

## Submission to the Independent Reviewer of SafeWork NSW – 2 March 2023

### Executive Summary

Founded in 1948, the Australian Institute of Health and Safety (AIHS) is Australia's largest peak body for generalist work health and safety practitioners and professionals. Our vision is "safe and healthy people in productive workplaces and communities" (Australian Institute of Health & Safety, 2022). We have a long and proud history of working with regulators, employers, unions, and governments in the pursuit of more effective health and safety policy, regulation, and practice. We have more than 4,000 members across Australia, including approximately 1,000 based in NSW. These 1,000 NSW-affiliated members are represented by the NSW Branch Committee.

When developing this submission we found there to be a lack of publicly available information to build a comprehensive response to the terms of reference. We collated some statistics and reviewed annual reports, but detailed data remained elusive. In lieu of this evidence, we developed and ran our own pulse survey, focusing on the approximately 1,000 AIHS members based in or affiliated with NSW. This survey yielded more than 100 responses, despite the relatively short timeframe of less than seven days. This demonstrates both 1) the passion and energy our membership have on the role, effectiveness, and performance of the regulator, and 2) their commitment to improving WHS outcomes in NSW.

Based on this survey and the expertise of AIHS leaders, we submit the following eight priorities and recommendations for consideration by the Reviewer:

1. Clarify regulation around professionalism and competency of WHS practitioners and professionals
2. Proactive SafeWork NSW enforcement of officer due diligence requirements, especially for boards/senior management of high-risk entities
3. Embrace professional development of SafeWork NSW workforce, including inspectorate, advisory services, technical experts, and other WHS-focused workers. This can include through:
  - a. Education and studying WHS vocational and tertiary courses,
  - b. Industry association membership and participation in training and networking activities,
  - c. Professional certification.
4. Reflect the 'quadripartite nature' of many NSW workplaces at the highest governance levels, and establish a peak advisory body or committee, including WHS experts, an independent chair, and representatives from employer groups, union bodies, and professional associations
5. Expand support for enforceable undertakings
6. Consider providing 'no-blame' safety investigation options where the public interest in understanding causality and sharing lessons to avoid recurrence outweighs prosecution
7. Look to external sources, such as the aviation industry, for better practice in supporting families of victims
8. Establish an OHS Essentials program, subsidising and connecting supporting resources to small businesses who require focused support and advice.

### Background

On 25 October 2022, the New South Wales Government initiated an Independent Review of SafeWork NSW in respect of SafeWork NSW's performance of its regulatory functions (including educational functions) under the Work Health and Safety Act 2011 (NSW). The scope of the Review is to inquire into, report on and where thought desirable make recommendations as to:

1. The performance and effectiveness of SafeWork NSW's compliance and enforcement functions. This part of the Review will consider complaints, inspections, investigations, and prosecutions, and will include consideration of SafeWork's Triaging and Investigation Decision Making Panel processes.
2. The performance and effectiveness of SafeWork NSW's educational functions.

3. The governance and culture of SafeWork NSW, including complaints as to alleged unlawful or undesirable conduct in the workplace.
4. Appropriate measures to ensure that workers and their representatives (including Health & Safety Representatives), and the families of injured and deceased workers, have a genuine voice in the complaints, investigation, and enforcement processes.

## About us

Founded in 1948, the Australian Institute of Health and Safety (AIHS) is Australia's largest peak body for generalist work health and safety practitioners and professionals. Our vision is "safe and healthy people in productive workplaces and communities" (Australian Institute of Health & Safety, 2022). We have a long and proud history of working with regulators, employers, unions, and governments in the pursuit of more effective health and safety policy, regulation, and practice.

We have more than 4,000 members across Australia, including approximately 1,000 based in NSW. These 1,000 NSW-affiliated members are represented by the [NSW Branch Committee](#). The NSW Branch Committee volunteer their time with the Institute. They represent NSW in AIHS policy submissions by providing their experience and expertise working in NSW. This includes frequently interacting with SafeWork NSW in their professional roles.

The College of Fellows was established in 2002 and comprises those members who are Fellows and Honorary Fellows of the Institute. As a senior network of the Institute, the College works to support the Institute's vision, values and strategy. The AIHS Policy Committee sits within the College of Fellows, and leads submission to health and safety policy consultations around the country. Our policy work can be found on the AIHS website at [www.aihs.org.au/aihs-policy](http://www.aihs.org.au/aihs-policy).

## Our view on the role of regulators

Regarding health and safety regulation and enforcement, our position is that effective compliance and enforcement is an vital ingredient to produce healthier and safer workplaces. Organisations have the primary responsibility and accountability for meeting the legislative health and safety requirements as applied to their own organisations. But we know that many duty holders require external motivators to meet legislative requirements.

Regulators play a critical role in providing advice on, confirming, monitoring, and investigating compliance, as well as for incident investigation, determination of causes of incidents, and pursuing processes to establish penalties associated with non-compliance. To this end we agree with and advocate for the appropriate use of enforceable undertakings (EUs) to advance health and safety outcomes, knowledge and practice.

Our view is that all Australian industry health and safety regulators should:

- be appropriately and securely funded to deliver and plan their works in proportion to the scale, capabilities, and risk of their regulated industries,
- be apolitical and independent, and supported with robust governance structures and processes,
- adopt risk- and evidence-based strategies in forming their program of works, initiatives, and areas of focus
- be dynamic, responsive, and data-driven in their work,
- be both focused on supporting and holding duty-holders to account the PCBUs and workers of today, with an eye on preparing for and mitigating the potential impacts of emerging risks in the future.
- invest in the health and safety knowledge, skills, and capabilities of their workforce, particularly inspectorate teams, advisory service providers, technical experts, and other WHS-facing roles, through
  - education,
  - industry association membership and participation, and
  - certification
- be strategic in their approach to engaging with industry.

As NSW's largest health and safety regulator, we support the work of SafeWork NSW in providing inspectorate, advisory and education services to NSW businesses, workers, and the community. An effective and efficient regulator makes the work of our members in NSW workplaces easier and more effective.

## General feedback on SafeWork NSW

In a broader Australian work health and safety (WHS) regulatory context, we believe SafeWork NSW are a middling agency. Since their establishment in late 2015, SafeWork NSW has overseen a stable fatality incidence rate of 0.8-1.1 fatalities per 100,000 workers, equal to the national average. Incidence rates of long term (12 weeks or more compensation) injury and disease claims have risen from 2.6 in 2015-16 to 4.1 in 2020-21. This compares to the national average of 3.2 to 3.9 through that period.

Incidence rates of serious injury and disease claims have increased from 9.7 claims per 1,000 employees in 2015-16 to 12.7 in 2020-21 in NSW. Frequency rates of serious injury and disease claims have increased from 5.8 to 7.8 claims per million hours worked for the same period. The usual statistical caveats apply to these figures regarding the impacts of the COVID-19 pandemic in 2020 onwards. Additional statistical tables are provided for the Reviewer's convenience in Appendix B.

However we believe there have been positives. These include:

- Development and release of Managing psychosocial hazards at work Code of Practice in May 2021
- Development and publishing of the NSW Dust Strategy 2020-22
- Development of Mentally Healthy Workplaces Strategy 2018-22
- Dynamic engagement approaches such as incident animations and 'risk radar' customisable data presentation
- Launch of Centre for WHS in late 2017
- Launch of the SafeWork small business rebate program in late 2018.

Further, our survey respondents provided positive feedback in relation to:

- timely response to incident sites, and the generally professional and respectful investigation process
- effective inspection methods, especially in the context of large infrastructure projects
- specific educational programs such as solar installations, psychological risk management, and PERforM (SafeWork NSW, n.d.), which have been instrumental in managing workplace risks. The use of posters, language, QR codes, safety packs, free Construction Supervisor courses, and COVID support was also commended.

We note the increased focus on visual and non-English communications. We support this upward trend continuing, in accordance with adult learning principles that cater for wide-ranging demographics, including cultural, language, and social factors. This includes collaborating with other regulators to leverage content where possible. We also support the way in which SafeWork NSW are trying to use behavioural insights, to influence public perceptions.

Data in the publicly available annual customer satisfaction survey was mixed, up until the series was ceased with the 2018-2019 version. This presumably was interrupted due to COVID-19. We support the resumption of this annual public polling, and across sample sizes much greater than those provided prior in previous reports.

Without engaging with workers at SafeWork NSW, the only other publicly available data we could identify was that increased from 6% to 11% between 2020-21 and 2021-22 (see [https://www.nsw.gov.au/sites/default/files/2022-12/DCS-annual-report-2021-2022\\_0.pdf](https://www.nsw.gov.au/sites/default/files/2022-12/DCS-annual-report-2021-2022_0.pdf)). This increase in proportion to the NSW Department of Customer Service is of course concerning. But we cannot infer any sense of internal culture, operational effectiveness, or workplace health and safety from such high level data.

In lieu of this data we developed our own pulse survey, to create data points to inform this submission.

## Our submission approach

This submission incorporates the views of our NSW-affiliated membership, our Policy Committee, and other selected leaders within the AIHS. To encompass the views of our NSW-affiliated members, we developed and ran a pulse survey against the Review terms of reference. We translated the ToR into the following questions:

1. How effective were SWNSW's complaints processes in the last five years?
2. How effective were SWNSW's investigation processes in the last five years?
3. How effective were SWNSW's inspection processes in the last five years?
4. How effective were SWNSW's prosecution processes in the last five years?
5. How effective were SWNSW's educational services in the last five years?
6. How effective were SWNSW's governance processes in the last five years, e.g. processes around complaints about their activities?
7. Has SWNSW effectively consulted with worker representatives in the last five years?
8. Has SWNSW effectively consulted with families of injured or deceased workers in the last five years?

We also asked members an open question about what actions SafeWork NSW could take to improve their effectiveness as a WHS Regulator.

The survey received more than 100 responses, despite the short timeline of five days. This relatively high response rate indicates the level of passion and engagement our members have regarding the role of SafeWork NSW. It is really important to WHS practitioners and professionals that SafeWork NSW does its work effectively. For the Reviewer's convenience we have provided the results of this survey in **Appendix A**.

We also performed a desktop analysis and collation of key WHS statistics between 2010-21. We understand stakeholders would have access to this data and have likely already done this analysis. However we performed this work in order to support this submission.

We believe the ToR are narrow. By focusing on "deficiencies and recommendations" at just the organisational level, the Reviewers are limited in their ability to improve overall WHS outcomes across NSW. The effectiveness of SafeWork NSW is intrinsically both constrained and enabled by interconnected components of the broader WHS complex system. This includes laws under the WHS Act 2011 and other related legislation, actions by educators and trainers, and broader reforms to the workers' compensation and other systems.

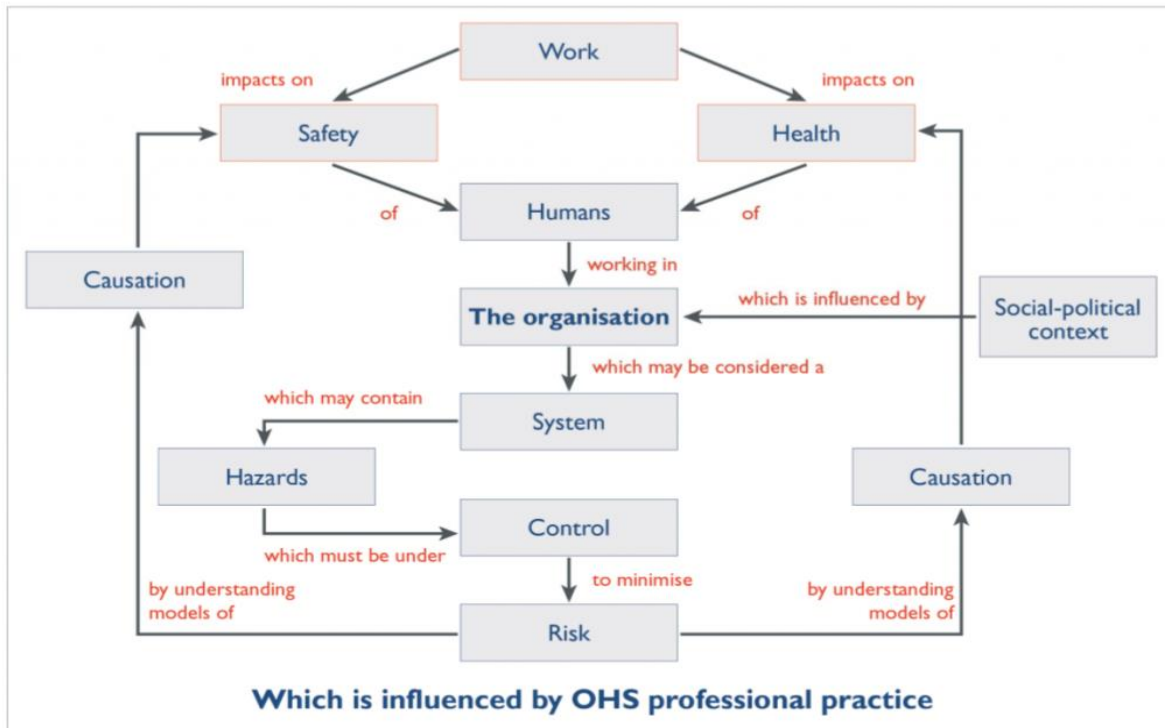
Notwithstanding these constraints, we make the following recommendations.

### 1. Clarify regulation around professionalism and competency of WHS practitioners and professionals

The AIHS has since 2012 published an extensive free on-line resource called the OHS Body of Knowledge (BoK) that is used in tertiary curricula around Australia and is internationally referenced (see: <https://www.ohsbok.org.au/> ). The conceptual framework of the BoK, summarised in the diagram below, is that:

- Work impacts on the safety and health of humans who work in organisations
- Organisations are influenced by their socio-political context and may be considered a system which may contain hazards that must be under control to minimise risk

- This can be achieved by understanding models of causation for safety and for health which will result in improvement in safety and health of people at work
- WHS professionals actively influence organisations to bring this about.



Drawing from the BoK and international best practice developed with the assistance of the AIHS by the International Network of Safety and Health Professional Organisations (INSHPO) (<https://www.inshpo.org/work>), the AIHS supports and facilitates certification of WHS practitioners and professionals and continuing professional development (CPD) to build and maintain competency (see: <https://www.aihs.org.au/certification>). This is executed through training and more recently via a strong mentoring program.

Legislation and associated guidelines in Victoria (suitably qualified professionals in OHS Act Section 22(2)(b)) and Western Australia (WHS Act Section 26A(3)) encourages professional OHS/WHS competence. There and elsewhere around the world, this can take the form of encouraging certification and/or penalising those who offer WHS advice that is not competent and/or leads to serious adverse health and safety outcomes. NSW should consider doing likewise.

As a point of comparison, the training requirements in Spain for those who provide higher level OHS 'prevention services', which are mandatory for prescribed organisations, are much more prescriptive and onerous compared with current AIHS certification requirements. Spanish practitioners require a university degree and an additional 600 hours of training required (see: [https://www.boe-es.translate.google.com/act.php?id=BOE-A-1997-1853&x\\_tr\\_sl=es&x\\_tr\\_tl=en&x\\_tr\\_hl=en&x\\_tr\\_pto=sc](https://www.boe-es.translate.google.com/act.php?id=BOE-A-1997-1853&x_tr_sl=es&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc)).

Support for well-trained health and safety representatives (HSRs) and high quality WHS education (vocational and tertiary) is critical to improving WHS outcomes. SafeWork NSW can play a critical role here through regulatory reforms and enforcement. Operators of high-risk plant can expect to have their licenses requested for inspection; we believe WHS practitioners and professionals providing material advice should face similar requirements.

## 2. Proactive SafeWork NSW enforcement of officer due diligence requirements, especially for boards/senior management of high-risk entities

One of the important innovations in the model WHS Act as adopted in NSW is the general ‘reasonably practicable’ duties of care of a person conducting a business or undertaking (PCBU) duties of officers (e.g. board members and senior management), including due diligence responsibilities in [section 27](#).

Whilst “industrial manslaughter” legislation has attracted a large amount of media and public attention in jurisdictions across Australia, and introduced under the premise it will provide a greater deterrent for PCBUs and the officers of organisations to not meet their WHS duties, we are aware of no research evidence that supports this proposition. Similarly, we do not believe there is a strong case that the a significant proportion of officers both 1) are aware of other prosecutions, and 2) consider these prosecutions when making decisions material to the WHS outcomes of their organisation.

A potential reason for this is the relatively small number of organisations and officers that are prosecuted for a breach of the WHS Act/Regulations. This compares to the number of infringement notices that are issued for more minor offences, for example using a mobile phone whilst driving. For example, in 2019 WA police issued almost 12,000 infringement notices for using a mobile phone whilst driving, whereas WorkSafe WA only had 5 successful prosecutions in that year.

This means that very few people (e.g. officers) personally know someone that has been prosecuted for a breach of the WHS Act/Regulations. There is therefore a perception that it is only the “cowboy” organisations and their officers that will ever be prosecuted. “It could never happen to me”. There are inevitably many breaches of the WHS Act/Regulations that occur every day, akin to using a mobile phone whilst driving. The vast majority of these breaches remain undetected and unprosecuted.

Therefore, we believe that prosecuting a small number of officers is unlikely to change the behaviour or thinking of other officers when they make decisions about whether to invest in newer plant to allow work to be conducted more safely, or how much to invest in auditing and inspecting workplaces to ensure that their WHS management systems are in place and controls are effective.

Further, prosecutions are reactive, and do not bring back the deceased workers or repair permanent injuries. We find it difficult to reconcile the decision to prioritise investing so much money in conducting reactive prosecutions, when the same or greater investment isn’t being made to proactively change the behaviour of officers before serious injuries or fatalities occur.

Accordingly, it is submitted that a greater proportion of SafeWork NSW’s enforcement activity should be focussed on the proactive enforcement of the officers’ WHS due diligence obligations, via random workplace inspections, even where there has not been an injury, fatality or dangerous occurrence. The 2020 Independent Review of NSW WHS Resources legislation made a similar recommendation (number 37 at pp112-3: <https://www.resourcesregulator.nsw.gov.au/sites/default/files/documents/whs-mines-and-petroleum-sites-act-and-regulation-statutory-review-report-october-2020.pdf> ).

Our analysis demonstrates that between 2013-21 approximately twice as many proactive visits occurred compared to reactive visits. We believe a step change is required in this balance, e.g. between four and ten times more proactive visits. Beginning with the UK Health and Safety Executive (HSE) in the 2000s, the UK offshore oil and gas industry placed a greater priority on health, safety and hazard training for boards and senior executives, with high performance outcomes. We see few reasons as to why this approach could not be adapted more broadly for other industries and jurisdictions likes NSW.

### 3. Embrace professional development of the SafeWork NSW workforce, including inspectorate, advisory services, technical experts and other WHS-focused workers

WHS is multi-faceted and multi-disciplinary. No single professional is an expert in all aspects. The AIHS are passionate advocates for lifelong learning, continual development, and professional growth. By striving to improve our practice through building knowledge and developing skills, we can provide higher quality and more effective advice and support to Australian workplaces. Ultimately, we believe this improvement will mean lives are saved and injuries and diseases avoided.

But the profession needs support.

In the same way PCBUs are obligated to provide HSRs with the time, resources, and tools to do their voluntary roles effectively, we believe employers should support their WHS workforce to develop. This could include through in-kind support (e.g. providing leave), reimbursement or subsidy, or in other ways. Professionals can develop through:

- Education and studying WHS vocational and tertiary courses,
- Industry association membership and participation in training and networking activities,
- Professional certification.

Our records indicate that currently just 14 individuals from SafeWork NSW are AIHS members. We think this figure should be much higher. We urge the Reviewer to recommend SafeWork NSW's develop the capabilities of their WHS-focused workforce by funding and promoting the development options listed above.

### 4. Establish a peak advisory body or committee, including WHS experts, an independent chair, and representatives from employers, union bodies and professional associations

WHS professionals in NSW workplaces are tasked with liaising and facilitating communications between the tripartite bodies; government (i.e. the regulator), employers (i.e. management), and unions (i.e. workers). Every day our members translate regulations into practical advice and actions for management and workers, explain to inspectors the arrangements in place around WHS risks, help management provide appropriate instruction, supervision, and training to workers, and escalate WHS issues raised by workers to management.

Traditional WHS policymaking arrangements are tripartite. However, in order to reflect the workplaces they serve, we believe the highest levels of governance and policy setting should be quadripartite, with WHS professionals playing a key translation and WHS expertise role.

We note that despite international agreements, NSW currently does not have an advisory board or committee. We believe an independent WHS advisory board, commission or committee should be created, with wider representation beyond tripartite parties to include WHS experts, as is the case in jurisdictions such as WA, Queensland, and soon to be SA. An independent chair would help facilitate its operation, as occurs with NSW Resources WHS.

For example, the WA WHS Commission includes three independent WHS experts, representing the disciplines of medicine, hygiene, and safety. They are active contributors providing contemporaneous advice from the latest research evidence, theoretical concepts and historical experience. They provide a connection back to university and WHS education providers, international links and committees, and professional practice groups. In the September 2022 WA WHS Commission meeting minutes there are 11 mentions from the experts.

Other health and safety professional bodies such as the Australian Institute of Occupational Hygienists (AIOH) also endorse this recommendation. We suggest that the Reviewer discuss the WA arrangement with the WorkSafe WA Commissioner, Darren Kavanagh, to independently gain an insight into the value and benefits of this arrangement.

## 5. Expand support for enforceable undertakings

SafeWork NSW have initiated 65 enforceable undertakings (EUs) between 2014-21, at an average of nine per year. We see EUs as providing greater opportunities for permanent and meaningful change. They can and have created lasting improvements, in shorter timeframes, compared to lengthy and expensive public prosecutions.

The OHS Body of Knowledge ([www.ohsbok.org.au](http://www.ohsbok.org.au)) (“OHS BoK”) was initially supported by WorkSafe Victoria in 2012. Safe Work Australia then supported the development of four new chapters in 2013-14. The OHS BoK continues to be funded and auspiced by the AIHS, which employs a BoK Manager and provides administration and web services using membership revenue. However, EU-based revenue and other corporate support is necessary to update chapters and produce new ones (see: <https://www.ohsbok.org.au/enforceable-undertaking/>).

We believe SafeWork NSW can do more work in this space, and we encourage them to seek out industry-based partners like us, in order to inform the design, area/s of focus, and deliverable objectives of EUs. They provide those who have failed to meet their duties an opportunity to create lasting positive change.

## 6. Consider providing ‘no-blame’ safety investigation options where the public interest in understanding causality and sharing lessons to avoid recurrence outweighs prosecution

The AIHS considers that while SWSA has made major improvements in compliance and enforcement investigation in recent years, there is an opportunity to add the option of a ‘no-blame’ safety investigation when the public interest in understanding causality and sharing lessons to avoid recurrence, particularly in high-risk industries, outweighs the merits of potential prosecution and associated lack of transparency issues associated with in-house legal professional privilege investigations.

The members of the International Transportation Safety Association (ITSA) are government ‘no-blame’ professional safety investigation authorities and include the Australian Transportation Safety Bureau (ATSB) and the US National Transportation Safety Board (NTSB). Following the lead of civil aviation through ICAO Annex 13 regulatory/criminal/civil law ‘blame and liability’ accident and serious incident investigations are conducted separately from safety (see from page 6 at: [https://bea.aero/fileadmin/documents/Cadre\\_juridique/Recueil\\_textes\\_reglementaires\\_ANG\\_2021\\_01\\_14.pdf](https://bea.aero/fileadmin/documents/Cadre_juridique/Recueil_textes_reglementaires_ANG_2021_01_14.pdf)). In Australia, other than aviation, marine and rail transport (and potentially heavy road vehicles soon), there is no independent standing investigatory body. The NSW Resources Regulator operating under enhanced WHS legislation conducts separate safety investigations aimed at preventing recurrence of similar accidents and serious occurrences. If it nominates to do this, it undertakes not to take separate compliance/enforcement action. We believe this is worthy of inclusion as an option for SafeWork NSW.

In 2020, Kym Bills as independent reviewer for the NSW WHS resources legislation and regulation recommended enhancements to investigation and improved uniformity and sharing with other WHS regulators, see recommendations 4, 6 and 7 and especially pages 46-48 and 56-58 in: <https://www.resourcesregulator.nsw.gov.au/sites/default/files/documents/whs-mines-and-petroleum-sites-act-and-regulation-statutory-review-report-october-2020.pdf>



## 7. Look to external sources for better practice in supporting families of victims

The International Civil Aviation Organisation (ICAO) provides best practice examples of arrangements and measures to support family members and other impacted stakeholders in relation to victims of aviation fatalities. There is a good deal that can be learned from better practice family assistance and transparency arrangements, particularly after a fatal aviation accident, as can be seen in the following sources:

- ICAO. 2013. Manual on Assistance to Aircraft Accident Victims and their Families. Doc 9973. 1st edition. International Civil Aviation Organization, Montréal. [https://www.icao.int/Meetings/a38/Documents/DOC9998\\_en.pdf](https://www.icao.int/Meetings/a38/Documents/DOC9998_en.pdf)
- ATSB. 2013. Information for families and friends as the next of kin. Australian Transport Safety Bureau, Canberra. <https://www.atsb.gov.au/media/4787672/Next%20of%20Kin%20booklet.pdf>
- NTSB. n.d. Family Assistance. National Transportation Safety Board, Washington, D.C. <https://www.nts.gov/tda/Pages/default.aspx>
- TSB. 2020. Policy on the dissemination of information to families, loved ones and survivors. Transportation Safety Board of Canada (TSB), Ottawa. <https://www.bst-tsb.gc.ca/eng/lois-acts/diffusion-dissemination.html>

## 8. Establish a health and safety essentials program for small businesses

For many years WorkSafe Victoria have overseen a program called the “OHS Essentials Program”. This program subsidises and connects health and safety consultants with small businesses requiring advisory and support services. Anecdotally, the program is popular with and valuable to businesses that are involved. We urge SafeWork NSW to consider implementing a similar scheme, given what we know about rates of injury, illness and fatalities being proportionally higher in small to medium-sized enterprises compared to larger PCBUs.

## Conclusion

We are grateful for the opportunity to make this submission and look forward to contributing further via an interview with the Hon Robert McDougall KC and his team in March 2023. Noting that an interim report is due the end of March, we would welcome any opportunity to provide input throughout the year as the final report is advanced through to November.

Our members and the broader WHS profession play a vital role in liaising with, interpreting, and ensuring the effective implementation of advice from SafeWork NSW in NSW workplaces. WHS professionals frequently translate legislative requirements for duty-holders into actionable, practicable advice. An effective regulator makes our jobs easier, and positively impacts health and safety outcomes in NSW workplaces. We look forward to improvements being made to SafeWork NSW, to drive NSW back to being a high performer among Australian WHS regulators. We believe supporting and implementing our recommendations will go a long way to achieving this.



Chair AIHS Policy Committee

2 March 2023



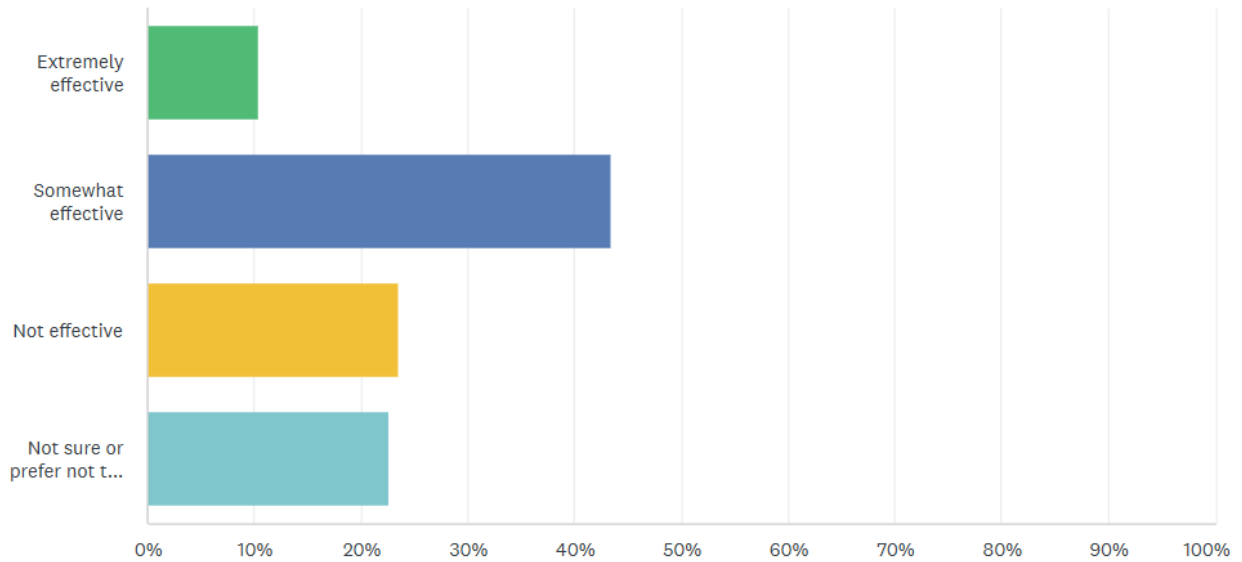
AIHS NSW Branch Committee – Policy Lead

## Appendix A – Survey results (n = 105) and summary analysis

Question	Extremely effective	Somewhat effective	Not effective	Not sure or prefer not to say
1. How effective were SWNSW’s complaints processes in the last five years?	11	45	25	24
2. How effective were SWNSW’s investigation processes in the last five years?	12	45	26	22
3. How effective were SWNSW’s inspection processes in the last five years?	10	55	23	17
4. How effective were SWNSW’s prosecution processes in the last five years?	10	33	19	43
5. How effective were SWNSW’s educational services in the last five years?	19	50	27	9
6. How effective were SWNSW’s governance processes in the last five years, e.g. processes around complaints about their activities?	6	26	27	46
7. Has SWNSW effectively consulted with worker representatives in the last five years?	10	33	28	34
8. Has SWNSW effectively consulted with families of injured or deceased workers in the last five years?	6	13	17	69

### Question 1: How effective were SWNSW’s complaints processes in the last five years?

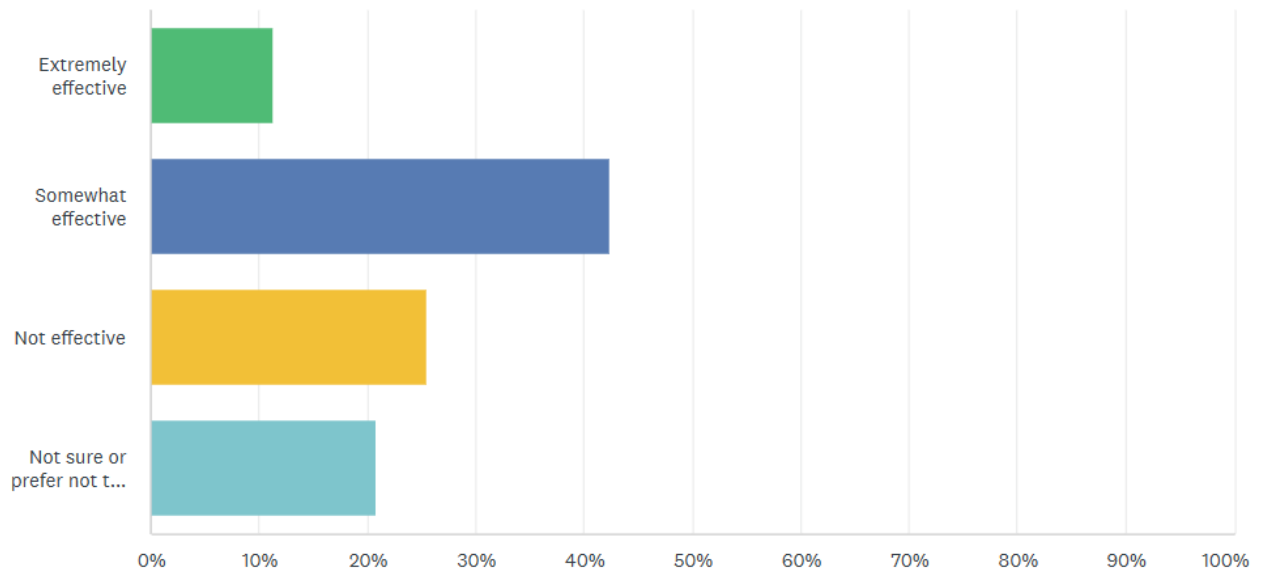
Answered: 106 Skipped: 0



This inquiry pertained to the efficacy of SafeWork NSW’s complaints processes over the past five years. The majority of respondents expressed confidence in the effectiveness of the processes, with favourable feedback provided on several aspects, including the Speak Up app (SafeWork NSW, n.d.), prompt investigations and follow-ups by SafeWork NSW, and access to guidance via telephone. Nonetheless, some respondents highlighted certain concerns, such as inconsistencies in inspectors’ perspectives and conflicting information, inexperience/incompetence of inspectors, inadequate prioritisation of complaints, use of Administrative Letters instead of on-site visits, bias towards larger enterprises and government, and a perceived lack of proactive enforcement of compliance.

## Question 2: How effective were SWNSW’s investigation processes in the last five years?

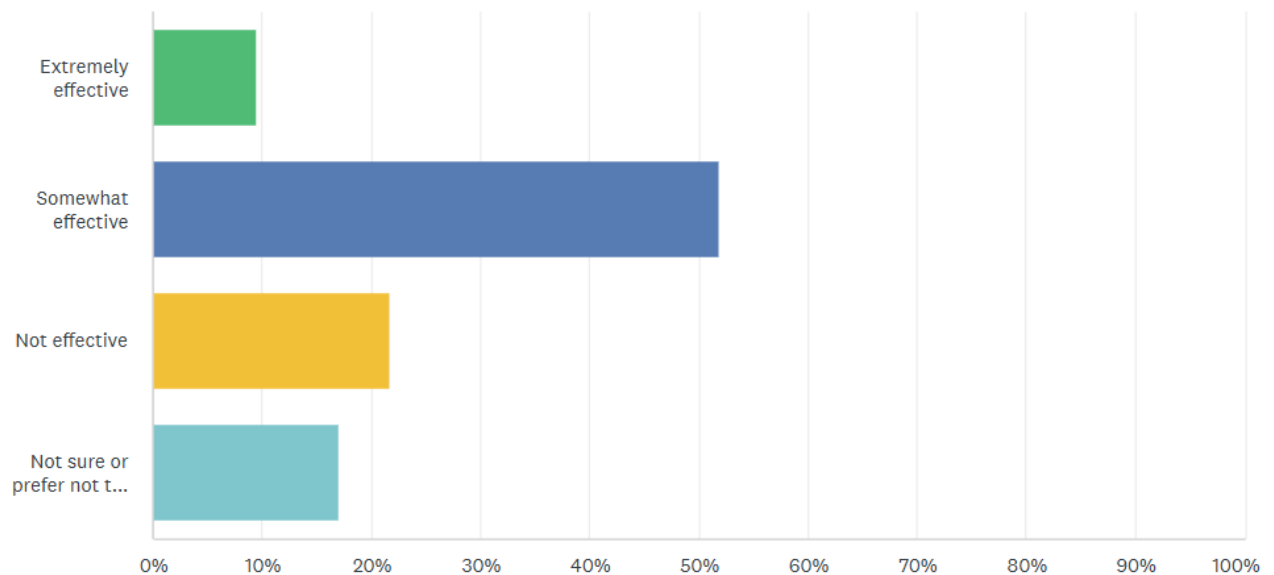
Answered: 106 Skipped: 0



This question centred on the effectiveness of SafeWork NSW’s investigation procedures over the past five years. Most respondents said that the processes have been effective, with positive feedback highlighting SafeWork NSW’s timely response to incident sites and the professional and respectful investigation process. In contrast, negative feedback centred on concerns about some inspectors' lack of soft skills, such as interviewing capabilities, and their focus on securing quick changes (through administrative controls) rather than more effective controls.

### Question 3: How effective were SWNSW’s inspection processes in the last five years?

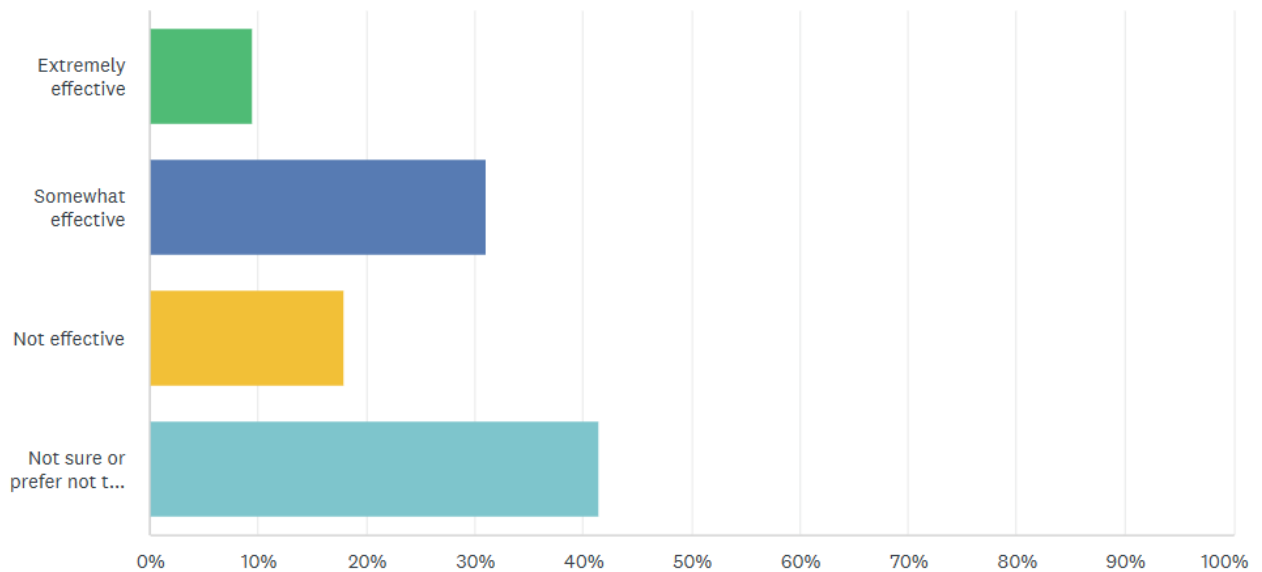
Answered: 106 Skipped: 0



Here respondents were asked to provide their views on SafeWork NSW’s inspection processes. Most of the respondents shared a positive outlook, indicating that SafeWork NSW’s inspection methods have been effective, especially in the context of large infrastructure projects. Additionally, recent inspections have shown an improvement in outcomes, as inspectors work with employers to facilitate better results. Furthermore, it was noted the inspections are now more targeted towards high-risk areas. However, some negative feedback was received regarding the inspectors' lack of experience and the focus being overly “client-oriented”. Respondents also expressed concern that inspections tend to be reactive and provide only basic or limited advice, and that insufficient resourcing at SafeWork NSW leads to inadequate inspection processes and frequency.

### Question 4: How effective were SWNSW’s prosecution processes in the last five years?

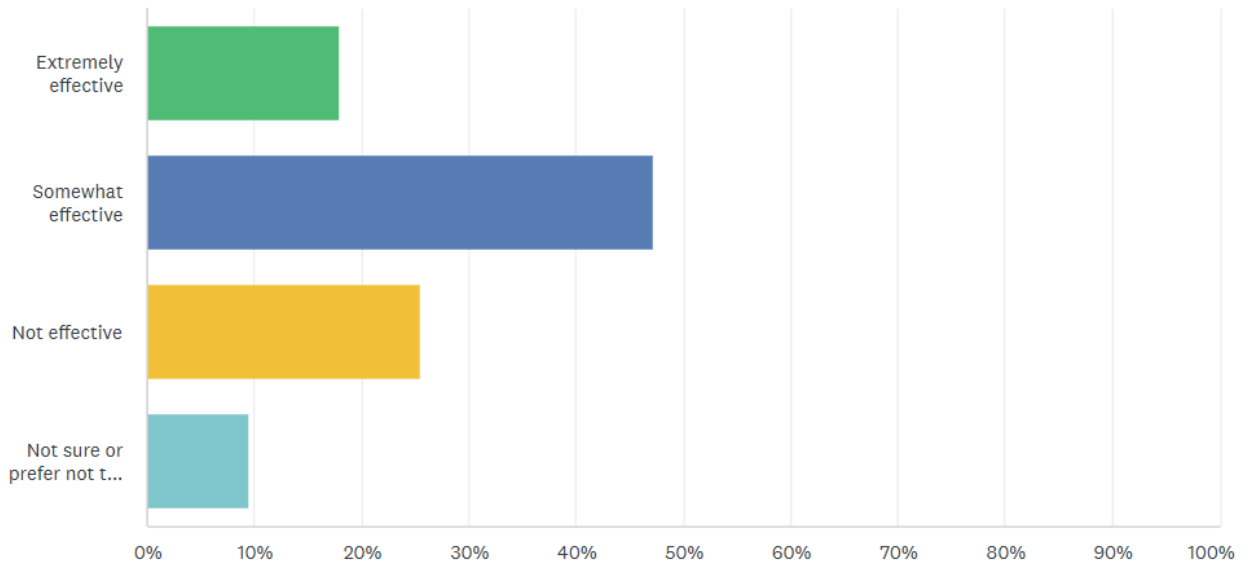
Answered: 106 Skipped: 0



This question sought to determine the effectiveness of SafeWork NSW’s prosecution processes over the last five years. Most of the respondents indicated no prior involvement with prosecutions, although the general consensus was that these processes have been effective. Respondents commended the slight increased use of enforceable undertakings as a positive development. However, some concerns were raised about the ability of prosecutions to bring about systemic and broader change. There were also concerns that the penalties imposed were too low to deter unreasonably hazardous processes from continuing. Limited investment in human resources was cited as a factor that can result in pressure to gather information in a timely manner for court hearings. Furthermore, respondents noted that prosecutions appear to be selective and not pursued for some issues, such as psychosocial risk management failures.

### Question 5: How effective were SWNSW’s educational services in the last five years?

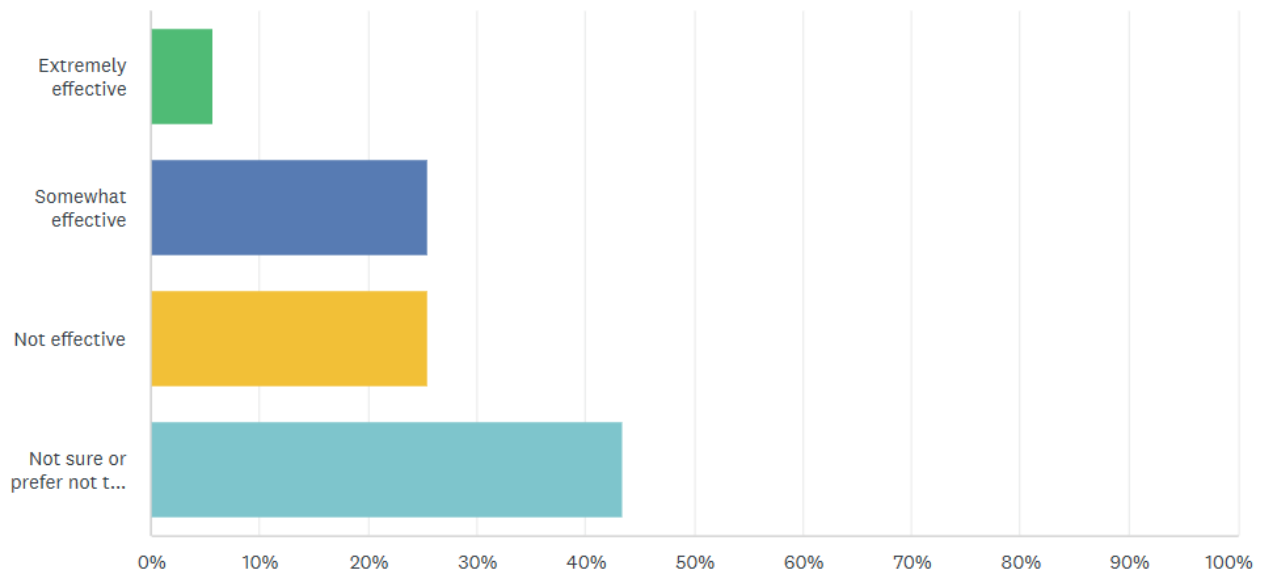
Answered: 106 Skipped: 0



Question five focused on SafeWork NSW’s educational services in the past five years, with the majority of respondents stating that these services were somehow effective. Positive feedback was received for specific educational programs such as solar installations, psychological risk management, and PERforM (SafeWork NSW, n.d.), which have been instrumental in managing workplace risks. The use of posters, language, QR codes, safety packs, free Construction Supervisor courses, and COVID support was also commended. Respondents also commented on the perception that the educational services did not cater to individuals with poor language skills. Additionally, some respondents expressed difficulty navigating SafeWork NSW’s website, while others noted the absence or lack of educational services. The decline in the quality of training services over the last decade was a point of agreement among respondents.

Question 6: How effective were SWNSW’s governance processes in the last five years, e.g. processes around complaints about their activities?

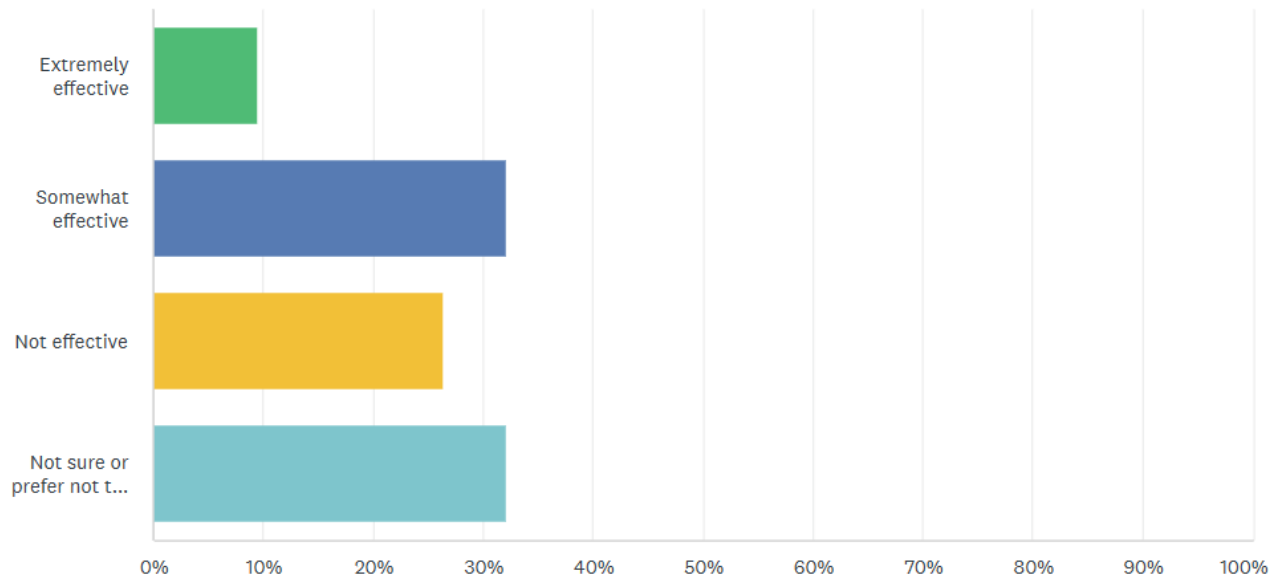
Answered: 106 Skipped: 0



Question six sought to explore the effectiveness of SafeWork NSW’s governance processes in the past five years. Most respondents expressed a lack of familiarity with SafeWork NSW’s governance processes. Positive feedback was received regarding consistency in governance and adherence to legislation. However, some respondents perceived that the governance processes were not aligned with the WHS Roadmap 2022 (SafeWork NSW, 2018). Concerns were also raised about the transparency of SafeWork NSW’s performance due to the absence of a Board, and there were negative comments about perceived bias towards large contractors and stakeholders. Additionally, some respondents expressed concerns about the inconsistency of internal review processes, and some raised concerns around SafeWork NSW’s independence and susceptibility to political and corporate influence.

### Question 7: Has SWNSW effectively consulted with worker representatives in the last five years?

Answered: 106 Skipped: 0

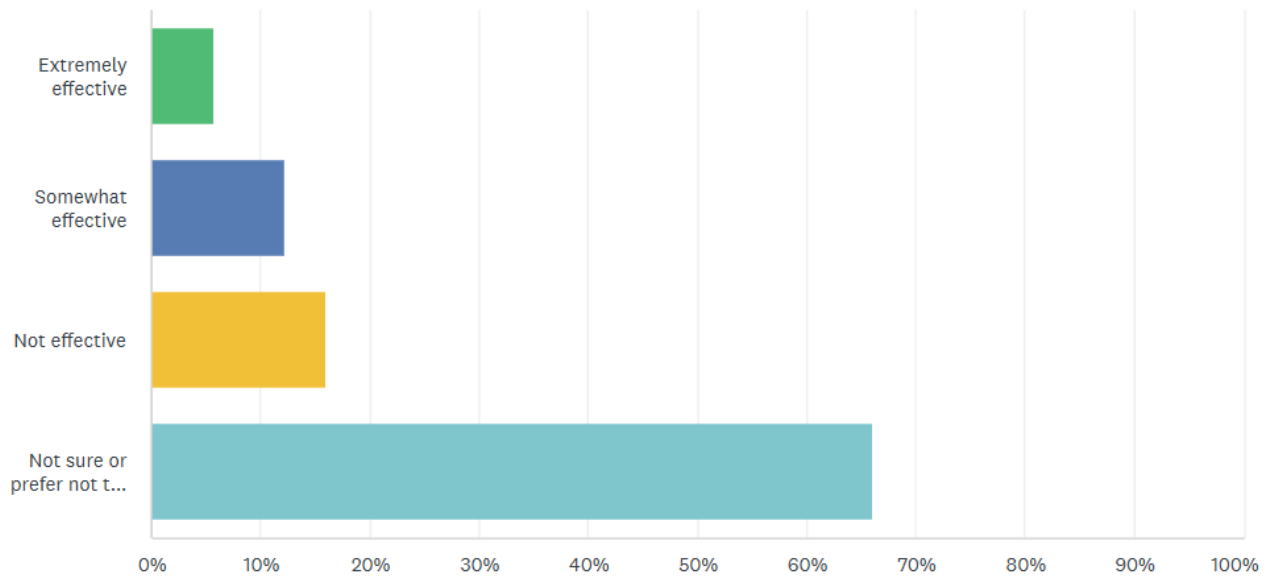


Inquiry item seven pertained to the efficacy of consulting with worker health and safety representatives (HSRs) within the preceding five-year period. This question generated the fewest results within the survey. While a few favourable remarks were received regarding inspectors prompting employers to liaise with HSRs, feedback from respondents who themselves function as HSRs indicated that they had not participated in any form of consultation with SafeWork NSW.



### Question 8: Has SWNSW effectively consulted with families of injured or deceased workers in the last five years?

Answered: 106 Skipped: 0



Question eight sought to assess the effectiveness of SafeWork NSW’s consultation with families of workers who had either been injured or deceased within the last five years. Most of the respondents indicated a lack of involvement in this aspect. None of the respondents had interacted with SafeWork NSW’s Family Liaison Coordinator (SafeWork NSW, n.d.).

## Question 9: What actions could SWNSW take to improve their effectiveness as a WHS Regulator, and why are these important?

This question sought to gather information on potential measures that could be taken to enhance the effectiveness of SafeWork NSW. The following actions were identified in descending order based on their frequency of mention:

1. Increase the resources allocated to enable coverage of more sites and conduct more inspections and investigations.
2. Provide more comprehensive education to inspectors on adopting a collaborative approach to achieving greater compliance with legislative requirements. This should include more engaging and practical recommendations.
3. Employ competent and multi-disciplinary professionals with hands-on experience in industrial work environments.
4. Strive to achieve consistency in responses and communications.
5. Offer more education, campaigns, advice, and forums.
6. Increase the media profile of SafeWork NSW.
7. Foster increased engagement with industry groups.
8. Provide customisable statistical search databases.
9. Work towards becoming an independent organisation that would not be impacted by political interference in its performance.
10. Generate comparative statistics against other states or countries to enable benchmarking of SafeWork NSW's performance.
11. Conduct more prosecutions to enhance compliance and deter non-compliant behaviour.
12. Develop workshops and a repository of recent regulatory changes and provide guidance on achieving compliance with them.
13. Foster increased engagement with industry groups to enable greater collaboration and understanding of the challenges faced in various industrial sectors.

## Statistics and data analysis

The work health and safety compliance and enforcement activity data for NSW were analysed from 2008-2009 to 2020-2021. The data included information on the number of infringement notices, improvement notices, prohibition notices, enforceable undertakings, legal proceedings, active inspectors, proactive and reactive visits, and other reactive interventions (Safe Work Australia, n.d.; Safe Work Australia, 2017; Safe Work Australia, 2014). Here's what we were able to interpret from the data:

1. Infringement notices issued: This refers to the number of fines issued for non-compliance with health and safety regulations. The number of infringement notices has varied over the years, with a peak of 688 in 2009-2010 and a low of 55 in 2013-2014. In 2020-2021, 520 infringement notices were issued.
2. Improvement notices issued: This refers to the number of notices issued to employers to improve their work health and safety practices. The number of improvement notices issued has decreased over the years, with a high of 12,161 in 2009-2010 and a low of 5,098 in 2013-2014. In 2020-2021, 9,985 improvement notices were issued.
3. Prohibition notices issued: This refers to the number of notices issued to prohibit work activities that pose an immediate risk to health and safety. The number of prohibition notices has also decreased over the years, with a high of 2,363 in 2020-2021 and a low of 498 in 2013-2014.
4. Enforceable undertakings: This refers to agreements made by employers to address health and safety issues. The number of enforceable undertakings has varied over the years, with a high of 17 in 2019-2020 and a low of 0 in 2011-2012 and 2012-2013. In 2020-2021, 9 enforceable undertakings were made.

5. Legal proceedings: This refers to legal action taken against employers for non-compliance with health and safety regulations. The number of legal proceedings has varied over the years, with a peak of 104 in 2020-2021 and a low of 33 in 2016-2017.
6. Field active inspectors per 10,000 employees: This refers to the number of inspectors per 10,000 employees actively enforcing work health and safety regulations. The number of inspectors has remained relatively constant over the years, with a high of 1.1 in 2008-2009, 2009-2010, and 2014-2015, and a low of 0.9 in 2016-2017, 2017-2018, 2018-2019, and 2019-2020.
7. Proactive visits: This refers to the number of visits made by inspectors to workplaces to proactively check for compliance with health and safety regulations. The number of proactive visits has varied over the years, with a high of 27,207 in 2020-2021 and a low of 6,577 in 2011-2012.
8. Reactive visits: This refers to the number of visits made by inspectors in response to a complaint or incident. The number of reactive visits has varied over the years, with a high of 1,421 in 2018-2019 and a low of 223 in 2012-2013.
9. Workshops/presentations/seminars: This refers to the number of proactive workshops, presentations, and seminars conducted by inspectors to promote work health and safety. The number of proactive workshops, presentations, and seminars has varied over the years, ranging from 3015 in 2010-11 to 837 in 2019-20.

The data indicates that the number of infringement notices issued has remained relatively consistent over the years, with a slight increase in recent years. Improvement notices and prohibition notices have also remained relatively stable, with some fluctuations. The number of enforceable undertakings has varied significantly year to year. Legal proceedings have resulted in a conviction, order of agreement in most years, with some fluctuations. The number of active inspectors per 10,000 employees has remained stable over the years.

Proactive visits, workshops/presentations/seminars: proactive, and reactive visits have all fluctuated over the years, with some years showing significant increases or decreases. Other reactive interventions have also varied year to year.

Overall, the data suggest that work health and safety compliance and enforcement activity in NSW has remained relatively consistent over the years, with some fluctuations. However, there have been some increases and decreases in specific areas of activity, which may reflect changes in priorities or resources.



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