



Independent review of the ACT's work safety compliance infrastructure, policies, and procedures

FINAL REPORT

27 August 2018

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Executive Summary

Our Review

This review is the first broad review of the ACT's work health and safety compliance and enforcement arrangements since the adoption of the national model work health and safety legislation in the ACT in 2011. We have identified emerging strengths in WorkSafe ACT's approach to strategic planning and have identified opportunities for improvement to clarify roles and responsibilities; and to better use data and information to inform the approach to compliance and enforcement.

The review of the ACT's work health and safety compliance infrastructure, policies, and procedures was established in May 2018 by the Minister for Workplace Health and Safety and Industrial Relations, Rachel Stephen-Smith MLA and the Minister for Regulatory Services, Gordon Ramsay MLA.

The scope of this review is confined to examining the work health and safety compliance and enforcement arrangements. It is not a policy and legislative review. That said, our findings and recommendations include changes to the governance for work health and safety arrangements which will require legislative change.

The terms of reference for the review were to consider:

- The approach to safety compliance and enforcement detailed in WorkSafe ACT's Compliance Framework.¹
- The appropriateness and effectiveness of WorkSafe ACT's governance structure including; the roles, legislative responsibilities, and functions of the Work Safety Commissioner, the Regulator, and relevant ministers.
- The appropriateness and effectiveness of WorkSafe ACT's organisational structure including; consideration of its independence and operational effectiveness in its current status as a business unit within Access Canberra.
- WorkSafe ACT's collection, use, and analysis of data and the impact and effectiveness of information sharing within Access Canberra and across government to drive work safety compliance and enforcement activities.

Our findings and recommendations are presented in this report in seven sections:

- Section 1 sets out the review framework and our approach to the review. It describes our research and consultations and describes the analytical framework that shapes the review and this report.
- Section 2 briefly outlines the changing work health and safety context in the ACT to provide a backdrop for the consideration of the arrangements we are considering in the review, and specially to scope the size of the jurisdiction and the types of businesses, and therefore the nature of workplace hazards in the ACT.
- Section 3 describes the history of WorkSafe ACT.
- Section 4 describes WorkSafe ACT's Compliance Framework.
- Section 5 continues the consideration of the appropriateness and effectiveness of WorkSafe ACT's approach with assessment of its risk-based approach and current activities; including the use of data and the sharing of information in Access Canberra which is a specific focus of the review.
- Section 6 describes the complex governance structure and makes recommendations for a sustainable future governance structure using the OECD best practice model as an assessment framework.
- Section 7 assesses the current organisational structure and proposes a preferred organisational structure to improve WorkSafe ACT's effectiveness.

¹ ACT Government Access Canberra, *WorkSafe ACT: Compliance Framework*, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/160522/1501545225/redirect/1/filename/WorkSafe+ACT+compliance+framework.pdf>

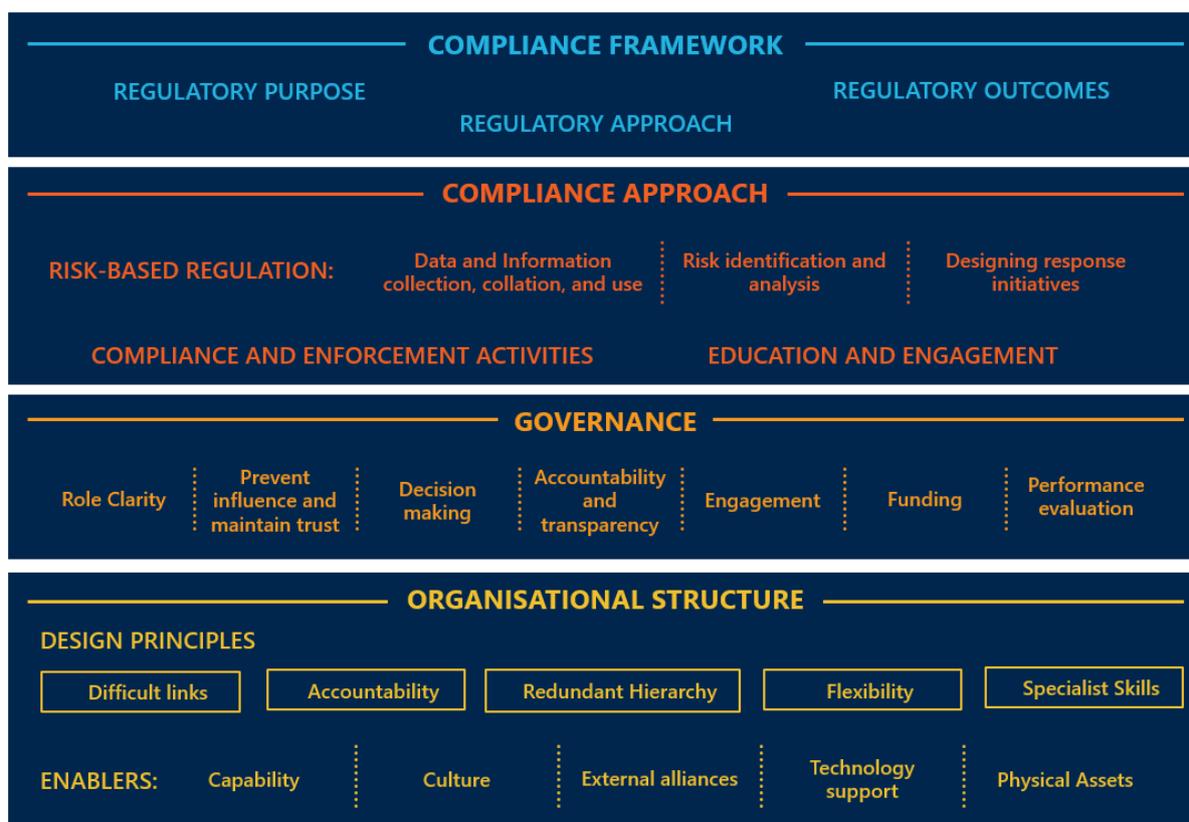
Section 1 Review Framework

The review examined best practice regulation, publicly available data from other Australian jurisdictions, and documents provided by WorkSafe ACT, Access Canberra, and the ACT Chief Minister, Treasury and Economic Development Directorate (CMTEDD). We consulted with business associations, unions, Access Canberra and WorkSafe ACT executives and managers, WorkSafe ACT inspectors, and received seven written submissions.

We developed an analytical framework to guide the review that incorporates elements of best practice from our research, focuses on the specific areas of the review specified in the terms of reference, and uses the Nous Groups' organisational architecture model to address core organisational enablers.

The analytical framework is described in Figure 1.

Figure 1 | Analytical framework for the review



Section 2 The changing work health and safety context in the ACT

The ACT is both one of the strongest and smallest economies in Australia and among the fastest growing states and territories. With a population of just over 400,000 it hosts over 27,000 businesses. The public sector represents over 30 per cent of employment and the majority of private businesses are classified as small businesses that are sole traders or have between one-five employees. There is continued growth in the construction sector. The largest proportion of the population is employed in health care and social assistance industry. The growing economy, the predominance of small businesses, and the large number of employees in professional and service industries suggests that work health and safety compliance needs to focus beyond physical injuries and be tailored to small businesses.

Section 3 Understanding the history of WorkSafe ACT

Work health and safety laws in the ACT have evolved from their early introduction in the ACT in 1989 to the adoption of the national work health and safety model laws in 2011. The institutional arrangements for administration of these laws have also changed over time. Of significant note for this review is that WorkSafe ACT is not an entity established in the work health and safety legislation, and indeed is simply a brand, adopted for the regulatory activities undertaken in the ACT. Under the *Work Health and Safety Act 2011* (the WHS Act) the Director-General of the Chief Minister's Department is the regulator. At the same time the WHS Act establishes the Work Safety Commissioner as a separate statutory appointee with specific education and advisory functions. These arrangements have been the subject of commentary in several previous reviews which are described in this section.

The WHS Act establishes the ACT Work Safety Council as a formal statutory advisory committee to the Minister. The Council is a tripartite body that is responsible for providing advice on work health and safety, workers' compensation, dangerous goods laws, approval of Codes of Practice and Protocols, education and training, and promoting safety at work. It performs a policy advisory function and plays a supportive role to the operation of WorkSafe ACT.

WorkSafe ACT operates within the national regulatory context and provides data for reporting by Safe Work Australia.

In 2014/15 WorkSafe ACT became part of Access Canberra. The establishment of Access Canberra aimed to bring together regulators across the ACT to make it easier for businesses, community organisations, and individuals to interact with ACT government. The operational effectiveness of WorkSafe ACT in the context of it being part of Access Canberra is a focus of this review.

Section 4 WorkSafe ACT's Compliance Framework

For the purposes of the review we considered the suite of documents that guide WorkSafe ACT's operations as constituting the Compliance Framework. We considered the extent to which the Compliance Framework met the criteria of being clear, comprehensive, and up to date.

The documents that comprise the Compliance Framework include documents that apply across Access Canberra including the Access Canberra Accountability Commitment and documents that apply specifically to WorkSafe ACT; including the WorkSafe ACT Compliance Framework. The National Compliance and Enforcement Policy is also applied by WorkSafe ACT. The first observation the review makes is that it is not clear how these documents operate together as a clear and simple framework to guide WorkSafe ACT staff in their work, and to inform stakeholders about what to expect in their interactions with WorkSafe ACT.

These overarching documents are supported by a large number of Standard Operating Procedures, some of which apply to all regulators in Access Canberra and some of which apply specifically to WorkSafe ACT. Our review of these documents demonstrated that they have not been updated for some years and may not reflect current processes and procedures.

We found specific areas where the Compliance Framework can be simplified, made clearer, and more accessible. We also found that there are specific aspects of the Compliance Framework that can be improved. There is a need to clarify WorkSafe ACT's regulatory approach. The current Compliance Model is an Educate, Engage, and Enforce model that suggests a 70:20:10 balance. Several stakeholders we consulted during the review raised concerns about this Model as the basis for WorkSafe ACT's compliance and enforcement approach. We were informed that the Model adopted by WorkSafe ACT is balanced according to identified non-compliance and the appropriate response (rather than the 70:20:10 ratio).

There is also a need to clarify what is meant by a risk-based approach for WorkSafe ACT and how this operates in practice. In our consultations with stakeholders, it is evident there is not a clear understanding of what a risk-based approach to work health and safety regulation entails.

We also found that the Compliance Framework would be improved by articulating how the tools available for WorkSafe ACT staff, especially inspectors, are to be used to address specific types of risks in each

situation. Inspectors we spoke to indicated there is insufficient guidance on when it is appropriate to use advice to address low risk non-compliance and when it is appropriate to issue Notices.

The review was encouraged by the recent initiative to develop a Strategic Business Plan and an Industry Engagement and Communications Strategy. We encourage WorkSafe ACT to finalise and publish these documents, establish processes, and assign responsibility to ensure this strategy and planning approach continues.

Section 5 The appropriateness and effectiveness of WorkSafe ACT's approach

The review considered WorkSafe ACT's approach to compliance by first considering the risk-based approach in practice. This part of the review included consideration of the effectiveness of WorkSafe ACT's collection, collation, and use of data to inform its activities and allocate resources. We also considered the extent to which there is effective information sharing across Access Canberra. We identified an opportunity to make better use of the systems capability available to WorkSafe ACT; including the new claims system and the new Customer Relationship Management (CRM) system. There is also an opportunity to maximise the use of the analytical capability available within CMTEDD. Currently WorkSafe ACT is not using data analysis to inform its programs and activities. This is being addressed in the strategic planning process where the new draft plan has been informed by a review of past activities, evidence from stakeholders, data analysis, and involvement and engagement of staff. We also found there is limited data sharing within Access Canberra relating to work safety compliance and enforcement activities.

We reviewed the current education and engagement, and compliance activities to understand their appropriateness and effectiveness. We identified opportunities to create more comprehensive information and compliance guidance material and to make it more accessible through a dedicated WorkSafe ACT website. With the introduction of a more strategic approach considering the new Strategic Business Plan, WorkSafe ACT can take a more strategic approach to its community and industry information, and education presentations and events.

We heard from stakeholders that they would benefit from earlier communication of activities and outcomes - to inform businesses and employees, and to strengthen prevention and compliance. We also heard that it would be useful to make claims and incident data available.

We examined how WorkSafe ACT uses the full suite of compliance and enforcement tools. We noted there has been a significant increase in the number of workplace visits in recent years and at the same time a decrease in the number of notices issued at workplaces; consistent with the emphasis on education and engagement as the primary compliance tool. We also noted that there would be benefit in ensuring records of visits are complete and provide details of any identified non-compliance, the guidance and advice provided, and the agreement reached to remediate the risks. This will provide important information to inform follow up visits and future targeting.

We noted that there is limited use of enforceable undertakings. We also noted there has been an increase in the number of legal proceedings taken.

The review suggests there is an opportunity to conduct more strategic, proactive visits that address identified risks and trends across a broader range of industries, where WorkSafe ACT's emphasis has primarily been on construction. We are also of the view that notices are an important tool to address more serious breaches of the work health and safety laws and there is a need for clearer guidance on when they should be used. The timely completion of investigations was raised as a concern. We note that there are now processes in place to ensure the progress of investigations is monitored to improve their timeliness.

Section 6 Governance structure

We considered the appropriateness and effectiveness of the work health and safety governance structure; including the roles and responsibilities of the Work Safety Commissioner, the regulator, and relevant ministers. Governance arrangements, institutional form, and governance tools together comprise the governance framework for an individual regulator. Our analysis uses the OECD Best Practice Principles for Regulatory Policy – the Governance of Regulators framework.² The model sets out the principles for good regulatory governance.

Our review of the current work health and safety governance arrangement found that there is a lack of role clarity as to the role of the regulator and the role of the Work Safety Commissioner. The important point of clarity is that the Work Safety Commissioner is not the regulator, and this creates confusion about the role the Commissioner performs; especially as the current Commissioner is also the Director of the Workplace Protection Division in Access Canberra.

Stakeholders have a perception that WorkSafe ACT is subject to influence, demonstrated in a reluctance to take action against government agencies on the one hand - and being too close to the unions on the other.

The decision-making framework within Access Canberra, especially the advisory role of the Regulatory Advisory Committee (RAC), was the subject of concern for some stakeholders. We found there was, when it was introduced, a lack of clarity about the role of the RAC and its impact on the exercise of discretion by individual inspectors and of the Director, Workplace Protection. We also heard concerns expressed about the exercise of delegations within Access Canberra. As noted above, there is an opportunity to improve the guidance provided to staff on the proper exercise of their delegations - to inform appropriate decision-making in the use of tools in response to non-compliance.

We found there is an opportunity to be more transparent about data, about performance information, and about funding.

Stakeholders are willing to work with WorkSafe ACT to achieve improved work health and safety outcomes. WorkSafe ACT can more effectively engage with business and unions through working groups and other consultative arrangements to develop and design programs and responses to emerging trends and to encourage tripartite collaboration.

We examined several institutional forms for effective governance of work health and safety in the ACT, drawing on previous reviews and models in other jurisdictions and regulatory domains. We ultimately recommend a new governance arrangement that provides for an independent work health and safety regulator that has regulatory authority vested in a single Commissioner. This model best addresses the need for independent decision-making and creates role clarity. At the same time, it is fit for purpose in a small jurisdiction.

Section 7 Organisation structure

The review considered the appropriate organisational structure for WorkSafe ACT for effective regulatory operations both within Access Canberra and in the proposed new independent regulatory entity. The proposed structure rebalances functional roles to separate compliance and enforcement, education and engagement, and organisational support. It also recognises that for a small entity there is an ongoing need for specialist services to be provided from other agencies within government.

The review also considered the core enablers to support the effective operation of WorkSafe ACT and identified there is an opportunity to improve the training and induction provided to WorkSafe ACT staff, to focus attention on change management, improving internal communications, and promote better alliances with workplace partners; including business associations, unions, and Health and Safety Representatives (HSRs).

² OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, 2014

Conclusion

Our review considered the appropriateness and effectiveness of work health and safety compliance and enforcement including the current Compliance Framework, WorkSafe ACT's current approach, and identified opportunities for improvement and emerging areas of strength.

To help inform the review we held a series of consultations, undertook best practice research, and were provided with data and information and documents from WorkSafe ACT and CMTEED. All the information gathered assisted us in developing our conclusions and recommendations about establishing clearer and simpler governance and organisational structure arrangements and improving WorkSafe ACT's effectiveness as a regulator.

Our report presents twenty-seven recommendations for consideration. We are confident the recommendations will enable WorkSafe ACT to be an effective and efficient work health and safety regulator in the future.

Review Recommendations

Recommendation 1: Be clear what comprises the Compliance Framework documents, how the suite of documents fits together, and how they are applied.

Recommendation 2: Review the WorkSafe ACT Compliance Framework to ensure it clearly articulates the regulatory approach and provides clarity on what is meant by the risk-based approach and how it is applied.

Recommendation 3: Articulate how the range of tools will be used, and in what circumstances, to provide clear guidance to regulated parties as to what to expect and to inform staff so there is consistent practice.

Recommendation 4: Review and update policies and procedures to ensure they align with the Compliance Framework and establish a process and assign responsibility for keeping all documents current.

Recommendation 5: Finalise and publish the WorkSafe ACT Strategic Business Plan 2018-22 and the WorkSafe ACT Industry Stakeholder Communications Strategy 2018/19, and ensure they align with the Compliance Framework.

Recommendation 6: Update the Strategic Business Plan annually to articulate compliance and enforcement priorities and measures.

Recommendation 7: Create a process and assign responsibility for data collection, collation and use to inform strategic priorities, programs and activities, resource allocation and performance, and outcomes measurement and reporting.

Recommendation 8: Ensure WorkSafe ACT has the capability and knowledge to effectively use the current systems and the data analytics services available to them.

Recommendation 9: Formalise an approach to sharing of information among and between regulators to better inform compliance targeting, responses, and to reduce burden for business.

Recommendation 10: Create more information and guidance material and make it more accessible through a WorkSafe ACT dedicated website.

Recommendation 11: Plan community and business engagement activities as part of the strategic approach to addressing priority industries, injuries, and cohorts.

Recommendation 12: Communicate about incident and enforcement outcomes sooner.

Recommendation 13: Make data publicly available to enable stakeholders to use the information to inform their work health and safety programs.

Recommendation 14: Continue to increase proactive inspections in the construction industry and conduct more inspections in other priority industries.

Recommendation 15: Report on the use of advice and guidance as a tool to inform when it was used, when non-compliance was identified, and the agreed response - to form part of the data set for future targeting.

Recommendation 16: Confirm the appropriate use of tools to reinforce the purpose and importance of the use of notices to address breaches.

Recommendation 17: Confirm the appropriate use of enforceable undertakings and encourage increased use.

Recommendation 18: Continue to improve procedures and expand investigative skills to support successful enforcement outcomes.

Recommendation 19: Produce a detailed annual report that includes a list of activities; including details of completed investigations and actions taken against private and public workplaces, and financial information.

Recommendation 20: Establish more effective collaborative arrangements with stakeholders to assist with the development and delivery of programs and activities to improve the reach of information and education materials.

Recommendation 21: Establish WorkSafe ACT as an entity under the WHS Act using a single accountability governance model in which a Commissioner is appointed as the regulatory authority and is accountable for all regulatory decisions.

Recommendation 22: Consider the proposed structure for WorkSafe ACT, to support the proposed governance model, including costing proposed changes.

Recommendation 23: Establish formal arrangements to define requirements and service expectations of all functions to be provided by other agencies.

Recommendation 24: Consider developing a formal and comprehensive internal training and development program, leveraging similar programs developed in other jurisdictions.

Recommendation 25: Consider developing a formal succession planning process to ensure knowledge, skills, and experience of the current workforce is captured and able to be transferred to new recruits.

Recommendation 26: Leverage guidance material developed by other jurisdictions, particularly for industries and programs that have received limited attention in the ACT.

Recommendation 27: Increase the visibility of the WorkSafe ACT brand on all physical and digital material, uniforms, and vehicles used by WorkSafe ACT.

1 Review Framework

1.1 Introduction

The independent review of the ACT's work health and safety compliance infrastructure, policies, and procedures was established in May 2018 for the Minister of Workplace Health and Safety and Industrial Relations, Rachel Stephen-Smith MLA and Minister for Regulatory Services, Gordon Ramsay MLA. To complete the review, ACT Chief Minister, Treasury and Economic Development Directorate (CMTEDD) engaged Dr Claire Noone from the Nous Group (Nous). This is the first broad review of the ACT's work health and safety compliance and enforcement arrangements since the adoption of the national model work health and safety legislation in 2011.

1.2 Scope of the review

The purpose of the review is to consider the appropriateness and effectiveness of the ACT's compliance and enforcement infrastructure, policies, and procedures.

In this context, the terms of reference³ for the review were to specifically consider:

- The approach to safety compliance and enforcement detailed in WorkSafe ACT's Compliance Framework.⁴
- The appropriateness and effectiveness of WorkSafe ACT's governance structure including; the roles, legislative responsibilities, and functions of the Work Safety Commissioner, the Regulator, and relevant ministers.
- The appropriateness and effectiveness of WorkSafe ACT's organisational structure including; consideration of its independence and operational effectiveness in its current status as a business unit within Access Canberra.
- WorkSafe ACT's collection, use, and analysis of data and the impact and effectiveness of information sharing within Access Canberra and across government to drive work safety compliance and enforcement activities.

1.3 Approach to the review

The approach to the review used a research-based methodology including:

- best practice as a basis for assessing the effectiveness of the current approach
- document review
- data analysing; including comparison with other work health and safety regulators in relation to activity and outcomes
- stakeholder consultation to identify issues, concerns, improvement opportunities, and approaches to implementation
- experience based insight and implementable recommendations.

³ Joint media release: Rachel Stephen-Smith MLA and Gordon Ramsay MLA, 'Independent review into work health and safety oversight', 24 May 2018, accessed at <https://www.cmtedd.act.gov.au/open-government/inform/act-government-media-releases/gordon-ramsay-mla-media-releases/2018/independent-review-into-work-health-and-safety-oversight>

⁴ ACT Government Access Canberra, *WorkSafe ACT: Compliance Framework*, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/160522/1501545225/redirect/1/filename/WorkSafe+ACT+compliance+framework.pdf>

Best practice research

We conducted a comprehensive desktop review into best practice in work health and safety compliance and enforcement, and emerging trends in regulatory practice. This literature review enabled us to develop a framework for assessment of effectiveness of WorkSafe ACT's current approach.

A full list of the best practice literature review is at Appendix A.

In summary we considered:

- academic analysis and thinking on the key strengths and weaknesses of the current approach to regulation, such as Gunningham⁵, Coglianese⁶, and Johnstone and Bluff⁷
- models and frameworks for assessing regulatory practice including:
 - the Australian National Audit Office's *Administering Regulation: Achieving the Right Balance*⁸ report
 - key performance indicators from the Australian Government's *Regulator Performance Framework*⁹
 - the New South Wales Government's *Guidance for regulators to implement outcomes and risk-based regulation*.¹⁰

Stakeholder consultation

The review sought to test and refine the thinking and understanding through a series of targeted consultations. The review met with:

- the Minister for Workplace Health and Safety and Industrial Relations
- the Deputy Director-General and Head of Access Canberra
- the former Chief Operating Officer, Access Canberra
- the Work Safety Commissioner and Director of Workplace Protection Division, Access Canberra
- the Deputy Director of Workplace Protection Division, Access Canberra
- the Executive Director and Senior Managers, Workplace Safety and Industrial Relations Division
- the Deputy Director of Strategic Communication and Media, CMDTEDD
- a Principal Solicitor and Senior Solicitor, ACT Government Solicitor
- a former Construction Registrar and WorkSafe ACT Inspector
- the Director, Licensing and Registration, Access Canberra and Former Deputy Director, Compliance and Enforcement
- the CEO of the Master Builders ACT
- the Regional Executive Director and Workplace Advisor, ACT/Southern NSW, Housing Industry Association

⁵ Neil Gunningham, 'Compliance, Enforcement, and Regulatory Excellence', PENN Program on Regulation, University of Pennsylvania Law School, June 2015, accessed at <https://www.law.upenn.edu/live/files/4717-gunningham-ppr-bicregulatordiscussionpaper-06>

⁶ Cary Coglianese, 'Listening, learning, leading: a framework for regulatory excellence', *University of Pennsylvania Law School, Philadelphia*, 2015, accessed at <https://www.law.upenn.edu/live/files/4946-pprfinalconvenersreport.pdf>

⁷ Richard Johnstone and Elizabeth Bluff, 'Supporting and enforcing compliance with Australia's harmonised WHS laws', *Australian Journal of Labour Law*, 30(1), pp. 30-57, 2017

⁸ Australian National Audit Office, 'Administering Regulation: Achieving the right balance', Commonwealth of Australia, accessed at https://www.anao.gov.au/sites/g/files/net616/f/2014_ANAO_per_cent20-per_cent20BPG_per_cent20Administering_per_cent20Regulation.pdf

⁹ Australian Government, *Regulator Performance Framework*, Commonwealth of Australia, 2014 available at https://docs.jobs.gov.au/system/files/doc/other/regulator_performance_framework.pdf

¹⁰ NSW Government Department of Finance, Services and Innovation, *Guidance for regulators to implement outcomes and risk-based assessment*, October 2016, available at http://productivity.nsw.gov.au/sites/default/files/2018-05/Guidance_for_regulators_to_implement_outcomes_and_risk-based_regulation-October_2016.pdf

- the CEO and Workplace Relations Manager, Canberra Business Chamber
- WorkSafe Inspectors
- Union representatives
- a Senior Lecturer at the School of Business at the University of New South Wales, Canberra.

We also convened sessions with:

- the ACT Work Safety Council
- union representatives
- WorkSafe ACT Inspectors
- Health and Safety Representatives (HSRs). Having convened a session for HSRs, we were disappointed that no Health and Safety Representatives took the opportunity to inform the review about the effectiveness of their role as part of the work health and safety system in the ACT, and their relationship with and support for, their role given by WorkSafe ACT.

In addition to our consultation we received written submissions from:

- Unions ACT
- the Master Builders ACT (MBA)
- the Australian Education Union (AEU)
- the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)
- the Community and Public Service Union (CPSU)
- the Australian Council of Trade Unions (ACTU)
- Kay Catanzariti.

Analytical framework

We developed an analytical framework for this review based on our review of the academic research and understanding of best practice regulation. The analytical framework guided our analysis and is used to guide the content of this report.

Section 4 of the report considers the Compliance Framework and examines whether it clearly articulates the regulatory purpose, regulatory approach, and regulatory outcomes for WorkSafe ACT. It assesses whether the documents are clear and simple and are comprehensive and consistent.

Section 5 of the report considers the Compliance Approach examining the approach to risk, the use of data and sharing of information, and follows with consideration of WorkSafe ACT's education and engagement, and compliance and enforcement activities.

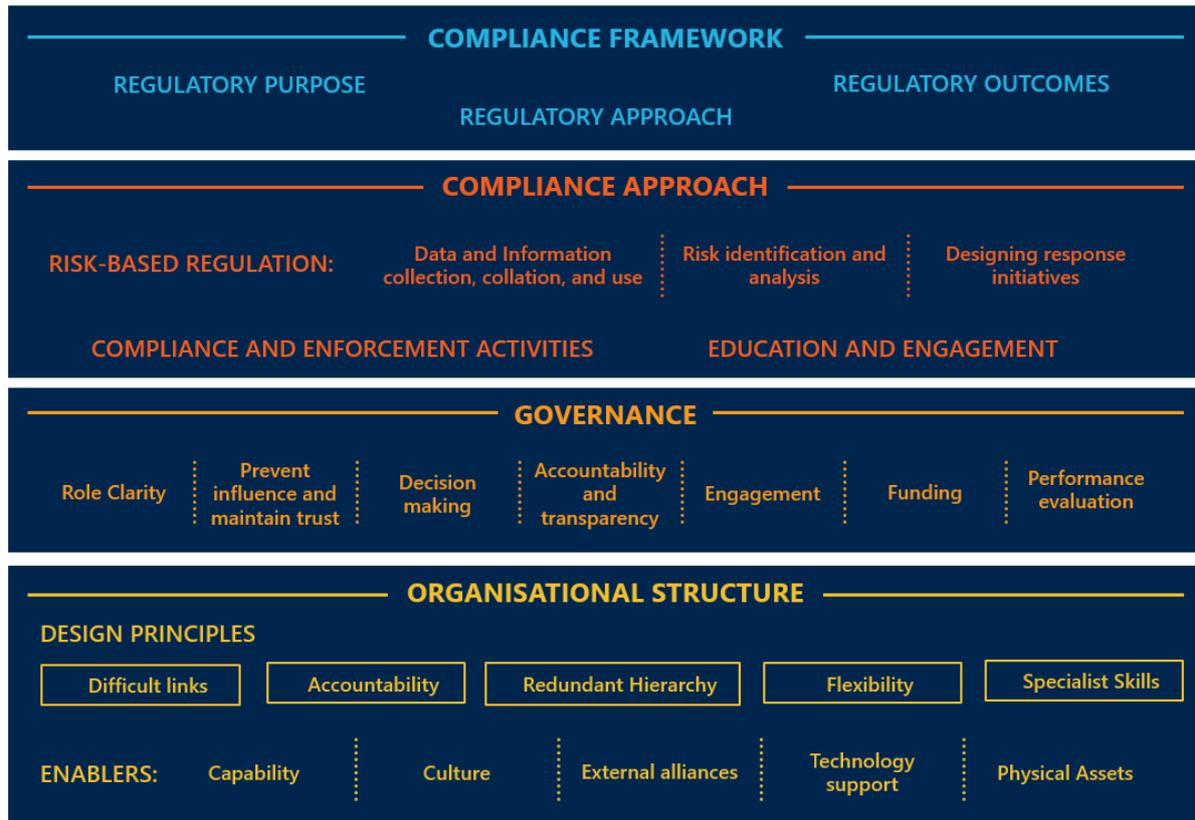
Section 6 of the report considers the Governance Structure with an assessment against the OECD Best Practice Principles for Regulatory Policy – the Governance of Regulators framework¹¹ to inform a preferred governance structure for WorkSafe ACT.

Section 7 of the report considers the Organisational Structure and core enablers using tailored design criteria to inform the appropriate structure for effective and efficient delivery of WorkSafe ACT's regulatory functions.

Figure 2 overleaf illustrates the analytical framework for the review.

¹¹ OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, 2014

Figure 2 | Analytical framework for the review



2 The changing work health and safety context in the ACT

2.1 Introduction

As a self-governing territory with only one city and a population just under 400,000, the ACT is a dynamic place to work in Australia. Our review of work health safety compliance is set in the context of this unique jurisdiction. Understanding the changing context of work in the ACT is important to inform our consideration of the ACT's work safety compliance infrastructure, policies, and procedures and provides context in which to shape our recommendations.

2.2 Economic conditions in the ACT

The ACT is both one of the strongest and smallest economies in the country, and among the fastest growing of all states and territories. With a population of just under 400,000 it hosts over 27,000 businesses and a gross state product over \$37.5 billion.¹² The public sector represents over 30 per cent of employment in the ACT, almost double the national average.¹³ The ACT population is highly educated with 37 per cent of the population having achieved a highest level of attainment of bachelor level degree or above. Median weekly earnings in the ACT are just under \$1,300 - the highest in Australia.¹⁴

ACT population growth is driven largely by interstate migration and currently sits above the national average growth rate of 1.6 per cent. Population growth is forecast to remain strong at an average of 1.5 per cent yearly growth. Under this forecast, the ACT population is expected to reach 437,000 by 2022 and 469,000 by 2027.¹⁵

The ACT economy has performed well relative to other states (growing 4.6 per cent in 2016/17 compared to the national average of 2.1 per cent), with especially significant growth in the Construction industry.¹⁶ This growth includes the Canberra Metro, which is the largest single engineering project undertaken by the ACT government (as at mid-2017 the Metro project accounted for \$3 in every \$4 of projects planned or under construction).¹⁷ Infrastructure spending continues to drive this growth with the 2018/19 ACT Budget allocating \$2.4 billion to a four year infrastructure program, including \$552 million for new initiatives and \$1.1 billion for existing projects.¹⁸ Figure 3 overleaf highlights the positive growth rate of both the ACT economy and population over the last few years, with anticipated growth to continue into the future.

¹² Australian Bureau of Statistics, Australian National Accounts: State Accounts, 2016-17, accessed at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5220.02016-17?OpenDocument>

¹³ Australian Bureau of Statistics, Australian Capital Territory (STE) (8), accessed at http://stat.abs.gov.au/itt/r.jsp?RegionSummaryandregion=8anddataset=ABS_REGIONAL_ASGS2016andgeoconcept=ASGS_2016andmeasure=MEASUREanddatasetASGS=ABS_REGIONAL_ASGS2016anddatasetLGA=ABS_REGIONAL_LGA2017andregionLGA=LGA_2017andregionASGS=ASGS_2016

¹⁴ Refer to footnote 13

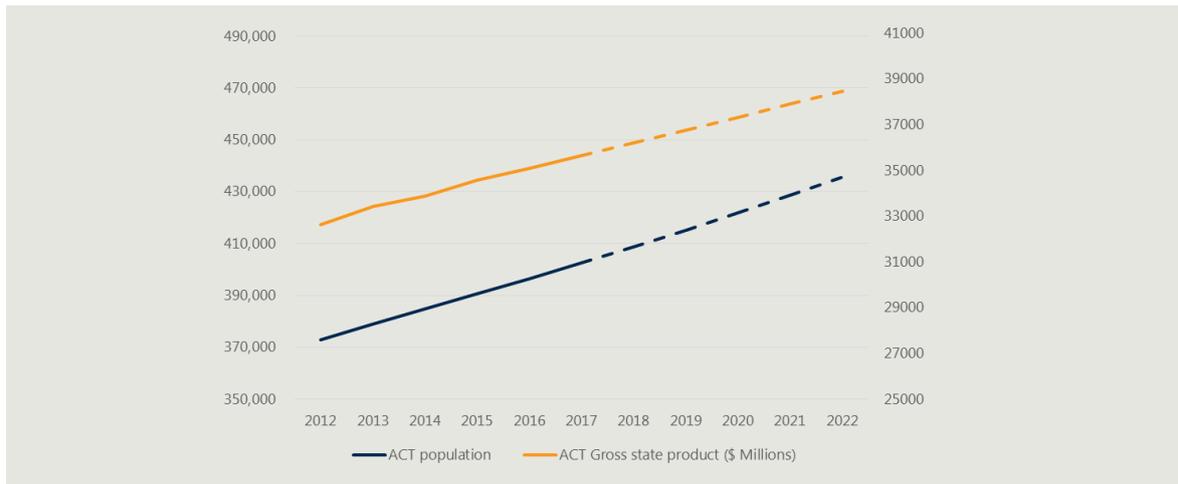
¹⁵ Refer to footnote 13

¹⁶ Refer to footnote 12

¹⁷ Capital Metro Agency, *Capital Metro: Full Business Case*, accessed at https://www.tccs.act.gov.au/_data/assets/pdf_file/0010/887680/Light-rail-Capital-Metro-Business-Case-In-Full.pdf

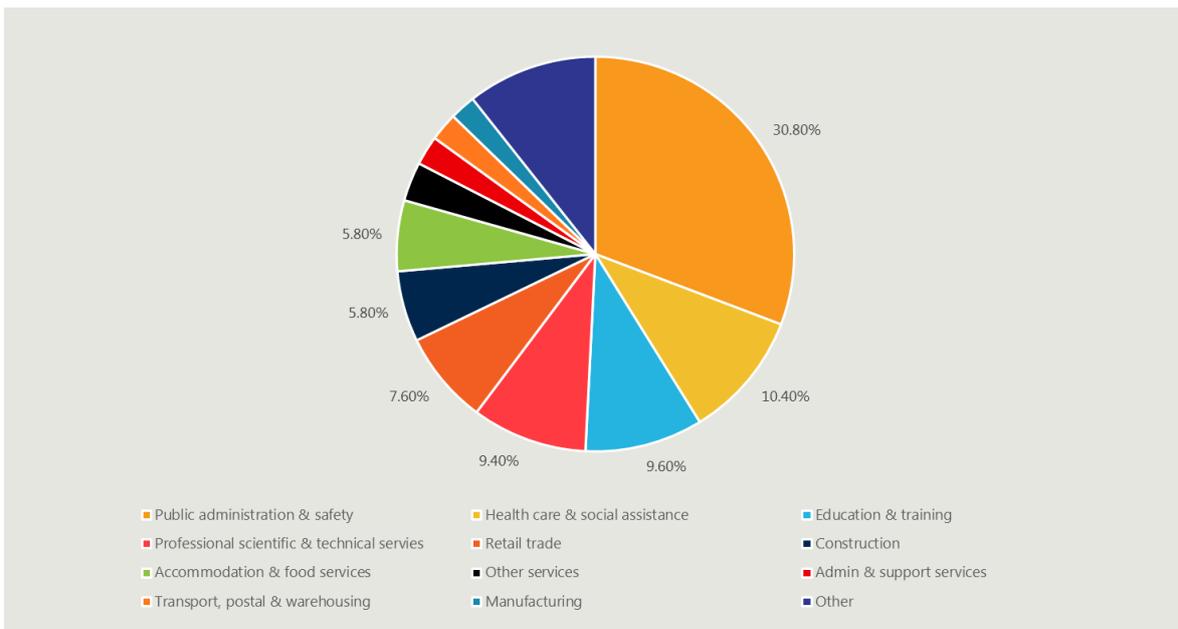
¹⁸ ACT Government, *Australian Capital Territory: Budget 2018-2019 Growing services for our growing city*, Budget Paper 3: Budget Outlook, accessed at https://apps.treasury.act.gov.au/_data/assets/pdf_file/0007/1206817/Budget-Paper-3-Budget-Outlook-2018-19.pdf

Figure 3 | ACT population and gross state product trends



As shown in Figure 4 below, just under a third of the ACT’s workforce is employed in Public Administration and Safety sector (63,286 out of 205,626); the next largest sectors are Health Care and Social Assistance (21,319), and Education and Training (19,647).¹⁹

Figure 4 | Workforce distribution in the ACT



The level of technical and further education is just above the national average (6.2 per cent versus 5.9 per cent nationally).²⁰ The level of tertiary education is substantially higher than the national average (26 per cent versus 16.1 per cent).²¹ Just over 60 per cent of the population work full-time (63.5 per cent); just over 26 per cent work part-time (26.4 per cent).²² Professionals, clerical, and administrative workers and managers comprise more than 60 per cent of the ACT’s workforce; technicians and trades workers, labourers, and machinery operators and drivers comprise 17 per cent of the workforce.²³

¹⁹ Refer to footnote 13

²⁰ Refer to footnote 13

²¹ Refer to footnote 13

²² Refer to footnote 13

²³ Refer to footnote 13

Table 1 | ACT industry sector and employment data

Industry	Percentage of Businesses in the ACT	Percentage of Population Employed in the ACT
Construction	19.4 per cent	5.8 per cent
Professional Scientific and Technical Service	18.3 per cent	9.4 per cent
Rental, Hiring, and Real Estate Services	10.3 per cent	>2 per cent
Financial and insurance services	7.8 per cent	>2 per cent
Health care and social assistance	7.4 per cent	9.6 per cent

In the private sector, business in the ACT is skewed towards small businesses, with sole traders and businesses of one - four employees representing 57 per cent and 29 per cent respectively of all registered businesses.²⁴ Relative levels of each type of business have remained stable, with slight growth seen in the sole trader segment. There are relatively more small businesses in industries such as construction, professional services, and rental, hiring and real estate services. Less than 6 per cent of the total workforce is employed in construction but it accounts for close to 20 per cent of the number of businesses.²⁵

2.3 Anticipated changes in the ACT

The ACT workforce is anticipated to continue shifting towards higher skilled work which will be accompanied by strong growth in infrastructure, construction, and service-related industries.

The ACT business landscape is evolving. Fast and future trends will continue to shape the composition of industries and employment. Strong population and economic growth are forecasted to persist which will continue to drive change. The public sector will continue to represent the largest industry of employment and the ACT workforce will continue to have a high proportion of educated professionals.

Economic confidence in the ACT is driving investment and growth which brings with it construction of infrastructure and housing, as well as increased demand for services. Currently, the highest growing industries are accommodation and food services (18.8 per cent), health care and social assistance (18.6 per cent) and education and training (14.6 per cent).²⁶ This reflects the wider demographic changes in the ACT and growth is expected to continue in these service industries. Technological innovations will also continue to support the ongoing shift to higher skilled jobs. New jobs created are likely to be in skilled roles, and to replace more traditional roles such as manufacturing.

2.4 Implications for work health and safety regulation

Businesses in the ACT are predominantly classified as small businesses, with the largest number of employees in the public administration and safety sector, followed by health care and social assistance sector. The nature of hazards in these sectors is complex and includes psychosocial, manual handling, and occupational violence, for example. These types of hazards are more difficult to identify and address than hazards in other sectors like construction. The review is mindful of this context in its consideration of the challenges facing WorkSafe ACT into the future and how to ensure WorkSafe ACT is equipped to respond to the changing context.

²⁴ Refer to footnote 13

²⁵ Refer to footnote 13

²⁶ Refer to footnote 13

3 Understanding the history of Worksafe ACT

3.1 Introduction

Our review of the work health safety and compliance is set in the context of the evolution of work health and safety laws over time and the different forms the organisation responsible and accountable for work health and safety in the ACT has taken. Work health and safety in the ACT has also been the subject of several previous reviews we have also considered. Understanding this history is important to inform our consideration of the current arrangements and our recommendations.

3.2 The evolution of work health and safety laws in the ACT

Work health and safety laws have evolved over time starting with the *Occupational Health and Safety Act 1989* following self-government in 1989 through to the current *Work Health and Safety Act 2011* based on the harmonised national model framework. Table 2 provides a brief history of the evolution of safety laws in the ACT.

Table 2 | Evolution of safety laws in the ACT

Date	Act	Key change
1989	<i>Occupational Health and Safety Act 1989 (OHS Act)</i>	Act established, including establishing the ACT Occupational Health and Safety Office administered by the Registrar, and the OHS Council. The Act also established an inspectorate and provided for a number of enforcement tools (e.g. improvement notices, prohibition notices, and enforceable undertakings). The Act was supported by regulations and by approved codes of practice.
1994	<i>Occupational Health and Safety Act 1989 (through a schedule to the Public Sector Management Act 1994)</i>	Modifications to the OHS Act in relation to the ACT Public Service were made to account for separation of the ACT Public Service from the Australian Public Service. The Territory assumed regulatory responsibility for OHS in the ACT public sector. The OHS Council employer and employee membership was expanded from 10 to 12 to include representation of the public sector.
1996	<i>Occupational Health and Safety Act 1989</i>	Act modified to expand the functions of the Council to provide advice in relation to workers' compensation and occupational rehabilitation.
1999	<i>OHS (Amendment) Act (No.2) 1999</i>	The Office of the Occupational Health and Safety Commissioner ²⁷ was established (and the position of the Registrar abolished).
2004	<i>Dangerous Substances Act 2004</i>	Act established.
2004	<i>Occupational Health and Safety Amendment Act 2004</i>	New provisions supporting cooperation and positive compliance and strengthened enforcement powers to parallel provisions in the <i>Dangerous Substances Act 2004</i> .
2008	<i>Work Safety Act 2008</i>	Act established and wholly replaced the Occupational Health and Safety Act 1989 with a modern set of work safety laws to address contemporary changes to work and employment arrangements, and to address emerging risks such as occupational violence, bullying, stress, and fatigue.

²⁷ A private members bill that was introduced after the Workcover Authority Bill 1999 to establish ACT WorkCover as a statutory authority to administer OHS, dangerous goods, and workers' compensation legislation was rejected by the Legislative Assembly largely for reasons of perceived failure to ensure adequate independence from the government, costs, and unnecessary complexity.

Date	Act	Key change
2012	<i>Work Health and Safety Act 2011</i>	Act established. The Act is underpinned by the harmonised work health and safety (WHS) framework. Schedule 2 of the Act maintains the Territory's arrangements for the ACT Work Safety Commissioner and the ACT Work Safety Council.

3.3 WorkSafe ACT over time

WorkSafe ACT has evolved over time from the Occupational Health and Safety Office in the Chief Minister's Department to being part of Access Canberra. Table 3 below provides a brief history of the evolution of WorkSafe ACT and the Acts it has administered and its functions.

Table 3 | WorkSafe ACT over time

Date	Name	Department	Acts administered
1989	ACT Occupational Health and Safety Office	Chief Minister's Department	<i>Occupational Health and Safety Act 1989.</i>
1994	ACT WorkCover	Chief Minister's Department	<i>Occupational Health and Safety Act 1989.</i>
1995	ACT WorkCover	Department of Business, Arts, Sport and Tourism (BASAT)	As above with the addition of the <i>Scaffolding and Lifts Act 1912</i> , <i>Machinery Act 1949</i> and a range of labour laws, excluding responsibility for public sector OHS which remained in the Chief Minister's Department as part of public sector management.
1997	ACT WorkCover	Department of Business, Arts, Sport and Tourism (BASAT)	As above with the additional of the <i>Dangerous Goods Act 1954</i> and the <i>Fuels Control Act 1979</i> .
1999	Office of the Occupational Health and Safety Commissioner	Department of Business, Arts, Sport and Tourism (BASAT)	Occupational Health and Safety Act 1989 and the 'associated laws'.
2000	ACT Workcover (Legislation and policy function separated from ACT WorkCover)	Department of Business, Arts, Sport and Tourism (BASAT)	<i>Occupational Health and Safety Act 1989</i> <i>Scaffolding and Lifts Act 1912</i> <i>Machinery Act 1949</i> <i>Dangerous Substances Act 1954</i> <i>Fuels Control Act 1979</i> <i>Workers Compensation Act 1951</i> <i>Long Service Leave Act 1976</i>
2001	ACT Workcover (Legislation and policy function separated from ACT WorkCover)	Chief Minister's Department	As above.
2006	ACT Workcover (Legislation and policy function separated from ACT WorkCover)	Justice and Community Safety Directorate, Office of Regulatory Services ²⁸	As above, with the updated <i>Dangerous Goods Act 2004</i> to replace <i>Dangerous Substances Act 1954</i> .

²⁸ In 2006, ACT WorkCover moved into the Office of Regulatory Services. The Office of Regulatory Services was established at the commencement of the reporting year, to provide a single streamlined and coordinated approach to regulation and licensing activities in the ACT. The Office was formed from merging ACT WorkCover, the Registrar General's Office, the Office of Fair Trading, the Offices of Parking Review and Parking Operations, and the Independent Competition and Review

Date	Name	Department	Acts administered
2010	WorkSafe ACT ²⁹	Justice and Community Safety Directorate, Office of Regulatory Services	As above, with the <i>Dangerous Goods (Road Transport Act) 2009</i> .
2014	WorkSafe ACT	Access Canberra, CMDTEDD as part of the Division of Construction, Environment and Workplace Protection	As above, with the <i>Dangerous Goods (Road Transport Act) 2009</i> .
2018	WorkSafe ACT	Access Canberra, CMDTEDD as part of the Workplace Protection Division	As above, with the <i>Dangerous Goods (Road Transport Act) 2009</i> .

It is interesting to note that at no time has WorkSafe ACT been a separate entity and has, for most of its history been part of a department; including as part combined regulatory services since 2006. It has also been administered by a range of different Directorates including the Chief Minister's Department, Department of Business, Arts, Sport, and Tourism, and the Justice and Community Safety Directorate before being returned to the Chief Minister's Directorate as part of Access Canberra.

3.4 The role of the Work Safety Commissioner

The Work Safety Commissioner is a statutory position appointed by the Executive for a term of seven years. The Commissioner reports directly to ministers (currently the Minister for Regulatory Services and the Minister for Workplace Safety and Industrial Relations). The functions of the Commissioner, as defined under the WHS Act are:

- To promote an understanding and acceptance of, and compliance with, this Act and other laws relating to work safety.
- To undertake research, and develop educational and other programs, for the purpose of promoting work safety.
- To advise the Minister on any matter relevant to the operation of this Act and other laws relating to work safety.
- The functions (if any) that are given to the commissioner under any other territory law.

The role of Work Safety Commissioner was first established in 1999 as the Occupational Health and Safety Commissioner following the Sherman report.³⁰ While the role remained the same, the title was changed to Work Safety Commissioner in 2011 at the time of the adoption of the national harmonised model law.

The Commissioner's role is a separate statutory role from that of the regulator. In this capacity, the Commissioner provides education to the community, and advises the relevant ministers on the operation of the Act.

3.5 Previous reviews

Although this is the first broad review of the ACT's work health and safety compliance and enforcement arrangements since the adoption of the national model work health and safety legislation in 2011, there have been several critical reports and assessments both before and since that time that give insight into

Commission. From this time, the Occupational Health and Safety Commissioner's report was annexed within this Office of Regulatory Services Department annual report.

²⁹ Combining the former ACT WorkCover with the Office of the Work Safety Commissioner. After this time the Occupational Health and Safety Commissioner did not complete an annual report.

³⁰ See footnote 29

the challenges and opportunities of work, health, and safety in the ACT. Table 4 provides a brief history of the previous reviews and their outcomes.

Table 4 | A brief history of key reviews

Date	Name	Purpose	Outcome
1997	Inquest, findings, comments, and recommendations into the death of Katie Bender on Sunday, 13th July 1997 at the Demolition of the Royal Canberra Hospital Acton Peninsula, ACT.	Coroner Inquiry into the failed implosion of the Royal Canberra Hospital.	ACT WorkCover assumed responsibility for the Dangerous Goods Act and the Fuels Control Act at this time. The Occupational Health and Safety (Amendment) Bill (No. 2) 1999, ³¹ a private member's bill, amended the OHS Act to replace the Registrar with the Office of the OHS Commissioner.
2000	Report of an assessment of the ACT Government's response to the Coroner's Report on the inquest into the death of Katie Bender at the demolition of the Royal Canberra Hospital on 13 July 1997 (2000), (the Sherman Report).	The Sherman Report (2000) ³² was commissioned to provide an independent assessment of the status of the ACT Government's implementation of the recommendations of the Coroner in relation to the 1997 hospital implosion.	In conjunction with the establishment of the Office of the OHS Commissioner, the Government separated the legislation and policy function from ACT WorkCover.
2003	ACT Occupational Health and Safety Council (2003) Occupational Health and Safety Act 1989: Enforcement and Compliance Framework – Issues Paper.	Examined the compliance and enforcement provisions of the 1989 Act.	ACT Legislative Assembly passed the <i>Occupational Health and Safety Amendment Act 2004</i> in June 2004.
2005	Occupational Health and Safety Act 1989: scope and structure review: final report. Chief Minister's Dept, 2005.	To review the scope and structure of the overall 1989 Act with particular reference to the boundaries of the OHS Act, including its interaction with public safety; and the structure of the OHS Act, including changes that would make it more user-friendly.	A number of recommendations were introduced in the <i>Work Safety Act 2008</i> . (A number of recommendations made in the report were not adopted ³³). The review examined the issue of the OHS Commissioner (the predecessor of today's Work Safety Commissioner), performing independent statutory functions while at the same time managing the government's OHS inspectorate and administering other legislation. The review identified a potential tension between the regulatory entity being part of a department that it could potentially be involved in regulating. The 2005 review explored a number of options for structuring WHS regulation in the ACT. These broadly fell into two groups:

³¹ Occupational Health and Safety (Amendment) Act (No 2) 1999 (repealed) A1999-82 accessed at <http://www.legislation.act.gov.au/a/1999-82/default.asp>

³² Report of an assessment of the ACT Government's response to the Coroner's Report on the inquest into the death of Katie Bender at the demolition of the Royal Canberra Hospital on 13 July 1997, prepared by Mr Tom Sherman AO, dated 14 February 2000 accessed at http://courts.act.gov.au/_data/assets/pdf_file/0017/1008080/Katie-Bender-redacted.pdf

³³ Among those recommendations, the Review explored the confusing arrangements in place with the OHS Commissioner performing both independent statutory functions (e.g. promoting acceptance of, awareness of and compliance with the OHS), and managing the Government's OHS inspectorate and administering other legislation for the Government. It recommended that ACT WorkCover be established as a regulatory authority and the role of Commissioner be modified to lead the authority.

Date	Name	Purpose	Outcome
			those that would see regulatory services delivered through departmental arrangements; and those that placed regulatory services outside departmental arrangements as a separate statutory body.
2012	Getting Home Safely Report.	The aim of the inquiry was to inform government, employers, workers, and the general community about the state of compliance with health and safety laws in the ACT's construction sector and to identify further measures which could be taken to improve the level of compliance.	On 26 February 2013, the ACT Government acknowledged the findings of the 'Getting Home Safely Report', accepting all 28 recommendations Government committed to funding 12 additional enforcement staff and five additional vehicles for WorkSafe ACT.
2017	Work Health and Safety Culture in the ACT Construction Industry (RMIT Report).	The aim of the review was to provide a baseline understanding of the culture of the ACT construction industry with regard to WHS, and evidence relating to the impact and effectiveness of changes introduced since implementing the recommended measures from the Getting Home Safely report.	The report cited a number of issues identified by the Getting Home Safely Report that still needed to be addressed. One was the quality, effectiveness and consistency of WHS training. The report also questioned the effectiveness of WHS management systems arguing that the engagement of the workforce in the design and implementation of safe work practices could bring about broader performance benefits and make use of construction workers' knowledge and experience in planning and designing work processes.
2017	Report by the ACT Auditor-General on WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses.	The performance audit provided an independent opinion to the Legislative Assembly on the effectiveness of WorkSafe ACT's management of its workplace health and safety regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses in the ACT. The scope of the audit included WorkSafe ACT's planning and implementation of its regulation of workplace health and safety relating to the demolition of residential houses that are government or privately owned.	The Report found WorkSafe ACT did not have a strategy and program to guide its Asbestos Team's activities and they were not risk-based. It also pointed to considerable variability in the performance of the Asbestos Team, including how and when site inspections were undertaken. The Report recommended that WorkSafe ACT adopt a regulatory strategy and program of activities to guide its Asbestos Team's activities, that WorkSafe bring forward a review into its resourcing of the regulation of demolitions, and that appropriate performance measures for the Asbestos Team be developed. In addition, procedures for the management of notifiable incidents should be developed. The ACT Government accepted all of the recommendations of the Auditor-General's Report.

Recent reviews, particularly the ACT Auditor-General report, have highlighted concerns over the lack of strategy and program plans for a specific WorkSafe ACT team and a lack of evidence in the use of a risk-based approach to planned activities. The review notes that it has previously been recommended that WorkSafe ACT be established as an independent statutory entity and previous reviews have commented on the confusing arrangements currently in place.

3.6 Consultative arrangements

The OHS Act 1989 established the tripartite OHS Council as an advisory body to the responsible Minister. At that time, the Council's functions were focused solely on the provision of advice in relation to occupational health and safety. The Minister appointed members, on a part-time basis, for terms of up to three years. The Council has continued to provide advice to the Minister on work health and safety, workers' compensation, and rehabilitation matters.

The Council was originally made up of ten members representing employees, employers, and other members appointed by the Minister. In 1994, the Council's employer and employee membership was expanded from 10 to 12 to include representation of the public sector.

In 1996, the OHS Act was amended to expand the functions of the Council to provide advice in relation to workers' compensation and occupational rehabilitation.

In 2000, the membership of the Council was changed to include the newly appointed ACT Occupational Health and Safety Commissioner. Since that time, the membership and functions of the Council have continued largely unchanged.

The current role of the Work Safety Council, as established in the WHS Act 2011, is to advise the Minister for Workplace Safety and Industrial Relations on work safety, workers' compensation, dangerous goods laws, approval of Codes of Practice and Protocols, education and training, and promoting safety at work.

The Minister for Work Safety and Industrial Relations appoints council members on a part time basis for up to three years. The Council is comprised of thirteen members: four members representing employees, four members representing employers, four other members appointed by the Minister and the ACT Work Safety Commissioner.

3.7 WorkSafe ACT today

Acts administered by Worksafe

WorkSafe ACT administers the work health and safety laws of the ACT. Table 5 lists the current laws administered.

Table 5 | WorkSafe ACT's regulatory responsibilities in relation to associated laws

Title	Role	Description
<i>Work Health and Safety Act 2011</i>	Principle legislation	The WHS Act is the principle legislation for work health and safety in the ACT. It provides for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces.
<i>Work Health and Safety Regulation 2011</i>	Supporting regulation	The WHS Regulation provides additional detail on specific work issues, such as workplace arrangements, facilities, licensing high risk work, construction, plant safety, electricity safety, and performing hazardous manual tasks.
Codes of Practice	Supporting guidance	Codes of Practice provide practical guidance on complying with legal duties. While it is not compulsory to follow a code of practice they are considered to be the minimum acceptable standard. Therefore, if a person conducting a business or undertaking does not follow a code of practice they must ensure their work safety practice is equivalent or better. Codes of Practice have formal status, allowing courts to consider compliance with a code of practice when deciding if legal duties have been met.
<i>Dangerous Substances Act 2004</i>	Associate law	Statutory framework for regulating the way that dangerous goods and hazardous substances are managed, to minimise the risk these

materials can pose to the health and safety of people working with these substances, the general community, and the environment.

<i>Workers Compensation Act 1951</i>	Associate law	An Act relating to compensation to workers for injuries arising out of, or in the course of their employment, and for other purposes.
<i>Scaffolding and Lifts Act 1912</i>	Associate law	An Act about scaffolding, lifts, cranes, building, excavation, and compressed air work.
<i>Machinery Act 1949</i>	Associate law	An Act relating to the installation, use, inspection, and operation of machinery.
<i>Fuels Control Act 1979</i>	Associate law	An Act relating to the distribution of certain fuels in the ACT.
<i>Long Service Leave Act 1976</i>	Associate law	An Act relating to long service leave.

National Context

In 2008, WHS Ministers signed the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA) which sets out the principles and processes for cooperation between the jurisdictions to implement model WHS legislation and in turn, achieve harmonisation of WHS laws.³⁴ Following this, the model WHS laws were developed. The model laws include a model WHS Act,³⁵ model WHS Regulations and 24 model codes. It forms the basis of the WHS Acts that have been implemented in most jurisdictions across Australia, including the ACT.

The model WHS laws provide the framework for a consistent approach to the regulation of WHS in each Australian jurisdiction. The Commonwealth, states and territories have responsibility for making and enforcing their own WHS legislation. For the model WHS laws to be legally binding, each jurisdiction must separately implement them as their own laws. The ACT, along with the Commonwealth, New South Wales, the Northern Territory, and Queensland implemented the model WHS laws in their jurisdictions on 1 January 2012. South Australia and Tasmania implemented the model WHS laws on 1 January 2013. Western Australia is currently drafting a new Work Health and Safety Bill based on the model WHS Act. Victoria has not implemented the model WHS laws.

Although each jurisdiction has made amendments to the model laws, it has delivered significant harmonisation of Australia's work health and safety legislation.

As part of Access Canberra

On 16 December 2014, the Chief Minister announced the formation of Access Canberra. As part of the establishment of Access Canberra within the Chief Minister, Treasury and Economic Development Directorate functions were moved to the Directorate from Territory and Municipal Services Directorate, Justice and Community Safety Directorate and Environment and Planning Directorate³⁶ including:

- building, utilities, land, and lease regulation
- electricity and natural gas, water and sewerage industry technical regulation
- environment protection and water regulation
- fair trading and registration, inspection and regulatory services
- occupational licensing
- public health protection and regulation for food permits

³⁴ *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (2008)* accessed at https://www.coag.gov.au/sites/default/files/agreements/OHS_IGA.pdf

³⁵ The model WHS Act refers to the *Model Work Health and Safety Bill 2011*. It forms the basis of the WHS Acts that have been implemented in most jurisdictions across Australia.

³⁶ Financial Management (Performance Criteria) Amendment 2015 (No 4), Notifiable instrument NI2015—265, Statement of reasons for amendments, accessed at <http://www.legislation.act.gov.au/ni/2015-265/current/pdf/2015-265.pdf>

- public unleased land permits
- racing and gambling regulation
- road safety regulation, and driver and vehicle licensing
- workplace safety
- most ACT Government shopfronts.

A key reason for the establishment of Access Canberra was to bring together regulators across the ACT into one large regulator. The intent was in:

"Bringing together key shopfront and regulatory services with the aim to make it easier for businesses, community organisations and individuals to interact with the ACT Government... to focus on identifying better ways to integrate and coordinate regulatory and compliance roles, streamline processes, and provide even more accessible channels to do business with government."³⁷

To achieve this, the head of Access Canberra has been authorised to exercise a range of regulatory functions of the Directors General under the Territory laws.³⁸ This includes the functions of:

- the Director-General, Chief Minister, Treasury and Economic Development Directorate relating to work health and safety, workers compensation, dangerous goods, and gambling and racing
- the Director-General, Environment, Planning and Sustainable Development Directorate relating to building and construction, environmental protection, and utilities
- the Director-General, Justice and Community Safety Directorate relating to fair trading, liquor, magistrates court, motor vehicles, tenancy and titles, and road transport
- the Director-General, Health Directorate relating to smoke-free places and tobacco.

Of particular relevance to the review, this includes all legislation covered by WorkSafe ACT which is part of the functions of the Director-General, Chief Minister, Treasury and Economic Development Directorate. As such, the head of Access Canberra is the authorised regulator for all activities carried out by WorkSafe ACT.

WorkSafe ACT was initially brought into Access Canberra as part of the Construction, Environment and Workplace Protection (CEWP) Division incorporating Work Safety, the Environmental Protection Agency, and Construction Compliance.

In February 2018, the Workplace Protection Division was created following the separation of Construction, Environment and Workplace Protection. The Workplace Protection Division combines the regulatory functions of work health and safety, workers compensation, dangerous goods, and utilities technical regulation.³⁹ The Director of Workplace Protection reports into senior management within Access Canberra to the Head of Access Canberra (the Deputy Director-General Access Canberra).

The role of the Director of Workplace Protection is held by the same individual currently appointed as the ACT Work Safety Commissioner. The role of the Work Safety Commissioner is a statutory position appointed by the Executive for a term of seven years. The details of this dual-role arrangement are considered in detail in Section 6.

Under the current arrangements, 'WorkSafe ACT' as a business unit is not well defined. For the purposes of the review, we have considered the functions of work health and safety, workers compensation, and dangerous goods, and support roles; including activities conducted by the Industry Liaison, the Healthier

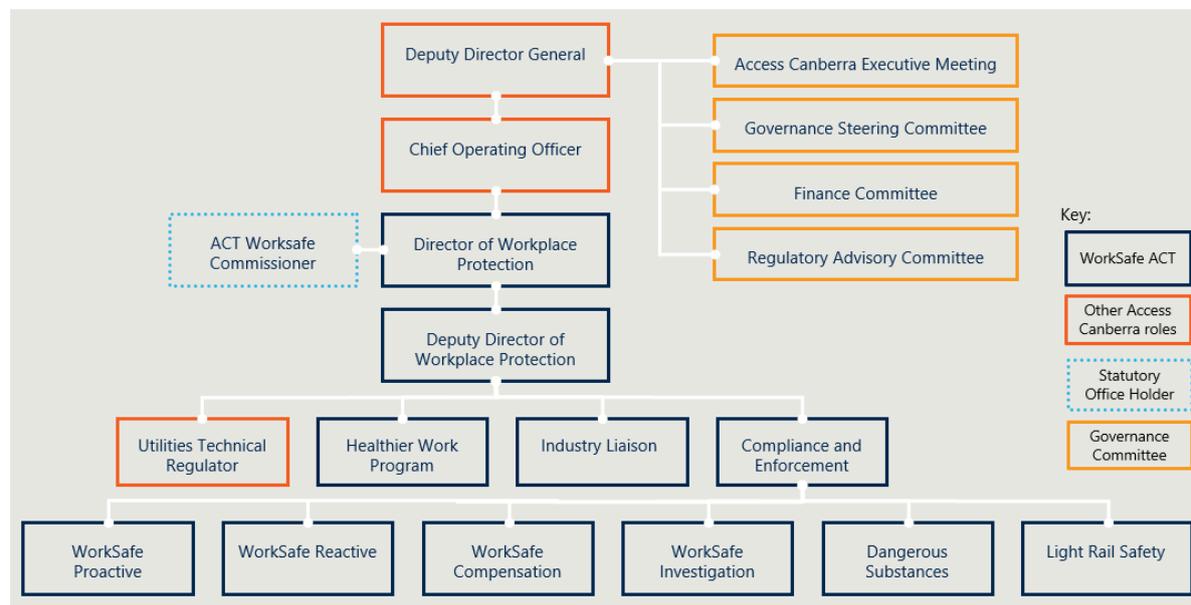
³⁷ Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15, Section 10.1 accessed at <http://www.cmd.act.gov.au/functions/publications/2014-15annualreport>

³⁸ Public Sector Management (Head of Access Canberra Functions) Declaration 2017 No 1), Notifiable Instrument NI2017-465 made under the Public Sector Management Act 1994, Section 21 (Exercise of certain director-general functions by head of Access Canberra) is the current declaration by Minister for Regulatory Services Gordon Ramsay that lists the functions the may be exercised by the head of Access Canberra. Accessed at <http://www.legislation.act.gov.au/ni/2017-465/current/pdf/2017-465.pdf>

³⁹ Access Canberra, *Workplace Protection Strategic Business Plan 2018-2022* [draft], June 2018

Work program, and the Workplace Protection Division Management to constitute WorkSafe ACT.⁴⁰ This includes both the roles of ACT Work Safety Commissioner and Director of Workplace Protection and Commissioner. The functions of the Utilities Technical Regulator and senior Access Canberra management are not considered to be part of WorkSafe ACT. This arrangement is depicted in Figure 5.

Figure 5 | Organisation chart for Access Canberra (relevant to WorkSafe ACT)



⁴⁰ The Asbestos taskforce, which was part of the Mr Fluffy program and reported into the Workplace Protection Division was considered part of WorkSafe ACT. However, the temporary appointment of these resources concluded on 30 June 2018 and were not included in the ongoing Workplace Protection Division resources from 1 July 2018. Thus, as any insight or recommendation relating to this team would be implementable going forward, the Review has not considered this team.

4 WorkSafe ACT's Compliance Framework

4.1 Introduction

A clear, comprehensive, and up to date Compliance Framework is a critical underpinning of effective regulatory practice and performance as it guides the activities and judgements of staff and decision makers and sets clear expectations for those who are regulated and for the community.

WorkSafe ACT's compliance and enforcement activities are guided by multiple documents including the Access Canberra Accountability Commitment, the WorkSafe ACT Compliance Framework, and the Safe Work Australia National Compliance Framework.

Our consideration of the clarity and comprehensiveness of the Compliance Framework addresses the first part of our analytical framework as shown in Figure 6.

Figure 6 | Compliance Framework



4.2 WorkSafe ACT's Compliance Framework

It is important for effective regulatory practice and performance that there is a comprehensive, clear, and up to date Compliance Framework that guides the regulator's staff in their actions and decision-making and informs those who are being regulated about what they can expect from the regulator.

A Compliance Framework can comprise a single document or several documents that are linked together and updated regularly. Generally, a Compliance Framework will identify:

- the Regulatory Approach, which includes the principles underpinning the regulator's approach
- the Compliance and Enforcement approach, including the risk assessment framework and how decisions are made to determine the appropriate use of compliance and enforcement tools
- policy and procedure documents
- strategic priorities (in a Strategic Business Plan)
- stakeholder engagement approach.

During the review, we found a suite of documents that guide WorkSafe ACT's compliance and approach beyond the single WorkSafe ACT's Compliance Framework document. The suite of documents the review has considered as part the Compliance Framework is shown in Figure 7. It comprises two key documents: the Access Canberra Accountability Commitment,⁴¹ and the WorkSafe ACT Compliance Framework.⁴² In addition, the Safe Work Australia National Compliance and Enforcement Policy⁴³ influences WorkSafe ACT's approach. WorkSafe ACT's Compliance Framework includes a number of procedure documents (SOP's), a draft strategic business plan and an industry engagement communications strategy.

⁴¹ Access Canberra, *Access Canberra Accountability Commitment*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/160503/1501544338/redirect/1/filename/Access+Canberra+accountability+commitment.pdf>

⁴² Access Canberra, *WorkSafe ACT: Compliance Framework*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/222543/1530060482/redirect/1/filename/Workplace+Safety+Compliance+Framework.pdf>

⁴³ Safe Work Australia, *National Compliance and Enforcement Policy*, 2011 accessed at https://www.safeworkaustralia.gov.au/system/files/documents/1702/national_compliance_and_enforcement_policy.pdf

Figure 7 | Suite of Compliance Framework documents



The Access Canberra Accountability Commitment and WorkSafe ACT Compliance Framework

The Accountability Commitment document explains how Access Canberra approaches its role as both a service provider and a risk-based regulator; including what factors are considered when dealing with non-compliance. It provides guidance for both the WorkSafe ACT Compliance Framework and Access Canberra standard operating procedures.

WorkSafe ACT’s published Compliance Framework describes WorkSafe ACT objectives and principles for compliance and enforcement activities to keep workers safe from harm and to ensure they are appropriately compensated when injuries do occur.

It is not clear how these two frameworks operate together in practice. It is also unclear how the application of WorkSafe ACT’s Compliance Framework aligns with the Safe Work Australia National Compliance and Enforcement Policy.

The content of each of these documents is described in Table 6 below.

Table 6 | Summary of Access Canberra Accountability Commitment

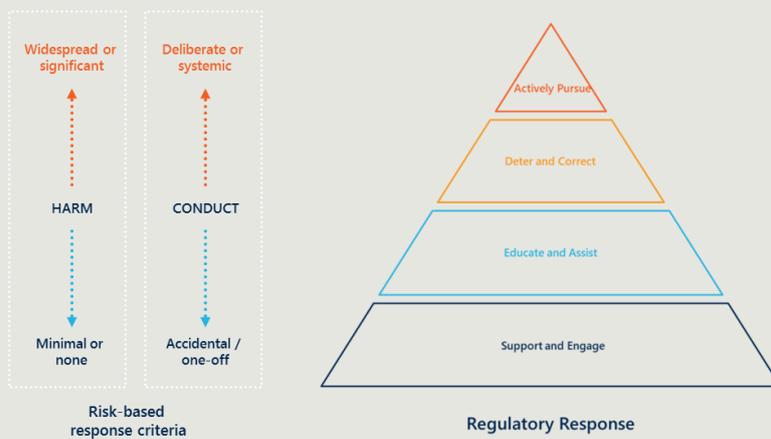
Section	Summary
Key principles:	<p>The Accountability Commitment outlines seven principles for Access Canberra’s regulatory activities and decisions:</p> <ul style="list-style-type: none"> • Risk-based – apply a risk-based compliance approach to ensure that resources are targeted to where the risks of harm, unsafe practices, or misconduct are the greatest; thereby strengthening capacity to take action where the community, workers, and the environment are most at risk. Access Canberra prioritises actions based on a range of considerations, including the following: <ul style="list-style-type: none"> • conduct that causes harm or risk to life, health, or the environment • conduct that is systemic and is likely to have a detrimental effect on the community and/or the environment • conduct that demonstrates a blatant disregard for the law. • Proportional – have regard for the current harm/risk, the experience, and past conduct of a person or business when determining the right regulatory response. • Effective – apply the appropriate compliance tool to ensure that regulatory interventions are responsive to the relevant circumstances and will achieve the desired outcomes. Aim for

consistent enforcement outcomes for similar conduct.

- **Constructive** – provide advice, guidance, and support to help business and the community comply with relevant laws.
- **Accountability** – willing to explain decisions whilst protecting the integrity of investigations. Balance confidentiality requirements with the need to inform businesses and the community about regulatory actions.
- **Transparency** – demonstrate impartiality and act with integrity. The community and those who are regulated know what to expect when engaging.
- **Timeliness** – conduct investigations, compliance activities, and enforcement action as efficiently as possible to limit disruption to business operations and to provide certainty about actions; including being adaptable to responding to new priorities, technologies, and changing environments.

Response Model

The Accountability Commitment document then describes Access Canberra’s Response Model. The model encourages compliance through education, with escalating enforcement actions to those that demonstrate a disregard for the law and whose conduct has, or is likely, to cause harm to consumers, business, the community, or the environment.



Governance

The Accountability Commitment document also briefly comments on governance in Access Canberra, with specific reference to two regulatory oversight committees:

- The Regulatory Complaint Assessment Committee (RCAC) determines appropriate case prioritisation and treatment for regulatory complaints.
- The Regulatory Advisory Committee (RAC) considers the most appropriate regulatory action at an important stage of, or the conclusion of, an investigation.

Regulatory toolkit

The Accountability Commitment document finishes by defining the range of activities and powers available across the statutory office holders to encourage and enforce compliance. The relevant tools described in the Accountability Commitment are:

- Advice.
- Education Campaigns.
- Written warnings.
- Inspections.
- Statutory Notice and Directions.
- Enforceable Undertakings.
- Infringement Notice.
- Public Naming.
- Prosecution.

(The Accountability Commitment document is limited in describing how, and when, these different parts of the regulatory toolkit can, and should be applied.)

The WorkSafe ACT Compliance Framework is a document that applies specifically to WorkSafe ACT in addition to the Access Canberra Accountability Framework. Table 7 describes the content of the Compliance Framework document.

Table 7 | WorkSafe ACT Compliance Framework

Section	Summary
Strategic Objectives	<p>The WorkSafe ACT Compliance Framework outlines four strategic objectives:</p> <ul style="list-style-type: none"> • Safety – seek to protect workers and other persons from harm. Minimise risks to safety, health, and welfare. Assist the public, business, and industry to understand and meet their legislative obligations. Target regulatory actions in a way that is proportionate to the actual or potential harm caused by the conduct. • Prevention – limit and prevent harm, damage, or loss by promoting compliance with workplace safety obligations. • Health – actively encourage healthy workplaces. • Compensation – seek to ensure that all employees comply with workers’ compensation obligations. Workers’ compensation protects a business from financial claims when a worker sustains a work-related injury or disease and importantly workers are compensated when injured in the workplace.
Compliance Model: Engage, educate, enforce	<p>The Compliance Framework applies the Response Model found in the Accountability Committee into a three step Compliance Model. The three steps are:</p> <ul style="list-style-type: none"> • Engage – ensuring there is a positive working relationship with stakeholders and members of the community. • Educate – taking reasonable steps to ensure people know how to comply. We provide information to the industry and community to promote understanding and to encourage voluntary compliance. • Enforce – taking action for non-compliance proportional to the harm caused by the conduct (e.g. issuing a prohibition notice or an infringement notice). <p>This model is also known as the 70:20:10 model, referencing the Access Canberra overall target of 70 per cent engagement, 20 per cent education, and 10 per cent enforcement.⁴⁴</p> <p>The model aims to encourage compliance through education with escalating enforcement action applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.</p>
Compliance Approach	<p>The Compliance Framework defines the risk-based compliance approach as <i>“the targeting of resources to those areas where they are most needed and will be most effective. This approach involves a series of steps to identify and assess risks and to then apply the most appropriate regulatory tool to control the risk.”</i>⁴⁵</p> <p>The WorkSafe ACT Compliance Framework specifically notes that <i>“the allocation and response determined based on priorities determined through risk assessment”</i> based on four categories of events.</p> <p>It then defines resource allocation and enforcement responses as:</p> <ul style="list-style-type: none"> • Resource allocation – how compliance priorities are established, such as the frequency of proactive compliance activities and the prioritisation of complaints or allegations of

⁴⁴ This 70:20:10 model is noted in Budget Statements B of the following report: ACT Government, *Australian Capital Territory Budget 2018-19 Growing services for our growing city*, June 2018, p. 33. The report states that “this indicator sets a ratio for the engagement and education functions that are separate from Access Canberra exercising its enforcement powers against an industry, business or individual. Increasing efforts to educate and inform individuals and business and industries about their responsibilities and legal requirements leads to increased compliance rates, a reduction in complaints and the need for enforcement responses.”

⁴⁵ Access Canberra, *WorkSafe ACT: Compliance Framework*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/222543/1530060482/redirect/1/filename/Workplace+Safety+Compliance+Framework.pdf>

non-compliance with the Act.

- **Enforcement responses** – the appropriate enforcement response is also determined based on the risk, or realised consequences. This allows a degree of flexibility to ensure the right regulatory approach for the right situation.

There is some guidance when and how to apply the tools, noting that “*depending on the circumstances, (this) may include: verbal compliance advice; a written warning; a referral to the ACT Civil and Administrative Tribunal; civil action, or criminal prosecution.*”⁴⁶

Risk Categories

In considering the approach for risk assessment, the Compliance Framework defines four categories of events as summarised:

Category	Event	Approach
Type One	Workplace incidents causing death of a worker or a member of the public.	All type one events are prioritised and subject to investigation unless there is a valid reason not to undertake an investigation (for example the incident does not fall under the Act or the Dangerous Substances Act), or another agency is taking the lead role in the investigation (for example the Australian Federal Police).
Type Two	A type two event is a workplace incident notified under Section 38 of the Act causing: serious injury/illness, workplace dangerous incidents, or substantial damage to property or the environment from the handling of or exposure to dangerous substances.	WorkSafe ACT takes necessary action to determine the cause/contributing factors and ensure appropriate control measures are implemented at the workplace to prevent reoccurrence.
Type Three	Matters reported as involving circumstances of substantial risk of serious injury. This could also include exposure of people to substantial risk of serious harm; risk of damage to property or the environment from the handling of dangerous substances.	WorkSafe ACT contacts the workplace to determine if any intervention is warranted to assist in resolution of the matter. Where complaints involve substantial risks to workplace health and safety, intervention occurs to determine the validity of the complaint and assist in the resolution of the matter, including taking appropriate enforcement action.
Type Four	All other complaints that do not involve an immediate risk to safety.	

Education

The approach to education is discussed in the Compliance Framework. It lists a range of communication activities and tools including:

- newsletters
- factsheets
- social media
- advertising campaigns
- web content (including guides, brochures, fact sheets, and links to outside resources).

Inspection activities

The Compliance Framework explores two types of inspection activities: proactive and reactive.

- **Proactive:** Visits by Inspectors to workplaces or work sites that occur at random, as part of

⁴⁶ Access Canberra, *WorkSafe ACT: Compliance Framework*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/222543/1530060482/redirect/1/filename/Workplace+Safety+Compliance+Framework.pdf>

	<p>targeted programs, or to promote better awareness of tools, processes, and options for achieving a compliant safe workplace.</p> <ul style="list-style-type: none"> • Reactive: relies on the community, business or industry reporting concerns. WorkSafe ACT prioritises this information based on the assessed level of risk to determine the appropriate response.
<p>Enforcement responses</p>	<p>Section 4 of the WorkSafe ACT Compliance Framework explores the appropriate regulatory response when an offence has been committed. It highlights that <i>“Inspectors are able to exercise a level of discretion”</i> however, enforcement is likely to occur where there is a risk or actualisation of work-related serious injuries or fatalities.</p> <p>The Compliance Framework then describes the enforcement options available to WorkSafe ACT, including:</p> <ul style="list-style-type: none"> • Advice or guidance. • Improvement Notice. • Prohibition Notice. • Injunctions. • Enforceable undertakings. • Revoking, suspending or cancelling authorisations. • Infringement notices. • Prosecution. <p>Like the Accountability Commitment, the WorkSafe ACT Compliance Framework does not give specific and clear guidance on when to use the different enforcement options and tools.</p>
<p>Review and Appeal Rights</p>	<p>The Compliance Framework describes the process for seeking a review and appeal rights under the WHS Act. These processes are well documented in the legislation.</p>

National Compliance and Enforcement Policy

Neither the Accountability Commitment or WorkSafe ACT Compliance Framework refers to the National Work Health and Safety Compliance and Enforcement Policy. However, the Access Canberra Work Health and Safety portal notes:

“WorkSafe ACT has a Compliance and Enforcement Framework that ties into Access Canberra’s Compliance and Enforcement Policy and the National Compliance and Enforcement Policy”.

In the section ‘How we Regulate’ the website notes that:

“The exercise of regulator powers and inspector functions and powers is guided by the principles contained within the National Work Health and Safety Compliance and Enforcement Policy...The principles acknowledge that in order for regulators to be effective they need to ensure that their resources are targeted toward the areas of greatest need and the strategies used will achieve constructive outcomes.”⁴⁷

WorkSafe ACT is also guided by several policies and procedures

Access Canberra SOP’s

Access Canberra developed a suite of standards in 2017 that are applicable to all divisions. Standards applicable to WorkSafe ACT are:

- Standard for Regulatory Powers.
- Standard for Compliance and Investigation Planning.
- Standard for Conducting Investigations.
- Standard for Case Management.

⁴⁷ Access Canberra, ‘How we regulate’, accessed at https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/4565

- RAC Procedures.

These standards provide generic, high-level guidance in accordance with Access Canberra's emphasis on engagement and education.

WorkSafe SOP's

There are over 50 procedures and guidelines that provide details on how to undertake particular activities and use tools under the WHS Act. The SOP's cover:

- detailed procedures for issuing, withdrawal, and non-compliance with Improvement, Infringement, Reminder, and Prohibition Notices
- handling third party interactions' including reporting of notifiable incidents over the phone
- investigation procedures
- guidelines for internal and external review and legal proceedings.

Most of these SOP's were developed after the introduction of the 2011 WHS Act, when WorkSafe was part of JACS in the Office of Regulatory Services. A very small number of SOP's developed after WorkSafe moved into Access Canberra have been developed in draft format, and cover topics such as the appropriate use of Access Canberra's CRM and Objective systems for WorkSafe staff.

WorkSafe ACT has developed draft strategy documents

Draft Strategic Business Plan 2018-2022

Workplace Protection Division has recently drafted its first Strategic Business Plan. The plan covers the four areas of responsibility within the Division: work health and safety, dangerous substances, workers' compensation, and utilities technical regulation. The Strategic Business Plan:

"...outlines Workplace Protection's strategic focus and priorities for the period 2018-2022... These priority areas have been identified following quantitative and qualitative analysis of a range of indicators such as lost time injury, frequency rates and mechanism of injury data and consultation with stakeholders."⁴⁸

The Strategic Business Plan notes that:

"Workplace Protection recognises the continued need to focus on Construction given the high-risk nature of work activities and the Territory's continuing poor safety record. Further work is also required to significantly improve safety across other industries."⁴⁹

The Strategic Business Plan also notes that it:

"...aligns with the National Work Health and Safety Strategy 2012-2022 and the goals as set out in the Access Canberra Business Plan, Access Canberra of Tomorrow."⁵⁰

However, it is unclear how this alignment is achieved.

The document is underpinned by a suite of draft business unit plans that are still under development, and which aim to document the specific programs and projects that will be undertaken each year to support each strategic priority.

The Strategic Business Plan also establishes a process that the plan, along with each business unit's plans, will be reviewed annually.

Draft WorkSafe ACT Industry Engagement Communications Strategy 2018/19

The Strategy begins to articulate the approach to stakeholder engagement and education activities including WorkSafe ACT's intent to support industry and the broader community to better understand the

⁴⁸ Access Canberra, *Workplace Protection Strategic Business Plan 2018-2022* [draft], June 2018

⁴⁹ Refer to footnote 48

⁵⁰ Refer to footnote 48

Work Health and Safety legislation, best practice safety framework; and identify work, health and safety issues that may impact businesses or individuals.⁵¹

The engagement and education programs outlined in the Strategy include regular information seminars, industry association engagements and collaboration on relevant campaigns, and a program to convey the complex information in the legislation into relevant information for specific industry or businesses to apply in their everyday work.

In addition, through industry engagement programs, the Strategy provides an approach to drive a positive message that WorkSafe ACT is a resource for promoting information on healthier and safer working environments and providing effective compliance through education.

4.3 Assessment of the appropriateness and effectiveness of the Compliance Framework

We examined whether the current WorkSafe ACT Compliance Framework and supporting documents are comprehensive, clear, easy to understand, and current and up to date; to guide the work of staff in WorkSafe ACT and to inform stakeholders about what they can expect from their interactions with WorkSafe ACT.

Improve simplicity and clarity

Best practice suggests the Compliance Framework will be written in a simple and practical style, be current and up to date, and be published and accessible.

As previously illustrated in Figure 7, there is a suite of documents that guide WorkSafe ACT's compliance and approach beyond the single WorkSafe ACT's Compliance Framework document. These include those that apply to all regulators that are part of Access Canberra, and those that apply specifically to WorkSafe ACT. The review found it difficult to understand how the different documents fit together.

Stakeholders observed that it is not clear how WorkSafe ACT operates as part of the national system and how it uses national templates and applies the national codes. They observed that there is an opportunity to make it clearer as to how this applies and integrates with the Access Canberra and WorkSafe ACT specific policy documents.

Providing a clear illustration of how the documents fit together and an explanation of how they are applied will make it easier for stakeholders to understand what to expect from WorkSafe ACT and for staff to know what guides their activities.

Our review of the comprehensive suite of SOP's indicated that they are ambiguous, are not current or up to date. One example is the Standard for Case Management which does not explicitly state who should be lodging WHS incidents nor detail the process for proactive inspection management.

Examples of outdated or unfinalised procedures include:

- Issue of Notices and Other General Requirements Relating to all Notice Types which was written 15 May 2013 and has not been updated.⁵² The purpose of this procedure is to provide guidance for inspectors on how and when to use different tools. However, it does not incorporate the use of Infringement Notices as a key compliance tool.
- Issuing and Tracking of Infringement and Reminder Notices was drafted 24 September 2014 and has not been updated.⁵³ The procedure is unfinalised and does not provide definitive guidance on when or how Infringement Notices should be applied. It is also unclear when inspectors should issue Infringement Notices instead of Prohibition Notices.

⁵¹ ACT Government, *WorkSafe ACT Industry Engagement Communications Strategy 2018/19* [draft], June 2018

⁵² ACT Government Justice and Community Safety, *Standard Operating Procedures for Issue of Notices and Other General Requirements Relating to all Notice Types*, May 2013

⁵³ ACT Government Justice and Community Safety, *Standard Operating Procedures for Issuing and Tracking of Infringement and Reminder Notices*, September 2014

- Standard Operating Procedures for Consideration of Enforceable Undertakings was written 15 May 2013 and has not been reviewed.⁵⁴
- Issuing Improvement Notices SOP was written in 2012 and last reviewed in October 2015.⁵⁵
- Operating Guidelines for Internal and External Review do not include reference to RAC or other Access Canberra committees or review structures.⁵⁶

We were informed by inspectors that they are guided in their activities by the specific WorkSafe SOP's. Numerous stakeholders noted that these documents do not provide the appropriate guidance for WorkSafe ACT inspectors in the conduct of their activities, and that no end-to-end process from triage to reporting exists. This has resulted in ad-hoc and inconsistent approaches which was raised by both internal and external stakeholders.

We were informed by WorkSafe ACT that they have recognised the need to update all SOP's to ensure they are consistent and reflect Access Canberra arrangements, new technologies and systems, and process changes that have occurred recently. They advised they have not yet commenced this process due to resource constraints and other priorities. The review would be concerned if the process were merely a rebranding of the SOP's rather than taking the opportunity to refresh the SOP's to ensure they are consistent and reflect the Compliance Framework, providing clear guidance. In this regard there is an opportunity to update and refresh the full suite of SOP's, and to update related training and development materials.

We found in our review that we were able to find the Accountability Commitment and Compliance Framework documents through the new Work Safety Portal on the Access Canberra website. However, their purpose, intent, and how they can be used by stakeholders is not explained. The website also refers to the Safe Work Australia National Compliance Framework but does not provide a link or explain its purpose or application.

Ensure the Compliance Framework is comprehensive and consistent

A comprehensive compliance framework describes the regulatory outcomes the regulator is seeking to achieve and clearly articulates why regulatory compliance matters. It articulates a systematic approach to determining risk and collecting and using information and data. Importantly it illustrates how the hierarchy of enforcement tools will be used in response to risk and provides a clear strategy for engagement with stakeholders.

Clarify the regulatory approach

Regulators achieve compliance through a range of interventions that include: encourage higher performance, inform and educate and use third parties, set standards, support to comply, monitor compliance and enforce the law.⁵⁷ In determining the appropriate intervention regulators take account of the contextual factors driving the behaviour of regulated entities and their response to the regulator.⁵⁸

The WorkSafe ACT Compliance Framework adopts the three step Compliance Model of Engage, Educate, and Enforce. This is referred to as the 70:20:10 model, referencing the Access Canberra overall target of 70 per cent engagement, 20 per cent education, and 10 per cent enforcement. The model is described in WorkSafe ACT documentation:

"The regulatory model is a risk harm approach with a 70:20:10 accountability indicator for Access Canberra. It is intended that we target 70 per cent of our activities towards engagement, 20 per cent education, and 10 per cent enforcement. This does not mean that engagement and

⁵⁴ ACT Government Justice and Community Safety, *Standard Operating Procedures for Consideration for Enforceable Undertakings*, May 2013

⁵⁵ ACT Government Justice and Community Safety, *Standard Operating Procedures for Issuing Improvement Notices*, October 2012

⁵⁶ ACT Government Justice and Community Safety, *Operating Guidelines for Internal and External Review*, 2013

⁵⁷ For example, the Environment Protection Authority Victoria, *Compliance and Enforcement Policy*, Publication 1388.3, December 2017, accessed at https://www.epa.vic.gov.au/~/_media/Publications/1388_per_cent203.pdf

⁵⁸ Richard Johnstone and Elizabeth Bluff, 'Supporting and enforcing compliance with Australia's harmonised WHS laws', *Australian Journal of Labour Law*, Vol. 30. No. 1, 2017, pp. 30-57.

education are the first steps, where there is an imminent safety risk, or a significant safety concern enforcement action will be taken.”⁵⁹

The model aims to encourage compliance through education with escalating enforcement action applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law. The Deputy Director-General, Access Canberra explained how the approach is applied in practice:

“The first thing we try to do whenever we are regulating an industry, or a group of individuals, or a situation, is focus on the engagement piece because what we know from evidence, not just here in Canberra or nationally but internationally, is that the vast majority of people will attempt to do the right thing so long as they understand what the right thing is.... From there we move to education...we will attempt to educate those individuals or organisations, so they are aware of their obligations...The final one, and prosecution fits within that area, is enforcement...”⁶⁰

We understand that the intent of the Compliance Model was to rebalance the approach to use the full range of tools available to achieve compliance, and not just focus on reactive enforcement activity.⁶¹ However, several stakeholders we consulted indicated there were considerable problems with the introduction and operation of the 70:20:10 model in the work health and safety context.

Those stakeholders who support the Compliance Model felt it provides a consistent framework across Access Canberra, and WorkSafe ACT’s current approach reflects the right balance between education and enforcement. They felt the educate first approach is a useful and constructive approach in a small jurisdiction where 97 per cent of businesses have 20 or less employees. They are supportive of education for low risk non-compliance as an appropriate and proportionate response.

Others raised concern that:

- The Compliance Model confuses the role of inspectors as providing ‘consulting services’ to business, to inform and assist businesses to comply and thereby shifting the obligation away from business building their own understanding and implementation of compliance requirements, to relying on inspectors. The CFMEU in its submission noted that:

“The Union is also concerned that WorkSafe currently places a disproportionate focus on educating and engaging industry with regard to WHS matters, rather than enforcement. While Government has some role to play in educating industry on their obligations to their workers’ health and safety, industry also should have an obligation to ensure that they are aware of their obligations themselves.”⁶²

- Adopting an educative model provides little incentive for businesses to comply. UnionsACT in its submission noted that:

“The Work Safety Commissioner noted in 2017 that the ‘majority’ of interactions with non-compliant PCBU’s were educative. Low levels of compliance activities by the regulator, including infringement notices and other penalties, means that businesses wilfully disregarding WHS laws can ‘roll the dice’, only paying the price if something goes wrong, with the knowledge that the price (for the business) is very low.”⁶³

The introduction and implementation of the Model was confusing for inspectors. They are not clear on when to address non-compliance through the use of guidance and advice to allow businesses to understand their obligations and have time to make the improvements necessary to address the risk and be compliant. The inspectors were also not clear about the distinction

⁵⁹ Access Canberra, *WorkSafe ACT: Regulatory Safety Strategy Canberra Metro Light Rail Network Safety Inspection Program 2018-2020*, June 2018.

⁶⁰ Legislative Assembly for the Australian Capital Territory, Standing Committee on Economic Development and Tourism, 9 November 2017, accessed at <http://www.hansard.act.gov.au/hansard/2017/comms/edt09a.pdf>

⁶¹ Interview with David Pepper, Deputy Director-General Access Canberra, July 2018

⁶² Written submission made by Jason O’Mara, Divisional Branch Secretary CFMEU Construction, ACT Branch, Review into work health and safety oversight, 30 July 2018

⁶³ Written submission made by UnionsACT, UnionsACT Submission to the Independent Review into ACT’s Work Safety Compliance and Enforcement Framework, 26 July 2018

between education and engagement. Inspectors misunderstood the Model to mean they were not permitted to conduct an inspection if they had not done the appropriate proportion of engagement and education. They continue to struggle to understand the balance expected of them across engagement, education, and enforcement. For example, one inspector asked:

"Does a single inspection cover all three or only one at a time?"

WorkSafe ACT indicated that their activities reflect an appropriate balance between engagement, education, and enforcement more aligned to a 20:20:60 ratio to reflect what is required to achieve their goals as a work health and safety regulator.⁶⁴

Make it clear what is meant by a 'risk-based approach'

The WorkSafe ACT Compliance Framework specifies the strategic objectives WorkSafe ACT is seeking to achieve. It sets out the principles it applies and indicates that WorkSafe ACT adopts a risk-based approach involving a series of steps to apply the most appropriate regulatory tool to control the risk.

In our discussions with a broad range of stakeholders during the review it was evident that there is not a clear understanding of what a risk-based approach to regulation entails. A risk-based approach involves identifying, assessing, and controlling risks to determine how inspectors should respond to behaviour of regulated entities. The risk assessment is an analysis of how the regulated organisation's activities pose a risk to the regulator's goals.⁶⁵ Some stakeholders felt the risk-based approach was not appropriate or sufficiently nuanced to ensure it addressed potential risk, and actual risk beyond physical injury.

Articulate how tools will be used and in what circumstances

Regulators need to use tools that are suitable and proportionate to the particular issue and the decision-making process for selecting that tool should be clear, transparent, and easy to understand. Regulators such as the United Kingdom Health and Safety Executive and Victoria's Environmental Protection Authority articulate what tools to use and in what situation to address particular types of risk.⁶⁶

As noted above, the guidance in the WorkSafe ACT Compliance Framework concerning the use of tools and in what circumstances is limited.

We heard from inspectors that they understood the risk-based approach to mean that they:

"...look at the major risk and respond according to the level based on the Compliance Framework category of risk."⁶⁷

They noted:

"The problem is that it's all risk to a certain degree and we don't have guidance on what's our response, we don't have anything in writing to say this is what we won't respond to, or for this we do this, for example write a letter in response to this type of complaint."⁶⁸

Articulate a strategy for engagement and providing information

Articulating a stakeholder and regulated party engagement strategy either as part of the Compliance Framework or as a separate strategy document is important to inform stakeholders and regulated parties of how the regulator will engage and provide information. A comprehensive stakeholder engagement

⁶⁴ Interview with Greg Jones, ACT Work Safety Commissioner, July 2018

⁶⁵ Gunningham notes that a risk-based regulation strategy "involves the targeting of regulatory resources based on the degree of risk which duty holders' activities pose to the regulator's objectives, and it calls for applying principles of identifying, assessing, and controlling risks in determining how inspectors should intervene in the affairs of regulated enterprises." Neil Gunningham, "Compliance, Enforcement, and Regulatory Excellence," PENN Program on Regulation, University of Pennsylvania Law School, June 2015, accessed at <https://www.law.upenn.edu/live/files/4717-gunningham-ppr-bicregulatordiscussionpaper-06>

⁶⁶ Health and Safety Executive, *Helping Great Britain work well 2016*, 2016, accessed at <http://www.hse.gov.uk/strategy/assets/docs/hse-helping-great-britain-work-well-strategy-2016.pdf>
Environment Protection Authority, *Our environment, Our health: Building our future together*, EPA's organisational strategy, August 2017, accessed at https://www.epa.vic.gov.au/~/_media/Publications/1661.pdf

⁶⁷ Interview with WorkSafe ACT inspectors, July 2018

⁶⁸ Interview with WorkSafe ACT inspectors, July 2018

strategy articulates the principles and objectives of engagement, clearly identifies the categories of stakeholders and their needs, and the ways in which the regulator will engage.

The recently developed WorkSafe ACT Industry Engagement Communications strategy is yet to be published and circulated.⁶⁹ When this occurs, it will be important to ensure the strategy is directly linked to the Compliance Framework and is recognised as part of the suite of documents that informs business about the role and expectations of WorkSafe ACT, and informs staff about the intent and objectives of programs and activities.

Confirm strategic priorities in a published Strategic Business Plan

Modern regulators plan and target their activities through a strategic planning process that considers the changing environmental context, examines data and trends, and identifies specific priorities for action based on that data analysis and risk assessment. The development of the draft 2018-2022 Strategic Business Plan has begun to move WorkSafe towards this approach. The plan articulates the vision, mission, and purpose well. It also uses a data-driven approach to clearly explain the key priorities and why those priorities have been chosen. Further, it links each priority to a set of outcomes and indicators in a clear and transparent way.

As this is the first Strategic Business Plan since WorkSafe joined Access Canberra, it is unsurprising that the strategic planning processes was immature. Importantly, without considerable attention it may also be at risk of being considered unimportant in the future. This would be a mistake and some lessons from the strategic planning process should be considered:

- The process relied on ad-hoc data requests due to the lack of a documented understanding of historical, current, and emerging risks through a structured and transparent process.
- The draft Strategic Business Plan fails to articulate how specific regulatory initiatives will contribute to outcomes.
- There was no process to substantiate what was included or excluded from the plan (such as documenting key analysis, decision-making processes, and quality controls).
- The accountability to develop the Strategic Business Plan and assist in embedding the plan were not defined and no resources were assigned to develop the plan outside of management. The entire process relied on individual efforts rather than a strategic resourcing approach.

4.4 Conclusion and recommendations to improve the Compliance Framework

WorkSafe ACT requires a comprehensive suite of documents to guide its compliance and enforcement activities; including what, and how activities are undertaken, and how discretion should be exercised by WorkSafe ACT staff.

We found that it is unclear how the key documents comprising the Compliance Framework, the Accountability Commitment, and the WorkSafe ACT Compliance Framework fit together. We also found that some of the documents are ambiguous and considerably out of date. We understand there is a recognition that the SOP's have not been reviewed in some time and may therefore be out of date and not reflect current systems and processes, and changes to the law. We also found that while it was easy to access the key documents through the Work Safety Portal there was no explanation about their purpose, intent, and how they can be used by stakeholders.

There is great deal of confusion about how the 70:20:10 model and how it is to be applied by WorkSafe ACT. And while we understand a balance of activities between education, engagement, and enforcement reflects what is required to achieve the goals as a work health and safety regulator, we consider there needs to be a clear articulation of WorkSafe's ACT's regulatory approach and how it balances these activities. This will be supported by clear guidance on the circumstances in which it is appropriate to respond to non-compliance, with lower level compliance response tools such as education and advice to

⁶⁹ ACT Government, *WorkSafe ACT Industry Engagement Communications Strategy 2018/19* [draft], June 2018

assist businesses to comply, a letter, or to take enforcement action. We found limited guidance for inspectors on how to exercise their discretion in the use of available tools to address non-compliance.

We also found that there is a great deal of confusion about what is meant by risk-based regulation and how it is applied in WorkSafe ACT.

We were encouraged by the recent initiative to develop a new Strategic Business Plan that articulates specific strategic priorities to inform staff, regulated parties, unions, and the community about where WorkSafe ACT intends to focus its effort and sets out key performance indicators against which to measure performance. We understand this Strategic Business Plan is still a draft. We were also encouraged to see guidance on how WorkSafe ACT will engage with its stakeholders and regulated parties and how and when it will engage.

Recommendation 1: Be clear what comprises the Compliance Framework documents, how the suite of documents fits together, and how they are applied.

Recommendation 2: Review the WorkSafe ACT Compliance Framework to ensure it clearly articulates the regulatory approach and provides clarity on what is meant by the risk-based approach and how it is applied.

Recommendation 3: Articulate how the range of tools will be used, and in what circumstances, to provide clear guidance to regulated parties as to what to expect and to inform staff so there is consistent practice.

Recommendation 4: Review and update policies and procedures to ensure they align with the Compliance Framework and establish a process and assign responsibility for keeping all documents current.

Recommendation 5: Finalise and publish the WorkSafe ACT Strategic Business Plan 2018-22 and the WorkSafe ACT Industry Stakeholder Communications Strategy 2018/19, and ensure they align with the Compliance Framework.

Recommendation 6: Update the Strategic Business Plan annually to articulate compliance and enforcement priorities and measures.

5 The appropriateness and effectiveness of WorkSafe ACT's approach

5.1 Introduction

In the previous section we described the approach to work health and safety compliance detailed in WorkSafe Act's Compliance Framework. In this section we continue the discussion of WorkSafe ACT's approach to work health and safety compliance with a detailed analysis of the way in which they operate, the activities they undertake, and the outcomes they achieve.

In reviewing the approach, we consider the collection, use, and analysis of data and the impact and effectiveness of information sharing within Access Canberra and across government to drive work safety compliance and enforcement activities.

We considered the operation of the risk-based approach and the compliance activities undertaken by WorkSafe ACT. This provides the basis for our assessment of both the appropriateness and effectiveness of the compliance approach.

The assessment of the appropriateness and effectiveness of WorkSafe ACT's compliance approach addresses the second part of our analytical framework as shown in Figure 8.

Figure 8 | Compliance Approach



5.2 The risk-based approach in practice

Introduction

A characteristic of many regulators is that their regulatory approach is risk-based. A risk-based approach is an acknowledgement of the limited resources at a regulator's disposal. Effective regulators need to prioritise activities to those areas they consider high risk, and other areas of identified strategic importance. A risk-based approach is used to prioritise effort in assisting compliance and identifying and enforcing instances of non-compliance.

A risk-based approach includes identifying risks and documenting historical, current and emerging risks and then assessing risks to inform the design of regulatory initiatives, allocating resources to identify non-compliance in higher and lower priority entities, and selecting the most appropriate enforcement tools for non-compliance.⁷⁰

An important issue that arises in this context is establishing a clear understanding and a nuanced approach to the collection and analysis of data - to inform the identification of the areas where there is potential risk to achieving the regulatory objectives of the regulator. In this case the objectives of the regulator set out in WorkSafe ACT's Compliance Framework are Safety, Prevention, Health, and Compensation.

⁷⁰ NSW Government Department of Finance, Services and Innovation, *Guidance for regulators to implement outcomes and risk-based regulation*, July 2014, accessed at [http://productivity.nsw.gov.au/sites/default/files/2018-05/Guidance for regulators to implement outcomes and risk-based regulation-October 2016.pdf](http://productivity.nsw.gov.au/sites/default/files/2018-05/Guidance%20for%20regulators%20to%20implement%20outcomes%20and%20risk-based%20regulation-October%202016.pdf)

The WorkSafe ACT risk categorisation, described previously in Table 7, considers the risk assessment in response to incidents and bases the response to the outcome of the incident rather than proactively identifying and assessing risks based on data and information collected from a range of sources. As noted in Section 4.3 several stakeholders raised concerns about WorkSafe ACT's risk-based approach.

We considered two related elements of the risk-based approach: the collection, collation, and use of information and the risk identification, analysis, and response. Each is discussed in turn.

Data and information collection, collation, and use

Regulators use data in every aspect of their activity to inform decision-making, for strategic planning, to analyse risk and to inform the appropriate regulatory response, and to determine the effectiveness of their activities.

Stakeholders indicated that WorkSafe ACT has limited maturity in its collection and collation of information and its use of available data. There was a shared view among both internal and external stakeholders that WorkSafe ACT has not used data to drive its inspection activity and there has been limited capability to do this. Instead there has been a reliance on inspector's on-site observations. Most stakeholders recognised the benefit of having good data for identifying emerging issues and leading indicators of risks and hazards that could inform prevention activity.

Make better use of the systems capability for data collection

We were advised that in recent years with the advent of the new claims system there is the ability to start to undertake trend analysis, but that WorkSafe ACT is not using the claims data in the same way that other work health and safety regulators do, and that it is using the data in an ad hoc way rather than strategically. Internal stakeholders advised the use of data does not inform the strategic allocation of resources in WorkSafe ACT.

There is also a new Customer Relationship Management (CRM) system, introduced into Access Canberra in 2017. The new CRM system enables information and data to be recorded about individual businesses and the interactions Access Canberra has with those businesses, allowing staff to gain a full picture of the issues raised about the organisation including previous visits and inspections, incidents, and complaints. At this stage, the system is being used by all regulatory teams within Access Canberra. The use of the system within WorkSafe ACT is inconsistent. This system has the potential to provide a rich source of information to inform the development of an appropriate and tailored compliance intervention for each business.

Stakeholders noted that there is an increasing recognition at the executive level in Access Canberra that the use of data is necessary to drive strategy. However, as more data tools come online, the gap between those individuals who know how to use data analytics tools and those who do not is growing rapidly. Concern was expressed that staff were not being adequately trained in the new systems and therefore are not using it consistently or appropriately and therefore the benefits are not being realised. Internal stakeholders felt the uptake of new technology and systems has been slow.

Maximise the use of available analytical capability

The capability to analyse data to inform planning and decision-making is available to WorkSafe ACT through services provided by the Workplace Safety and Industrial Relations Office. WorkSafe ACT has no dedicated resources and limited capability to perform data analysis, limiting its ability to effectively use the data analytics capability available in the Directorate.

Industry representatives noted, for example, that:

"Access Canberra is collecting more data than before, but this data is not being communicated enough" internally or externally.⁷¹

External stakeholders believed that there was limited understanding of how to use the increased information and data to inform target audiences in a way that the audiences might prefer to receive the information.

⁷¹ Interview with representatives from the Canberra Business Chamber, July 2018

Use data analysis to inform programs and activities

WorkSafe ACT inspectors concurred that there was limited data driving their program of work. The inspectors we interviewed stated that their approach was based on a combination of institutional and personal knowledge and what they see as opposed to data driven insights. The inspectors said that some of the data they rely on for inspections is from workers compensation figures but knew the limitation of this data given its historic nature. One inspector summarised the current approach:

“When we go out and do an industry audit it would be randomly picked out of the yellow pages.”⁷²

The view from industry conveyed a similar perspective on the lack of data analytics informing the activities of WorkSafe ACT. Stakeholders broadly expressed the view that the use and sharing of data is inadequate.

Although the use and collection of data is still at an early stage, we were informed that the strategic planning process for 2018 has included measures that will position WorkSafe ACT to be guided and informed by the data it collects and uses. These measures include:

- a review of past activities to understand what activities were taking place and why, has resulted more recently in an effort to shift the focus of activity to more proactive rather than reactive inspections and better targeting to industries of concern⁷³
- the building of an evidence base through data analysis, engagement with stakeholders and considering learnings from prior reviews
- involvement and engagement of staff which enabled their knowledge to inform the priorities and identify target businesses where there is a higher risk of non-compliance.

In this regard it is anticipated that future programs and activities will be conducted in accordance with the Strategic Business Plan and will continue to be informed by ongoing data collection and analysis.

Increase information sharing across regulators

Our terms of reference also asked us to consider the sharing of data within Access Canberra relating to work safety compliance and enforcement activities. The Deputy Director-General of Access Canberra has publicly noted that the inclusion of WorkSafe ACT into Access Canberra has improved information sharing, saying:

“In terms of the operations of WorkSafe, since the commencement of Access Canberra, undeniably there has been greater collaboration across regulatory arms within government with regard to the scheduling of inspections, the sharing of intelligence between different regulatory arms, and certainly the undertaking of compliance and enforcement activity where there is a common understanding about the parties that might be involved. That has certainly been one of the changes we have seen. From our perspective, we see that as a positive where, rather than having individual regulatory arms without complete information of what is happening in an industry sector or related to a particular industry party, they now have much greater information available to them... we have, I guess, introduced a level of awareness where a gasfitter, for instance, might observe other things occurring on the site and, if there are concerns, take action to bring WorkSafe in to actually conduct a review. Where in the past that would not have happened, they would have gone in and done their job, there is now that much greater awareness and sharing of information so that we can better target our resources as well.”⁷⁴

Stakeholders noted that two Access Canberra committees, the Regulatory Advisor Committee (RAC) and Regulatory Complaint Assessment Committee (RCAC) have functioned as a formal way to coordinate and share this type of information across the different regulatory functions inside Access Canberra.

⁷² Interview with WorkSafe ACT Inspectors, July 2018

⁷³ Email correspondence with ACT Workplace Protection, July 2018

⁷⁴ Legislative Assembly for the Australian Capital Territory, Standing Committee on Economic Development and Tourism, 9 November 2017, accessed at <http://www.hansard.act.gov.au/hansard/2017/comms/edt09a.pdf>

Stakeholders also noted that the introduction of the Access Canberra CRM system has significantly improved the ability to access and share information to meet the intent of Access Canberra to reduce burden and achieve economies of scale.

However, there was a broad consensus among stakeholders that these efforts are particularly focused on individual activities, such as coordinating a joint visit, and have not been extended to informing the strategic priorities and activities of WorkSafe ACT.

Stakeholders raised the concern that there is limited systemic processes for the sharing of data and information to inform strategic priorities. Indeed, one stakeholder suggested that:

"...as the policy intent of doing the merge was to achieve economy of scale there is real opportunity to catch up with the way data analytics is being used in other jurisdictions, but it is far from certain that it will be integrated and embraced."⁷⁵

Risk identification and analysis and designing response initiatives to address risk

Regulators who have an ongoing approach to risk identification are able to adapt and respond to changing circumstances and emerging challenges. They understand risk identification in terms of what are the risks to achieving the regulator's objectives. They analyse those risks and use that risk analysis to inform their responses such as targeting of inspections, creating new guidance and education materials, focusing on individual businesses, injury types, cohorts such as young workers, whole industries, or a combination of these.

The review was not provided with material that enabled us to clearly understand how the risk-based approach is applied in practice. The consultations suggested it resulted in an overemphasis on response activities and on the construction industry where there are recorded fatalities.

Interviews with internal stakeholders raised concerns that proactive activities were focussed on joint events⁷⁶ and that the decision to undertake specific audits was reactively based on information WorkSafe ACT gathered from stakeholder views and the preferences of management - rather than through data informed analysis.⁷⁷

External stakeholders also raised concerns about the lack of data-informed activities. For example, UnionsACT submitted that:

"...the regulator [should] expand its profiling of businesses and associated risks to consider factors such as prevalence of employing young workers, women, transient and migrant workers, workers with a disability, and culturally and linguistically diverse workers. For example, risks affecting these classes of workers are prevalent in areas such as retail, hospitality and health and community services."⁷⁸

The review noted that stakeholders considered that the approach to risk identification and analysis in designing response initiative is changing, particularly since February 2018. This is evident in the processes for developing the WorkSafe ACT Strategic Business Plan 2018-2022 and business unit plans for 2018/19.⁷⁹ However, the review considers that the extent to which risk analysis is used to allocate resources and the design of specific risk responses to use of the right mix of tools is very limited.

⁷⁵ Interview with member of the ACT Government July 2018

⁷⁶ Interview with WorkSafe ACT Inspectors, July 2018

⁷⁷ Interview with WorkSafe ACT Inspectors, July 2018

⁷⁸ Written submission made by UnionsACT, UnionsACT Submission to the Independent Review into ACT's Work Safety Compliance and Enforcement Framework, 26 July 2018, p. 16

⁷⁹ Access Canberra, *Workplace Protection Strategic Business Plan 2018-2022* [draft], June 2018; Access Canberra, *Construction, Environment and Workplace Protection Division Annual Business Plan 2017-18*, July 2017

Conclusion and recommendations for improving the risk-based approach

The review has formed a conclusion that while there is now the opportunity available with new systems, capability to analyse data to support strategic planning (which has commenced), there is limited understanding of how data can be used to inform the risk analysis and to design response initiatives. The collection and use of data supported by appropriate systems is fundamental to effective compliance targeting and resource allocation.

The strategic planning process recently undertaken represents a good first step in using data and information to inform the program of work and to identify areas of focus. This approach should continue and be the subject of review on a regular basis.

There is also little evidence that the current sharing of information within Access Canberra relating to work health and safety activities is improving the overall compliance or reducing the burden on business.

Recommendation 7: Create a process and assign responsibility for data collection, collation and use to inform strategic priorities, programs and activities, resource allocation and performance, and outcomes measurement and reporting.

Recommendation 8: Ensure WorkSafe ACT has the capability and knowledge to effectively use the current systems and the data analytics services available to them.

Recommendation 9: Formalise an approach to sharing of information among and between regulators to better inform compliance targeting, responses, and to reduce burden for business.

5.3 WorkSafe ACT's regulatory activities

Where a risk-based approach is taken there will be a balance between the activities that are designed to encourage work health and safety as well as activities that are designed to deter poor OHS performance. WorkSafe ACT's approach applies the Compliance Model to inform this balance. In that regard its compliance activities include education and engagement as well as compliance and enforcement activities.

In this section we consider WorkSafe's education and engagement activities and their compliance and enforcement activities to describe both their appropriateness and effectiveness.

Education and engagement activities

A key tool for encouraging workplace health and safety is the provision of practical and constructive advice and information.

WorkSafe ACT's approach to education and engagement is discussed in the Compliance Framework. The Compliance Framework lists a range of communication activities and tools including: newsletters, factsheets, social media, advertising campaigns, and Web Content (including guides, brochures, fact sheets and links to outside resources). In addition, WorkSafe ACT conducts several community and business information seminars, events, and presentations.

WorkSafe ACT's engagement and education programs are aimed at businesses and workers in partnership with industry. The engagement program is also applied to government agencies and directorates. This program consists of regular information seminars, industry association engagements, collaboration on relevant campaigns and guidance materials.

Stakeholders noted that engagement and education activities aim to support industry and the broader community to better understand the Work Health and Safety legislation, best practice safety framework, and to identify work, health, and safety issues that may impact businesses or individuals. Master Builders ACT submission notes that:

“Presently, WorkSafe ACT are actively engaged with industry and conduct seminars and presentations to members of the MBA. These seminars cover a variety of topics and cater to a wide audience – from our apprentices through to experienced business owners.”⁸⁰

Data reported by WorkSafe to SafeWork Australia each year highlights the large volume of workshops, presentations and seminars WorkSafe ACT conducts every year as shown in Table 8.

Table 8 | WorkSafe Community engagement activities over time

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Number of workshops/ presentations / seminars: Proactive	161	218	168	159	100	173

Source: SafeWork Australia data⁸¹

Examples of education and information materials include:

- Producing over 20 safety videos in partnership with Safe Work Australia, Housing Industry Association, Master Builders ACT, Unions ACT, Training Fund Authority and the Construction Industry Training Council to engage and educate members of the construction industry on the areas of high risk activities.
- Producing a regular industry newsletter sent to 13,000 individual subscribers covering information on construction, environment, and workplace matters.
- Developing a variety of education and guidance material distributed through social media platforms such as ‘how-to’ guides for notifying an incident or dangerous occurrence, safety alerts, and with key safety messages such as ‘Think safety at work this winter: slips, trips and falls risks increase’ linked to WorkSafe’s Working in Cold Weather video, and a case study book as part of the Healthier Work ACT program.

Build more information and guidance material and make it more easily accessible

Business stakeholders indicated they were satisfied with the guidance material and information provided but that most of this information was focused on the construction industry.

Almost universally concern was expressed about WorkSafe ACT’s website. This concern was raised across business, government, employee representatives, and internal stakeholders. Stakeholders felt there was an opportunity to improve communication of compliance activities and especially publication of outcomes to provide information to business about common areas of non-compliance to inform their work health and safety practices and to deter others and thereby improve compliance.

The Access Canberra website has been a challenge for WorkSafe ACT. The Access Canberra website is arranged as a ‘frequently asked questions’ format and is not intuitive for the stakeholders that have an interest in WorkSafe ACT oriented information. For example, the information on the website reacts to the frequency of types of enquiries across the whole of Access Canberra, and typically work safety related queries do not appear in the search engine. This means that those seeking work safety information must work through a range of unrelated material before finding anything of relevance.

As the website is one of the key means of communication, the current design makes it difficult to access guidance materials, is difficult to navigate, and does not display content in a way that is typically expected by web interactions.

The Work Safety Portal on the Access Canberra website was launched in June 2018 to improve accessibility to the available materials such as safety videos, safety alerts, the construction industry newsletters, and guidance materials for the construction industry. Some stakeholders acknowledge that there has been

⁸⁰ Written submission made by Michael Hopkins, Chief Executive Officer, Master Builders ACT of the ACT, Review of WorkSafe ACT, 27 July 2018, p. 1

⁸¹ SafeWork Australia, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers’ compensation schemes in Australia and New Zealand, Part 2 – Work Health and Safety Compliance and Enforcement Activities*, 19th Edition, December 2017

improvement with the introduction of the Portal. However, the review found that the fundamental concerns around usability and lack of information remain. In our own searching on the website⁸² we found it difficult to navigate, that it contains limited information to guide industries outside of construction and does not provide a clear articulation of the approach WorkSafe ACT takes in its work or how the community can and should interact with the regulator.

We have not deeply explored the extent to which WorkSafe ACT, as part of the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, accesses and reuses information and guidance prepared by other states and territories where the same laws apply - but suggest this is something to be explored to quickly supplement the material available; especially for industries beyond construction and for hazards such as psychosocial health, muscular skeletal disorders, vulnerable workers, and occupational disease for example.

Plan community engagement activities as part of 'compliance campaigns'

Providing information and advice on how to comply and improve safety in face-to-face presentations to target audiences can be an effective preventative measure. Stakeholders noted that engagement and education activities, especially the presentations and Q&A sessions, were useful and informative.⁸³ This is especially the case where they provide simple and practical guidance on how to change practices to improve workplace health and safety.

Stakeholders indicated that they have ready access to WorkSafe ACT staff if they are seeking information and assistance regarding issues of concern, and that WorkSafe ACT is responsive to requests to speak. They have good relationships with the Work Safety Commissioner and know who to call directly if issues arise and that WorkSafe ACT is very responsive.

We were not provided with any detail about the subject of the presentations or the numbers of attendees. In this regard, we are unable to determine the reach of these presentations and their impact. It would be helpful for ongoing support for this type of activity and to ensure it is effective for programs to be designed with the audiences and with a specific purpose as part of an overall strategy to address particular issues where the education activity can be part of a broader program, such as supporting an audit program or following enforcement action. Planning the engagement presentations as part of a targeted 'campaign' is likely to be more effective than an approach that responds to requests for speakers at events and meetings.

Communicate activities and outcomes sooner

Many stakeholders agreed that there was insufficient sharing of incident information early and that this had the effect of creating rumours, while also delaying the potential lessons that come from incidents for industry; so, they can address hazards in their own workplaces that might give rise to a similar incident. It was felt that this information did not need to specifically name the business, but to provide sufficient information about the nature and cause of the incident to be useful.

In addition, there was a strong view that the deterrent effect of widely publicising the outcomes of prosecutions and penalties imposed is not being achieved.

Be transparent with claims and incident data

A few stakeholders commented that it would be useful if claims and incident data were readily available to enable industry associations and unions to interrogate the data to inform their education activities, communicate trends to members, and provide appropriate training to address emerging issues. For example, the submission to the review from the Master Builders ACT called for:

"Real-time data of incidents so that industry is notified and aware of reoccurring problems and can act to educate and avoid further incidents."⁸⁴

⁸² Access Canberra, Work Health and Safety, accessed at <https://www.accesscanberra.act.gov.au/app/home#/workhealthandsafety>

⁸³ Interview with the Master Builders ACT of the ACT, July 2018; Interview with the Housing Industry Association, July 2018.

⁸⁴ Written submission made by Michael Hopkins, Chief Executive Officer, Master Builders ACT of the ACT, Review of WorkSafe ACT, 27 July 2018, p.1

In this regard the review recognises that industry associations, businesses, and unions would be better equipped to play an active role in working with WorkSafe ACT to improve work health and safety compliance and outcomes if this information were shared in a timely way.

Inspections and the use of compliance and enforcement tools

In addition to education and community engagement activities discussed above, workplace inspections are a frontline activity used to detect non-compliance with the law and remediation of breaches. During workplace inspections inspectors can exercise their discretion and make decisions about the most appropriate response to breaches they identify. WorkSafe ACT inspectors have a range of tools available to them. Each of the tools and their purpose is described in the WorkSafe Compliance Framework. The process for using these tools is described in the SOP's. As noted above there is incomplete guidance provided to inspectors as to what circumstances warrant the use of which tool. The range of enforcement options available to inspectors is covered in Table 9 below.⁸⁵

Table 9 | Tools listed in the WorkSafe ACT Compliance Framework

Type	Summary
Advice or guidance	<p>Aims to raise workplace parties' awareness of their rights and obligations and help duty holders know how to comply with work health and safety laws and build their capability to address work health and safety issues and achieve compliance.</p> <p>Having provided the duty holder with advice or guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, the regulator may decide to take no further action.</p> <p>Advice and guidance can also be provided to support the use of other compliance and enforcement tools, such as improvement and prohibition notices.</p>
Improvement Notice	<p>Cautions the workplace about an unsafe practice, particular hazard, or potential risk to health and safety. The notice requires corrective action to be taken within a specified timeframe.</p>
Prohibition Notice	<p>Issued to people in the workplace where there is a risk of imminent and serious injury. It requires the person in charge of the activity to cease the activity. However, in some circumstances the Inspector may allow the activity to continue in accordance with the directions specified in the notice.</p> <p>Where there is a failure to comply with an inspector's notice, the regulator may prosecute or, if there is a serious risk to health and safety, may also seek an injunction against the person to whom the notice was directed.</p> <p>Improvement and prohibition notices are 'remedial' enforcement measures, not 'punitive' measures (i.e. they are not punishment).</p>
Injunctions	<p>May be sought to compel a person to comply with an inspector's improvement, prohibition, or non-disturbance notice. Injunctions are used when there is a serious risk to health and safety which has not been remedied by the person to whom the notice has been issued, and other mechanisms available to the regulator have not resulted in compliance being secured.</p> <p>Injunctions are likely to be sought when there are exceptional, pressing, or urgent circumstances (for example, where the breach involves a significant risk to public safety).</p>
Enforceable undertakings	<p>Legally binding agreement entered into as an alternative to having the matter decided through legal proceedings for a contravention of the Act. An enforceable undertaking provides an opportunity for significant work health and safety reform to be undertaken.</p> <p>Typically, the activities associated with an undertaking are substantial and must aim to deliver tangible benefits to the workplace, industry, or the broader community.</p>

⁸⁵ Access Canberra, *WorkSafe ACT: Compliance Framework*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/222543/1530060482/redirect/1/filename/Workplace+Safety+Compliance+Framework.pdf>

Type	Summary
	An enforceable undertaking will generally not be accepted where the offence relates to reckless conduct or where an Infringement Notice has been issued for the contravention.
Revoking, suspending or cancelling authorisations	<p>WorkSafe ACT will authorise certain people to undertake certain types of work and organisations to conduct certain types of undertakings. For example, work involving the removal of dangerous substances such as asbestos and to operate major hazard facilities.</p> <p>WorkSafe ACT may decide to revoke, suspend, or cancel a person's authorisation given to deal with inappropriate conduct or practices identified during inspection work, or as a result of information received. Such action is a protective measure and may be undertaken even where steps have been taken to remedy a contravention or where an offender has otherwise been punished (i.e. fined). It is recognised that the revocation, suspension or cancellation of authorisations may have serious consequences for a person or business. When making decisions about authorisations, WorkSafe ACT will balance these considerations with the paramount need to protect the health and safety of workers and other persons.</p>
Infringement Notices	<p>Mechanism for regulators to impose an immediate monetary sanction for certain types of breaches; sending a clear and timely message that there are consequences for non-compliance. Payment of an Infringement Notice is not an admission of guilt nor does it constitute a conviction. However, failure to pay an Infringement Notice and disputing an Infringement Notice leaves the option of prosecution open.</p> <p>A failure to make the payment that is required under an infringement notice may result in court proceedings.</p>
Prosecution	<p>Prosecution may be brought in relation to alleged breaches of offence provisions in work health and safety laws.</p> <p>In relation to work health and safety offences, the time for the regulator to bring charges against a person is limited.</p> <p>Alleged offences under the <i>Criminal Code 2002</i> or the <i>Crimes Act 1900</i> committed in the context of the legislation administered by Worksafe are referred to ACT Policing for investigation.</p>

Continue to increase proactive inspections

WorkSafe ACT uses workplace inspections as the main tool for identifying non-compliance and improving performance. The WorkSafe Compliance Framework defines two types of inspection activities: proactive and reactive.⁸⁶

- **Proactive:** Visits by Inspectors to workplaces or work sites that occur at random, as part of targeted programs, or to promote better awareness of tools, processes, and options for achieving a compliant safe workplace.
- **Reactive:** relies on the community, business, or industry reporting concerns. WorkSafe ACT prioritises this information based on the assessed level of risk to determine the appropriate response.

Figure 9 provides a view of the number of inspections conducted by WorkSafe ACT since 2011/12 to 2017/18 separating out proactive and reactive workplace visits. Table 10 shows the number of inspections in each category and total inspections.

⁸⁶ Access Canberra, *WorkSafe ACT: Compliance Framework*, ACT Government, 2015, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/222543/1530060482/redirect/1/filename/Workplace+Safety+Compliance+Framework.pdf>

Figure 9 | Number of proactive and reactive visits by inspectors

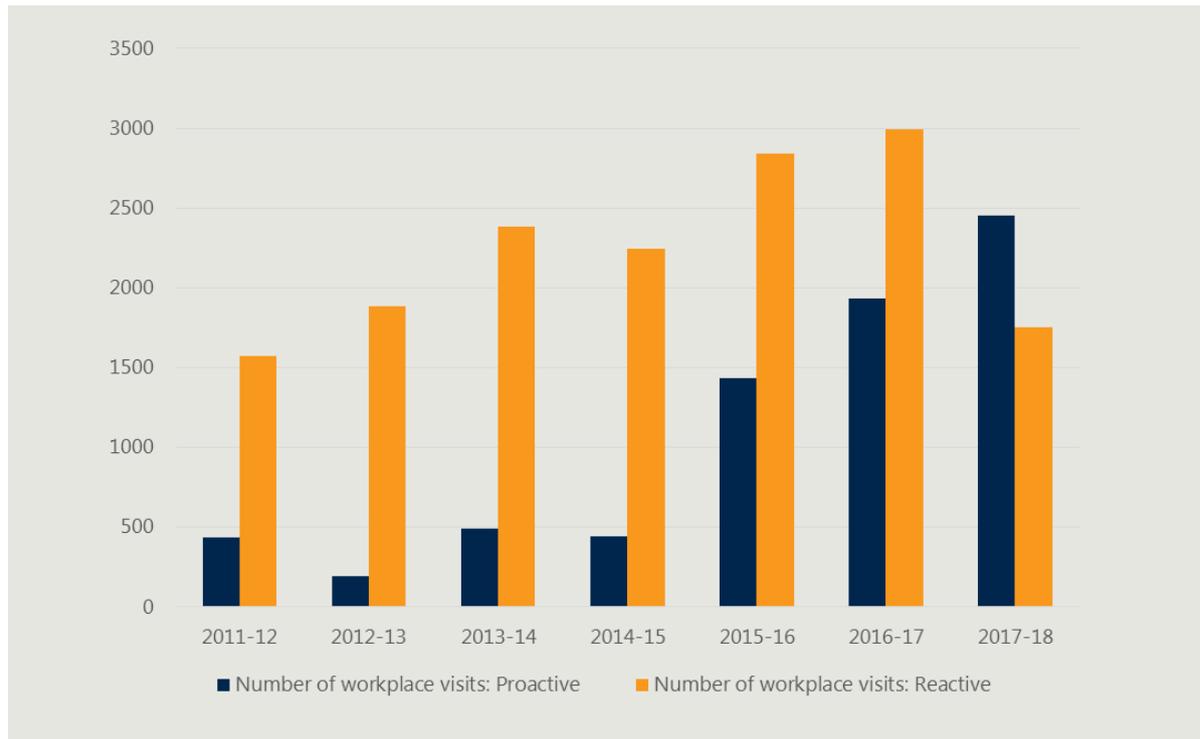


Table 10 | Number of proactive and reactive workplace visits by inspectors

Activity	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Number of workplace visits: Proactive	433	195	490	442	1,434	1,933	2,452
Number of workplace visits: Reactive	1,574	1,886	2,384	2,247	2,838	2,990	1,752
Total number of workplace visits	2,007	2,081	2,874	2,689	4,272	4,923	4,134

Source: Data provided by Access Canberra and Nous analysis⁸⁷

As shown in Figure 9, workplace visits conducted by WorkSafe ACT have risen substantially over time. The data indicates that there has been an increase of 106 per cent in workplace visits by inspector since 2011/12. Since WorkSafe ACT joined Access Canberra there has been a 54 per cent increase in inspections. This increase has been predominantly in proactive visits.

It is important to note that an inspection is defined as a visit by an inspector and includes all visits whether their objective is to promote better awareness of how to achieve compliance (what might be considered an educative or an advice and guidance visit) or is an inspection with the intent of identifying and remedying non-compliance or breaches of the work health and safety laws. The 2015/16 annual report highlights the issue, noting that WorkSafe ACT:

"...undertook 1,024 events related workplace visits such as at Summernats, Canberra Show, Multicultural Festival, and Night Noodle Markets."⁸⁸

This suggests that over 70 per cent of all proactive workplace visits (1,024 of 1,434 proactive visits) were event based educative visits.

⁸⁷ WorkSafe ACT inspections data from 2011-2018 provided by Access Canberra, July 2018

⁸⁸ ACT Government, *Annual Report 2016-16*, Output 10.1 Access Canberra, accessed at <http://www.cmd.act.gov.au/functions/publications/2015-16annualreport/organisational-overview-non-financial-reporting/b.2-performance-analysis/output-10.1-access-canberra>

The distinction between an educative visit and an inspection should be well defined to clearly understand the intent of the visit, and therefore the appropriate skill and capability required to conduct the visit. For example, an educative visit may not require an experienced specialist inspector whose time could be better used undertaking targeted compliance inspections. This is discussed further in Section 7.5.

Stakeholders were supportive of using data and information to inform a proactive inspection program that addressed strategic priorities. However, there was considerable concern that the current program of proactive inspections is too limited and does not recognise the wide range of risks in all industry sectors. The review notes this is likely to change with the introduction of the Strategic Business Plan and the process undertaken to develop it.

Widen the focus of compliance activity to include construction and other industries.

WorkSafe ACT has focused on the construction industry for a number of years. The poor record of the ACT's construction industry has been a particular focus since the 'Getting Home Safely' report found that the ACT's serious injury rate was 31 per cent higher than the national average; and that the industry's long-term injury performance was 50 per cent worse than most other jurisdictions and double the national average.

In more recent times, WorkSafe ACT has continued this focus by, for example, conducting multiple audits such as the tower crane audit of all ACT construction sites that had a tower crane in operation, and the well-publicised audit program of the installed scaffolding industry across 26 construction sites - consisting of five large commercial properties and 21 medium, and single residential sites were visually inspected from March to May 2017.⁸⁹

Stakeholders suggested that WorkSafe ACT focuses disproportionate effort on the construction industry and does not focus on other industries where there are incidents. As noted above, this was attributed by stakeholders to WorkSafe ACT not using data to inform its activities and an inappropriate emphasis in their risk targeting on fatalities.

Many stakeholders raised the importance of WorkSafe ACT broadening its focus and emphasis beyond construction and physical injuries to a wider range of industries, for example, health and community services, and beyond physical injuries to include psychosocial injuries that are cumulative including bullying, harassment, and mental health. They also raised targeting of specific cohorts such as young people. The recent conduct of an audit of apprentices and young workers suggests that this approach is now be incorporated into WorkSafe' ACT's planned activities.

Representatives from the Canberra Business Chamber noted that:

"The construction industry predominates a lot of the conversation but there is a need to look at other injuries such as psychosocial matters" and added that "there has to be a strategy that looks at mental health in young workers."⁹⁰

The submission from the AEU noted that survey results in the education industry:

"...pointed to key areas that needed immediate attention and wide spread non-compliance with the WHS ACT".

The review analysed data to assess WorkSafe ACT's approach to different industries. In presenting this analysis, we have identified select industries where claims trends suggest focus by WorkSafe ACT is warranted. These select industries account for 76 per cent percent of private sector claims in 2016/17 in the ACT, and a significant majority of private sector workers' compensation claims in the ACT over the last four years. The complete data for private sector claims across all industry categories is shown in Appendix A.

⁸⁹ WorkSafe ACT, *Tower Crane Audit Report*, November 2016, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/113639/1479162372/redirect/1/filename/Tower+crane+audit+report.pdf>; WorkSafe ACT, *Scaffolding Audit Report*, October 2017, accessed at <https://www.accesscanberra.act.gov.au/ci/fattach/get/173512/1507179255/redirect/1/filename/Scaffolding+Audit+Report.pdf>

⁹⁰ Interview with representatives from the Canberra Business Chamber, July 2018

Figure 10 shows the percentage of total visits by inspectors to workplaces relative to the percentage of private sector claims in select industries for 2017/18.

Figure 10 | Percentage of private sector claims in select industries and the percentage of workplace visits in 2017/18

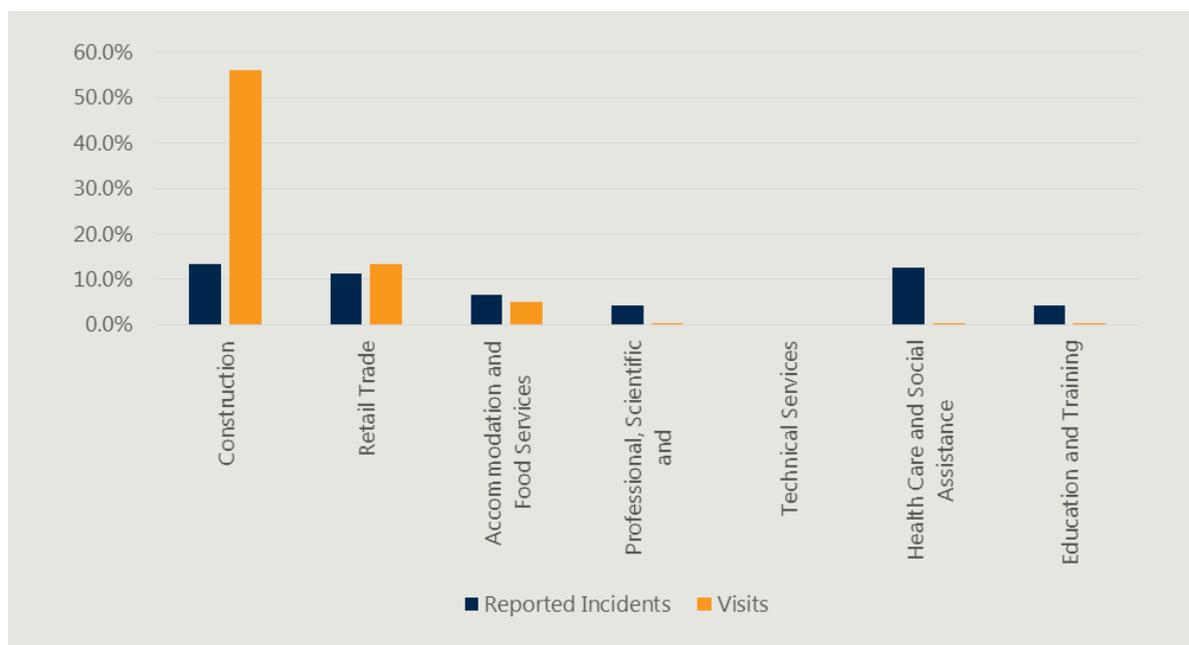


Table 11 | Total actions undertaken by WorkSafe ACT in 2017/18 in selected private sector industries

Industry	Private sector claims	Visit	Improvement notices	Prohibition notices	Infringement notices	Total notices issued
Construction	653	2761	103	52	1	156
Retail Trade	550	655	11	1	0	12
Accommodation and Food Services	324	244	5	0	0	5
Professional, Scientific and Technical Services	205	3	0	0	0	0
Health Care and Social Assistance	614	9	0	0	0	0
Education and Training	207	18	1	0	0	1
Public Administration and Safety	59	9	0	0	0	0
Other	2311	1224	20	5	0	25
Total	4923	4923	140	58	1	199

Source: Data provided by Access Canberra and Nous analysis⁹¹

Table 11 shows that over the last year, workplace visits to the construction industry have constituted over 56 per cent of total WorkSafe ACT visits by inspectors. Less than 20 per cent of total private sector claims occur in the construction industry over the same time period. In contrast, 40 per cent of total private

⁹¹ WorkSafe ACT inspections data from 2011-2018 provided by Access Canberra, July 2018

sector claims occur in the other selected industries. They represent less than twenty per cent of workplace visits by an inspector over the same period. Further, over 40 per cent of all private sector claims occur in other industries while these constitute less than 25 per cent of WorkSafe ACT visits by inspectors. This analysis suggests that WorkSafe ACT is disproportionately focusing its inspection resources on the construction industry. As noted above, this is consistent with the views of a range of stakeholders.

Better use of data to guide the identification and analysis of risk has the potential to more appropriately allocate resources across industries where the claims data suggests there is non-compliance. This suggests there is an opportunity for WorkSafe ACT to provide education and guidance for these industries, to use the data to inform the development of targeted education materials, and to undertake compliance programs to address specific risks.

Using notices to address non-compliance

The appropriateness and effectiveness of WorkSafe ACT's compliance approach can also be assessed by an examination of the use of the full suite of tools available to achieve compliance and address non-compliance.

Some stakeholders suggested there is widespread non-compliance across the ACT.

*"Access Canberra (and its predecessors), have conducted numerous proactive education campaigns ... over many years to raise awareness of compliance and have conducted audits in the past. All have found repeated, significant and concerning levels of non-compliance."*⁹²

Having considered the number of workplace visits overall and for selected industries, it is of interest to consider what was the outcome from each visit, i.e. was a notice issued indicating there was specific non-compliance at the workplace visited? This examination provides insight into the compliance models adopted over time and in response to identified events and reviews.

Record the actions and outcomes for workplace visits

The adoption of an educative approach when visiting workplaces requires complete notes to be consistently recorded during visits. The visit report needs to record if non-compliance was identified, the nature of the non-compliance, the guidance provided, and the agreed action. This information informs future inspections and assists inspectors to make decisions about appropriate responses in future. Inspectors informed the review that there was a lack of consistency in the use of the systems to record data and information about visits.

Recording and reporting how education and guidance is being used, and the types of hazards and non-compliance being identified in the field, is important information to inform future planning of activities. It is also important to be able to report on the use of guidance as a compliance tool to inform the broader understanding of compliance rates across the ACT.

Increase the use of notices to address non-compliance

Notices are another important tool by which WorkSafe ACT can enforce improvements to prevent future incidents and minimise risks. Based on the severity of safety issues, inspectors can issue Improvement, Prohibition, and Infringement Notices. An inspector may also recommend a comprehensive investigation by WorkSafe ACT to determine if the contravention of work safety laws warrants prosecution or other action.

As noted in Section 3.5, there have been specific events and reviews that have influenced WorkSafe ACT's compliance response. WorkSafe ACT's use of notices in the last ten years has fluctuated based on their compliance approach. Figure 11 and Table 12 overleaf show the use of notices⁹³ issued under the WHS Act 2011 over time.

⁹² Written submission made by UnionsACT, UnionsACT Submission to the Independent Review into ACT's Work Safety Compliance and Enforcement Framework, 26 July 2018

⁹³ The review also considered notices issued by WorkSafe under other Acts including the Dangerous Goods Act 2004, and Worker's Compensation Act 1961, Appendix B provides these details.

The analysis highlights a number of insights. First, from 2008 to 2011 the use of Improvement Notices, Prohibition Notices and Infringement Notices grew steadily. Secondly, from 2012-14, WorkSafe issued significantly more notices, particularly Improvement Notices. Stakeholders noted that this was, in part, as a response to the Getting Home Safely report. Thirdly, since joining Access Canberra at the beginning of 2015, the use of improvement notices has dropped 75 per cent, the use of prohibition notices has dropped 59 per cent, and the use of infringement notices has dropped 69 per cent.⁹⁴ This decline in the use of notices is consistent with the Compliance Model adopted by WorkSafe ACT which emphasises engagement and education as a priority.

Figure 11 | Notices issued over time (under the WHS Act)⁹⁵

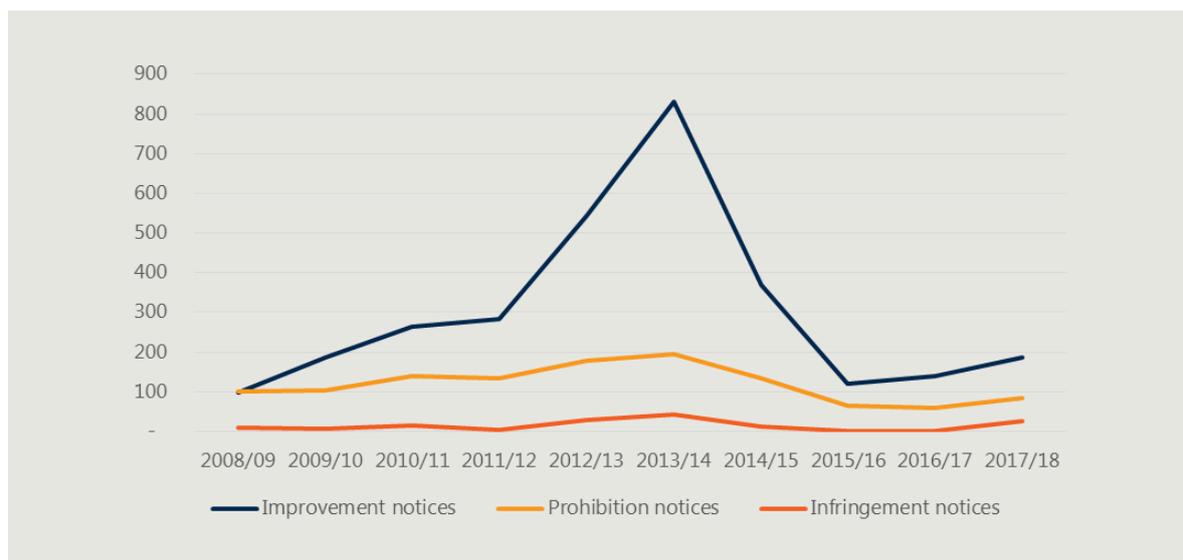


Table 12 | Number of notices from 2008/09 to 2017/18⁹⁶

Year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Improvement Notices	99	187	265	282	544	832	369	119	140	185
Prohibition Notices	101	103	139	135	177	195	133	65	58	84
Infringement Notices	10	6	14	4	29	43	13	0	1	25

Source: Data provided by Access Canberra⁹⁷ and Nous analysis.

Overleaf, Figure 12 highlights the relationship between the number of visits to workplaces and use of notices, showing a significant decrease from 2015 onwards. This is consistent with the Compliance Model which has encouraged Worksafe ACT inspectors to preference the use of their advice and guidance tools to raise workplace parties' awareness of their rights and obligations and help duty holders to comply and build their capability to address work health and safety issues and achieve compliance.

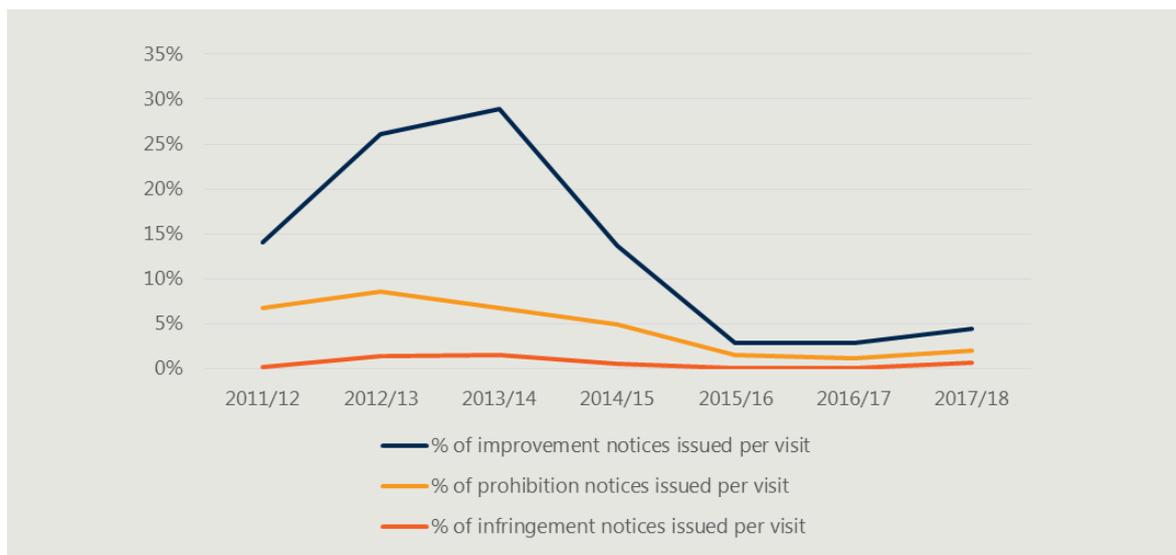
⁹⁴ This is calculated by comparing notices issued three years prior to WorkSafe joining Access Canberra (from 2012-15) notices issued three years after (from 2016-18). These periods were selected to reduce yearly fluctuations to more accurately assess the change in approach since joining Access Canberra.

⁹⁵ The Review considered statutory notices across the Work Safety Act Dangerous Substances Act and Workers Compensation Act. Details of these are included in Appendix B.

⁹⁶ 2017/18 data are estimated based on July 2017 to May 2018 data, assuming linear progression, provided at the start of the Review.

⁹⁷ WorkSafe ACT inspections data from 2011-2018 provided by Access Canberra, July 2018

Figure 12 | Percentage of different notices per visit⁹⁸ over time



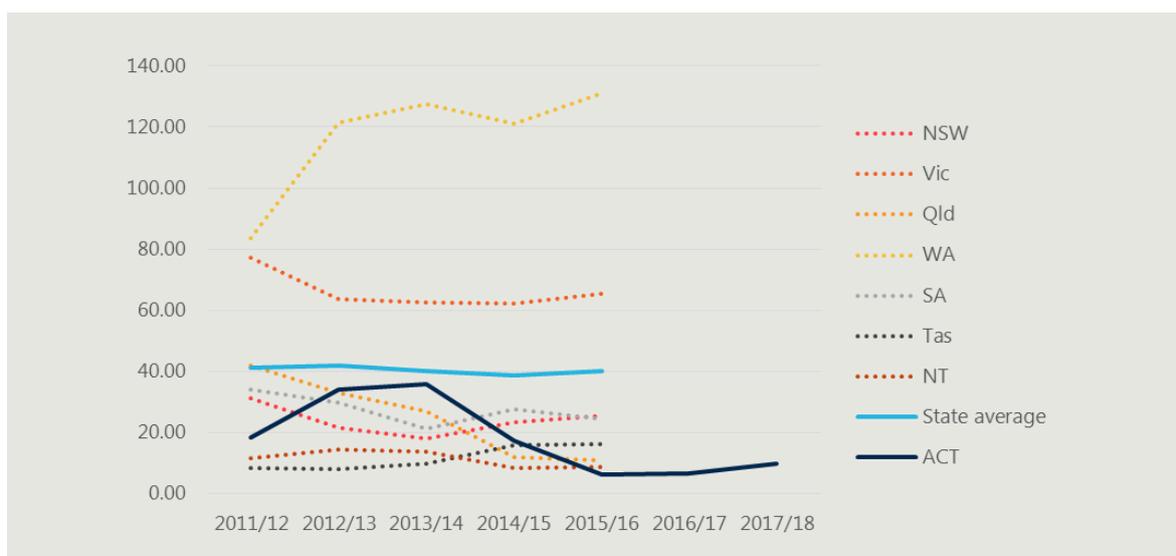
Source: Data provided by Access Canberra⁹⁹ and Nous analysis.

Shifting to an industry focus, Figure 12 shows the percentage of total notices issues relative to the percentage of private sector claims lodged in selected industries for 2017/18. The data suggests that non-compliance in the construction industry is more likely to result in a notice than in other industries. This is consistent with the emphasis on addressing breaches of the WHS Act in the construction industry.

A comparison of WorkSafe’s use of notices to other jurisdictions

To compare WorkSafe’s use of notices with other jurisdictions, the review has analysed the use of notices per total number of workplace visits. Figure 13 highlights that regulators adopt a different balance in the way they use their tools in response to changes in the environment. For example, NSW decreased the use of notices in 2011 and 2013 and has changed its approach in recent years. Additionally, the Tasmanian regulator has steadily increased its use of notices over time.

Figure 13 | ACT’s notices per visit compared to other jurisdictions



Source: SafeWork Australia Comparative Statistics¹⁰⁰, additional data provided by Access Canberra¹⁰¹ and Nous analysis

⁹⁸ Data analysis by the review for workplace visits conducted by WorkSafe ACT do not distinguish between statutory visits conducted for the purpose of work, health and safety, dangerous goods, or workers compensation. As such, there is the potential that some included in the analysis were only targeted at statutory activity other than work, health, and safety. Appendix B documents the concomitate notices across all Acts administered by WorkSafe ACT.

⁹⁹ WorkSafe ACT inspections data from 2011-2018 provided by Access Canberra, July 2018

Consider increasing the use of Enforceable Undertakings

Access Canberra may accept a work health and safety undertaking, also known as an Enforceable Undertaking, as an alternative to prosecuting a contravention or an alleged contravention of the ACT's WHS Act1, except for a category one offence.¹⁰²

An Enforceable Undertaking is a legally binding agreement between Access Canberra and the individual who proposed the undertaking. If Access Canberra accepts the work health and safety undertaking the individual is obliged to carry out the specific activities outlined in the undertaking. The activities are intended to improve not only health and safety at the workplace, but also deliver health and safety initiatives to the relevant industry and the broader community. The activities may be substantial.

When a proposed Enforceable Undertaking is accepted, any legal proceedings connected to the alleged contravention are discontinued. Where legal proceedings have not been instituted, acceptance of the undertaking will mean that no proceedings will be commenced, subject to the undertaking not being contravened.

Enforceable Undertakings are an important compliance tool for WorkSafe ACT. They have the potential to provide innovative solutions to address breaches of the law and to provide the opportunity for the regulator to have an ongoing constructive relationship during the life of the Enforceable Undertaking. It can be a more efficient and effective tool for the regulator and potentially leads to earlier resolution and a tailored response that is can create an ongoing focus on work health and safety in the business.

WorkSafe ACT has approved a total of seven Enforceable Undertakings since the adoption of the nationally agreed WHS laws in 2011. WorkSafe ACT accepted undertakings across a number of industries. Given the effectiveness of Enforceable Undertakings as an enforcement tool, the review considers there is an opportunity for WorkSafe ACT to develop clearer guidance on when its use is appropriate and to increase the use of Enforceable Undertakings as an innovative way to address breaches of the law.

Continue to focus on enforcing the law through prosecutions and legal proceedings

Workplace incidents causing death of a worker or a member of the public are prioritised by WorkSafe ACT.¹⁰³ In relation to work health and safety offences, the time for WorkSafe ACT to bring charges against a person is limited. Table 13 summarises the data in relation to legal proceedings including court ordered fines in the ACT from 2008-2016.

Table 13 | Prosecutions and other legal proceedings

Year	Number of legal proceedings finalised	Number of legal proceedings resulting in a conviction, order, or agreement	Total amount of fines ordered by the courts (\$'000)
2008/09	3	3	165
2009/10	3	3	15
2010/11	1	1	8
2011/12	2	1	15
2012/13	3	2	48
2013/14	4	4	58

¹⁰⁰ SafeWork Australia, Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Part 2 – Work Health and Safety Compliance and Enforcement Activities, 19th Edition, December 2017

¹⁰¹ WorkSafe ACT inspections data from 2011-2018 provided by Access Canberra, July 2018

¹⁰² Workplace incidents causing death of a worker or a member of the public.

¹⁰³ For example, the incident does not fall under the Act or the Dangerous Substances Act, or another agency is taking the lead role in the investigation (for example the Australian Federal Police).

Year	Number of legal proceedings finalised	Number of legal proceedings resulting in a conviction, order, or agreement	Total amount of fines ordered by the courts (\$'000)
2014/15	5	4	311
2015/16	7	4	238

Source: *Safe Work Australia*¹⁰⁴

Stakeholders expressed strong views that the limited resources available to WorkSafe ACT for investigations has in the past, resulted in a failure to properly investigate serious incidents, a failure to prosecute matters and a failure to lay charges within the statutory time limits.

WorkSafe ACT has recruited a number of additional resources with significant investigative experience in a focused attempt to build investigative capability and to enhance their ability to bring successful prosecution actions in a timely way. Recent progress suggests that this approach is having positive effect with a significant increase in investigation activity.¹⁰⁵ We found that processes for conducting and documenting investigations have been significantly improved over the past 12 months.

We were advised that the major investigations team produces a weekly report on progress for investigations; including details of every investigation, who is responsible, and relevant statutory timeframes. It also identifies delays against the investigations plan. The progress of each major investigation is reported to the Minister for Workplace Safety and Industrial Relations on a fortnightly basis. It was noted that since its introduction WorkSafe ACT has not missed the statutory timeframe for taking an enforcement decision on any investigation. These processes for monitoring will continue to ensure the timely completion of investigations that support successful enforcement outcomes.

WorkSafe ACT inspectors' activity

The review was asked to consider the appropriateness and effectiveness of WorkSafe's compliance and enforcement approach. Analysis of inspector level data found inspectors have inconsistent compliance and enforcement approaches. However, the review received no comments on the efficiency and effectiveness of WorkSafe ACT inspectors and there was nothing to suggest that they have not been performing their role effectively. Inspectors themselves considered they could be more effective if there was better training, more clarity about the exercise of their discretion, and their use of information.

Continue to build the efficiency of inspectors

As illustrated previously, there has been an increase in the number of visits. It is important to also consider the extent to which this increase has been because of additional resources. Accordingly, we considered the number of WorkSafe ACT visits per inspector.

Figure 14 illustrates the number of workplace visits per inspector. The data shows an increase in visits per inspector from around 90 visits per inspector each year to over 160 in 2016/17.

¹⁰⁴ Safe Work Australia, *Comparative Performance Monitoring Report*, 16th Edition, October 2014, accessed at <https://www.safeworkaustralia.gov.au/system/files/documents/1702/cpm16-web.pdf>

Safe Work Australia, *Comparative Performance Monitoring Report*, 17th Edition, October 2015, accessed at <https://www.safeworkaustralia.gov.au/system/files/documents/1702/cpm-17-edition.pdf>

Safe Work Australia, *Comparative Performance Monitoring Report*, 18th Edition, Revised July 2017, accessed at <https://www.safeworkaustralia.gov.au/system/files/documents/1707/comparative-performance-monitoring-report-18th-edition-revised.pdf>

Safe Work Australia, *Comparative Performance Monitoring Report: Part 2 – Work Health and Safety Compliance and Enforcement Activities*, 19th Edition, December 2017, accessed at <https://www.safeworkaustralia.gov.au/system/files/documents/1806/comparative-performance-monitoring-report-19th-edition-part-2.pdf>

¹⁰⁵ This includes 8 ongoing cases, 5 finalised and closed cases, 10 cases before the court, 7 cases before the Coroner, and 1 cases before ACAT.

Figure 14 | Number of Worksafe ACT visits per inspector

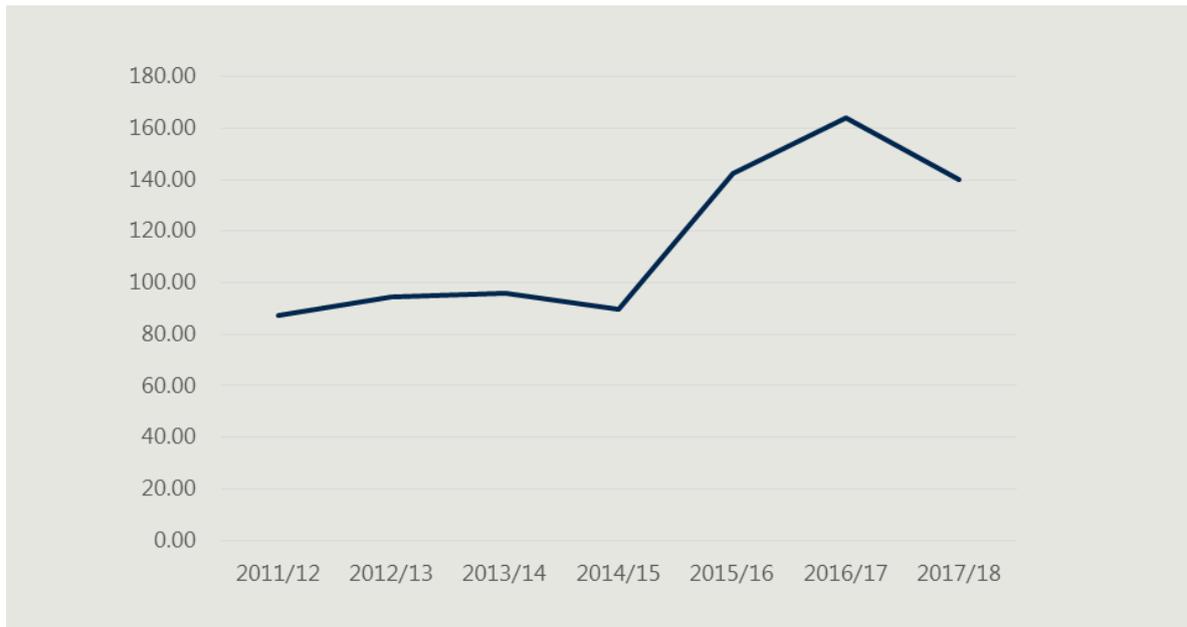


Table 14 | Number of visits, inspectors and visits per inspector

Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Total number of workplace visits	2,007	2,081	2,874	2,689	4,272	4,923	4,204 ¹⁰⁶
Number of field active inspectors ¹⁰⁷	23	22	30	30	30	30	30
Visits per inspector	87.3	94.6	95.8	89.6	142.4	164.1	140.1

Source: Data provided by Access Canberra and Nous analysis

Figure 15 and Table 15 compare WorkSafe ACT’s number of workplace visits per inspector to other jurisdictions up to 2014/15. As Figure 15 shows, the ratio was lower than other Australian states prior to 2014/15. The recent increase in workplace visits in the ACT brings it in line with the average of other states and territories.¹⁰⁸

¹⁰⁶ Projected based on the July 2017 – May 2018 workplace visit data provided by WorkSafe.

¹⁰⁷ Number of field active Inspectors as reported to SafeWork Australia. Field active inspectors are defined as gazetted inspectors whose role is to spend the majority of their time ensuring compliance with the provisions of the work health and safety legislation.

¹⁰⁸ As noted above, we are cautious about making comparisons using this data as the definition of workplace visits used by SafeWork Australia includes workplace visits “for the purpose of providing information, presentations, training and advice, investigating incidents or dangerous occurrences and ensuring compliance with work health and safety legislation”¹⁰⁸ and does not differentiate between the type and nature of visits.

Figure 15 | WorkSafe ACT workplace visits per inspector compared to other jurisdictions

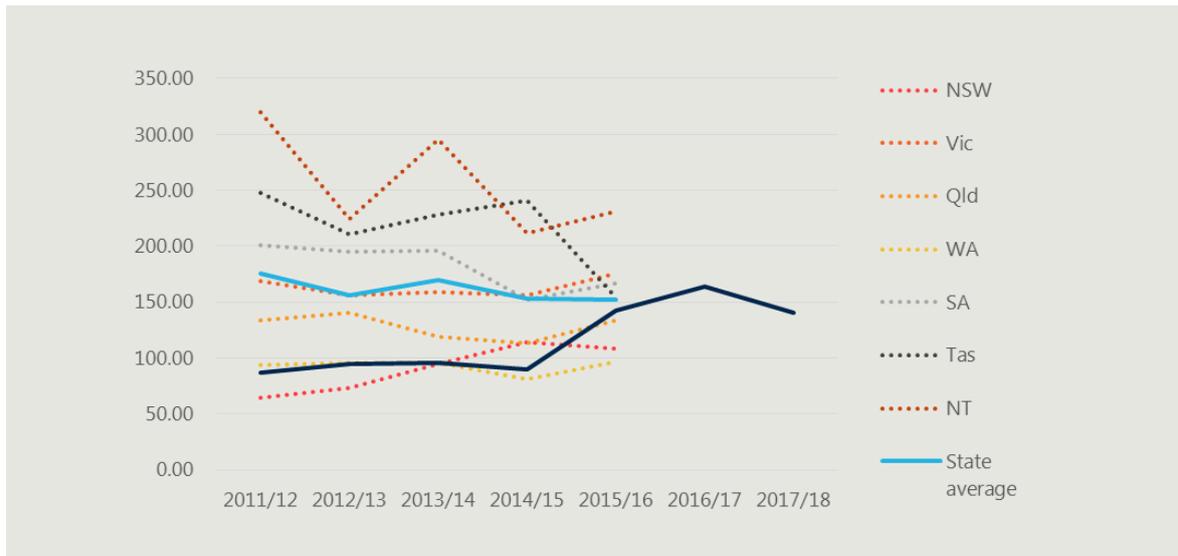


Table 15 | Visits to inspector ratio

Visits to Inspector ratio	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
ACT	87.26	94.59	95.80	89.63	142.40	164.10	140.13
Tasmania	247.48	210.39	227.81	240.87	154.12	u/a	u/a
NT	319.58	224.12	295.76	211.68	231.38	u/a	u/a

Source: SafeWork Australia Comparative Statistics¹⁰⁹, additional data provided by Access Canberra and Nous analysis

5.4 Conclusions and recommendations to improve WorkSafe ACT's approach

The review has formed a conclusion that there is opportunity to improve both the education and engagement activities, and the use of inspections and enforcement tools.

Making data transparent and accessible will enable associations, unions, businesses, and employees to work with WorkSafe Act to communicate and educate about issues, trends, and areas to address to improve work health and safety. Given HSR's did not take the opportunity to inform the review about their role and the effectiveness of WorkSafe ACT's approach to informing and enabling them to perform their role at workplaces, there may be an opportunity to provide additional training for HSRs and create an environment in which HSR's perform an effective work health and safety prevention and education role within their workplaces.

The safety videos demonstrate a useful approach for work health and safety education but are currently limited to construction industry information. We consider it is also worth exploring the possibility of leveraging information and education materials prepared by other states and territories to widen the scope and availability of educative materials.

There is also scope to more effectively integrate community education presentations and Q&A sessions as part of strategic 'campaigns' rather than just proactive and ad hoc. This is likely to increase their impact.

¹⁰⁹ SafeWork Australia, Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Part 2 – Work Health and Safety Compliance and Enforcement Activities, 19th Edition, December 2017

The strategic planning process recently undertaken represents a good first step in using data and information to inform the program of work and to identify areas of focus. This approach should continue and be the subject of review on a regular basis.

There is an opportunity to continue to focus on proactive visits and to make more use of Notices, Enforceable Undertakings, and legal proceedings and prosecutions to address non-compliance.

Recommendation 10: Create more information and guidance material and make it more accessible through a WorkSafe ACT dedicated website.

Recommendation 11: Plan community and business engagement activities as part of the strategic approach to addressing priority industries, injuries, and cohorts.

Recommendation 12: Communicate about incident and enforcement outcomes sooner.

Recommendation 13: Make data publicly available to enable stakeholders to use the information to inform their work health and safety programs.

Recommendation 14: Continue to increase proactive inspections in the construction industry and conduct more inspections in other priority industries.

Recommendation 15: Report on the use of advice and guidance as a tool to inform when it was used, when non-compliance was identified, and the agreed response - to form part of the data set for future targeting.

Recommendation 16: Confirm the appropriate use of tools to reinforce the purpose and importance of the use of notices to address breaches.

Recommendation 17: Confirm the appropriate use of enforceable undertakings and encourage increased use.

Recommendation 18: Continue to improve procedures and expand investigative skills to support successful enforcement outcomes.

6 Governance structure

6.1 Introduction

In this section we consider the appropriateness and effectiveness of WorkSafe ACT’s governance structure, including the roles and responsibilities of the Work Safety Commissioner, the regulator, and relevant ministers. Governance arrangements, institutional form, and governance tools together comprise the governance framework for an individual regulator. The framework sets out the objectives, powers, functions limitations, and relationships of a regulator.¹¹⁰ Our analysis uses the OECD Best Practice Principles for Regulatory Policy – the Governance of Regulators framework.¹¹¹ The model sets out the principles for good regulatory governance.

In this section we first describe the OECD model as our framework for assessment. We then provide our analysis and conclusion about the current WorkSafe ACT arrangements and our conclusions and recommendations for improving WorkSafe ACT’s governance structure.

Our consideration in this chapter addresses the central part of our analytical framework as shown in Figure 16. Each element is discussed in turn.

Figure 16 | Effective Governance



6.2 Model governance structure

The OECD Best Practice model is the analytical framework for our consideration of WorkSafe ACT’s governance framework. It is summarised in Table 16 below.

Table 16 | OECD Model Best Practice model

Element	Description of the principle
Role clarity	An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve the desired regulatory outcomes.
Preventing influence and maintaining trust	It is important that regulatory decisions and functions are conducted with the upmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring the rule of law, encouraging investment, and having an enabling environment for inclusive growth built on trust.
Decision-making and governing body structure for independent regulators	Regulators require governance arrangements that ensure their effective functioning, preserve its regulatory integrity, and deliver the regulatory objectives of its mandate.
Accountability and transparency	Businesses and citizens expect the delivery of regulatory outcomes from government and regulatory agencies, and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: i) ministers and the legislature; ii) regulated entities; and iii) the public.

¹¹⁰ Refer to footnote 2

¹¹¹ OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, 2014

Engagement	Good regulators have established mechanisms for engagement with stakeholders as part of achieving their objectives. The knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes assists to regulate effectively.
Funding	The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objectives.
Performance evaluation	It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to whom it is accountable and helps to build confidence in the regulatory system.

Source: OECD Best Practice Principles for Regulatory Policy¹¹²

6.3 Assessment of WorkSafe ACT's governance against each element of the model

The Review assessed WorkSafe ACT's governance framework against the seven elements of the OECD Best Practice model.



Clarify the role of the regulator and of the Work Safety Commissioner

There is a general acknowledgement that WorkSafe ACT is the work health and safety regulator, and indeed the review's terms of reference refer to WorkSafe ACT. Our analysis of the legislative framework indicates that WorkSafe ACT is not an entity established under the WHS Act or other legislation. In May 2010, the Government in response to a review of ACT WorkCover, created WorkSafe ACT as a new brand when it combined the former WorkCover ACT with the Office of the Occupational Health and Safety Commissioner.¹¹³ The aim was to create a stronger link between the education and regulatory functions covered by those two entities. At that time, it was part of the Justice and Community Safety Directorate, Office of Regulatory Services which had been established at the commencement of 2006 to provide a single streamlined and coordinated approach to regulation and licensing activities in the ACT. The Work Safety Commissioner's role is not as regulator and does not come with decision-making responsibility. Instead, it is specifically designed as a separate statutory role apart from the regulator. In this capacity, the Commissioner provides education to the community, and advises the relevant ministers on the operation of the Act.

The review found there is a lack of clarity and understanding of the specific role of the Work Safety Commissioner and some confusion about the functions the Commissioner performs. At present, the role of the Work Safety Commissioner and the role of Director of the Workplace Protection Division are performed by the same person. This means that, in effect, the role of the Work Safety Commissioner and the role of the regulator are being performed by the same person wearing different hats. In one position he operates as a separate statutory appointee to perform promotion, research, education, and advice functions; in the other he reports to the head of Access Canberra as an executive responsible for a range of regulatory functions under the WHS Act and other Acts and in this role has responsibility and accountability for all the functions of the regulator - some of which overlap with the functions of the Work Safety Commissioner.

¹¹² OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, 2014

¹¹³ Justice and Community Services Annual Report, 2001, page 41

http://www.justice.act.gov.au/resources/attachments/110724_JACS_2011_Volume1_FA_web.pdf

Stakeholders expressed concern about the confused roles of the Work Safety Commissioner and the regulator. Most stakeholders agreed that the two hats worn by the person holding the position of the Work Safety Commissioner is problematic. Stakeholders also expressed dissatisfaction about the subordinate nature of the Work Safety Commissioner's position under the current arrangements within Access Canberra. Stakeholders suggested that the Commissioner's role is hamstrung as the holder of this position does not have control over resourcing. The Head of Access Canberra is authorised to be the work health and safety regulator.

The *Work Health and Safety Act 2011* (the WHS Act) as the governing legislation, establishes the Director-General as the regulator and enables the role and functions of the regulator to be delegated. With responsibility of the WHS Act currently under the Chief Minister, Treasury and Economic Development Directorate, this makes the Director-General the regulator under the legislation.

Since the establishment of Access Canberra, the head of Access Canberra has been authorised to exercise the functions of the Director-General under ACT laws. Notifiable Instrument NI2017-465¹¹⁴ declares that the head of Access Canberra may exercise the functions of the Director-General across all legislation covered by WorkSafe ACT.

Under these arrangements, the head of Access Canberra exercises the powers and function of the regulator for all activities carried out by WorkSafe ACT, including appointments of Work Safety Inspectors under section 156 of the Act and delegations of responsibility given to positions across Access Canberra.¹¹⁵ The Director of Workplace Protection is one of eleven delegated positions in Access Canberra with responsibility for all sections of the WHS Act and associated acts. This delegation, and the position as Director of Workplace Protection, empowers the Director to lead the work of WorkSafe ACT.

The review is strongly of the view that, at a minimum, the role of the regulator and the role of the Work Safety Commissioner needs to be clarified and the complex duplication be addressed.

Policy is appropriately separated from the regulator

Following the Sherman Review in 2000, the Government separated the legislation and policy function from ACT WorkCover. That separation has continued with the Workplace Safety and Industrial Relation (WSIR) Division within the ACT Government's Chief Minister, Treasury and Economic Development Directorate having responsibility for policy matters associated with development and maintenance of the ACT's workers' compensation and health and safety laws. This separation is consistent with the recommended approach in the OECD model and with generally agreed principles.

Three ministers receive reports on the activities of WorkSafe ACT

There are three relevant ministers that receive reporting relating to the activities of WorkSafe ACT: the Chief Minister, the Minister for Regulatory Services, and the Minister for Workplace Safety and Industrial Relations. While this arrangement potentially places pressure on staff within agencies, there is no issue in itself that reporting to more than one minister creates. However, it is important to be clear which functions and areas of responsibility under the legislation are the responsibility of which minister.

Stakeholders noted that ministerial reporting is led by the Commissioner with the Head of Access Canberra also present. Under the current dual-role arrangements, there is no practical distinction between the ministerial reporting responsibilities of the Commissioner and the regulator.

While there were no concerns raised about confusion or lack of certainty in ministerial reporting arrangements, stakeholders suggested that a single minister responsible for both policy and the

¹¹⁴ Australian Capital Territory, Public Sector Management (Head of Access Canberra Functions) Declaration 2017 (No 1), Notifiable Instrument NI2017-465, accessed at <http://www.legislation.act.gov.au/ni/2017-465/current/pdf/2017-465.pdf>

¹¹⁵ The current instrument is the Work Health and Safety (Appointments and Delegations) 2018 (No 2). This appoints inspectors and functions of the Regulator under the provisions of the WHS Act and Regulation to positions throughout Access Canberra. The current instrument delegates all or parts of sections of the Act and Regulation to staff across Access Canberra including in the Workplace Protection Division, Access Canberra Service Centre Staff, and a range of executive positions. For example, the delegation for Section 89 of the Regulation (Decision on application), and Section 93 (Licence Document) and others are delegated to, among others, all Access Canberra Service Centre Staff.

administration and compliance of all elements of WorkSafe ACT would create a more focused approach to work, health, and safety.



There is a perception that WorkSafe ACT is subject to influence

There was concern expressed by a number of stakeholders that the nature of the regulatory function performed by WorkSafe ACT is such that it requires arm's length distance from government to protect its integrity. This was considered to be particularly so where the regulator has responsibility for ensuring compliance with the legislation by government agencies. Some stakeholders considered that the integrity of the regulatory scheme, and its effectiveness to prevent workplace injury and fatalities, is compromised if there is a perception that the regulator will not take action against government agencies.

The AEU submission highlights this concern:

"It is difficult to understand how the regulator can adhere to the conduct requirements of a public servant pursuant to the Act when work, health, and safety matters pertain to another ACT Government Directorate such as the Education Directorate... As the Director General of Access Canberra is also the Regulator it is unlikely that they would enforce penalties in the event that they failed to meet their obligations or duties pursuant to the WHS Act. It is also unlikely that, given their standing within the ACT Public Sector and their relationships with Directors General of other ACT Government Directorates, they would enforce penalties against another ACT Government Directorate."¹¹⁶

There is also concern that WorkSafe ACT is unduly influenced by the unions. Industry groups raised concerns over the inappropriate requests by unions to use WorkSafe ACT inspectors to conciliate industrial relations issues. These concerns were particularly raised over reported instances where WorkSafe ACT inspectors were being requested at worksites to conciliate issues where the entry to the worksite was on safety grounds, but then the nature of the dispute was relating to industrial relations concerns. Internal stakeholders raised concerns that this type of action created a perception that inspectors were advancing concerns of special interest groups.

There is strong support that WorkSafe ACT be independent – but this means different things to different stakeholders. These views are highlighted in the written submissions to the review:

"WorkSafe ACT must remain independent, free of control from a Board or other statutory authority that may be ultimately controlled by union or industry officials. WorkSafe ACT should remain as a branch of government, whether as part of Access Canberra or another government department is immaterial."¹¹⁷

"Create a dedicated, stand-alone and statutorily independent WHS authority that is free from the conflicts currently created through co-location within Access Canberra, with a CEO answerable to a board on matters of strategic policy only. The CEO should be the statutory regulator, rather than the function and powers being delegated from the Head of Service. The WHS Authority should be governed by a Board of Directors, that reports to the Minister for Workplace Safety."¹¹⁸

¹¹⁶ Written submission Glenn Fowler, Secretary, Australian Education Union – ACT Branch, Review of WorkSafe ACT, July 2018

¹¹⁷ Written submission from Master Builders ACT

¹¹⁸ Written submission from Unions ACT

"A standalone and statutorily independent Work Health and Safety authority headed by an independent statutory regulator." and "A Board of Directors that includes relevant stakeholders, including employee representatives, that is answerable to the Minister."¹¹⁹

"WorkSafe ACT to be an independent, stand-alone authority; and that the head of WorkSafe ACT (whatever structure is chosen) be a statutory office holder, with direct reporting to ACT Legislative Assembly."¹²⁰

"The creation of a standalone, specialist, independent and impartial WHS regulator in the ACT that is effective in ensuring compliance with WHS laws."¹²¹

"...our position is that for the regulator to be effective, there needs to be a dedicated, stand-alone statutorily independent work health and safety (WHS) authority that is free from the conflicts currently created through co-location within Access, with a CEO who deals only with WHS and is answerable to a board independent of Government. The CEO should be the statutory regulator, rather than the current arrangement where the functions and powers are delegated from the Head of Service. This authority would then governed by a board of directors that reports directly to the Minister for Workplace Safety."¹²²

The nature of work health and safety legislation and its application to all workplaces creates the need for it to be, and be seen to be, free from influence. This suggests the regulator should be a specific position in the legislation appointed to perform the functions of the regulator under that legislation and that the regulator should not be subject to direction by the Minister. We have considered the appropriate institutional arrangements to ensure this independence in Section 6.4.



Governance committees provide advice to statutory decision makers in Access Canberra

The review considered the current decision-making structures established in Access Canberra and WorkSafe ACT. Stakeholders commented on the Access Canberra Regulatory Advisory Committee (RAC) and the important role it has played as a formal governance and oversight committee across all regulators in Access Canberra *"to ensure executive oversight on regulatory matters"*.¹²³

Some stakeholders regarded the RAC as lacking transparency. The submission from UnionsACT noted that:

"the Regulatory Advisory Committee is not specifically referred to within the WorkSafe Compliance Framework or the WHS Act. It is therefore not clear or transparent about the role of the RAC in affecting or determining regulatory action for Work Safe compliance matters, other than the Framework refers in general terms to the Access Canberra Accountability Commitment."¹²⁴

¹¹⁹ Written submission the Australian Education Union – ACT Branch

¹²⁰ Written submission made by the Community and Public Sector Union (CPSU) PSU Group, Review of WorkSafe ACT, July 2017

¹²¹ Written submission made by Michael Borowick JP, Assistant Secretary, Australian Council of Trade Unions, Review of WorkSafe ACT, August 2018

¹²² Written submission from CFMEU

¹²³ Access Canberra, *Standard Operating Procedure for Access Canberra Regulatory Advisory Committee*, ACT Government, 2017

¹²⁴ Written submission from UnionsACT submission

The RAC is the regulatory governance mechanism for Access Canberra to ensure executive oversight on regulatory matters. The membership of the RAC includes Directors and Deputy Directors. The RAC considers contraventions of legislation that have occurred and have the potential to cause harm or pose significant risk to the community or environment.

The RAC is not a decision-making body. It provides guidance to staff undertaking investigations, and advice to Directors/statutory office holders on compliance, licensing, and risk assessment matters'.¹²⁵ In this capacity, the RAC considers information presented by inspectors and provides suggestions on the appropriate course of action. This can include: seeking additional information, no further action, issuing an infringement, issuing an order, seeking an Enforceable Undertaking, or pursuing civil or criminal penalties. The procedures of the RAC are clear that the final decision rests with the decision maker who has the legislative authority.

The RAC seeks to ensure that appropriate processes are followed and that all relevant considerations are taken into account prior to a recommendation being made. RAC also provide input at significant stages of an investigation or application process in line with any relevant policies and procedures.

Internal stakeholders noted that the aim of the RAC is to provide 'scaffolding' for the decision-making and to have a clear process for gaining management support.

We also heard that there is limited guidance on when and how a decision should and should not be brought to the RAC. Internal stakeholders noted that in the past WorkSafe ACT matters were referred to RAC whenever a regulatory action was to occur. However, that this process has been revised so that only key regulatory action is referred and that greater use of 'mentions' to the RAC have reduced the guidance and input received from the RAC and reduced the Inspectors administrative burden. This substantial change of approach raises questions over the effectiveness of the RAC to provide adequate oversight.

Stakeholders also suggested that the requirement to present matters for RAC input had made inspectors reluctant to advance prosecutions or issue Infringement Notices. While this may have been the initial impact of the RAC, the review heard that recent changes have removed this potential concern and inspectors feel that the RAC provides an important support mechanism when used effectively.

The review understands the intent of the RAC is to support statutory decision makers in their deliberations and to provide a range of views and opinions as input to the decision. The use of similar committees is common in other regulatory environments.

The RAC, or similar advisory committee to assist regulatory decision-making, can be a useful means of obtaining input and creating consistency in regulatory decision-making. It is best reserved for enforcement related decisions such as whether to accept and enforceable undertaking or to take legal or prosecution action.

The operation of delegations in practice is the subject of concern

Access Canberra's decisions with regard to the extent to which some or all administrative responsibilities are delegated are reflected in the instrument of delegation. The current instrument of delegation for responsibilities under the WHS Act and associated laws is the Work Health and Safety (Appointments and Delegations) 2018 (No 2).¹²⁶

The delegation comes for the head of Access Canberra as the position authorised to carry out the functions of the regulator (as discussed in Section 3.7). Delegations in Access Canberra follow the rules of Part 19.4 of the *Legislation Act 2001*, which state that:

- the delegate's decision operates as the appointer's decision (Legislation Act, s 239 (4))
- the appointer can change the delegate's decision (Legislation Act, s 180 read with ss 238 and 240).

As such, delegates' decisions are subject to change by the head of Access Canberra as the appointer at any time.

¹²⁵ Access Canberra, *Standard Operating Procedure for Access Canberra Regulatory Advisory Committee*, ACT Government, 2017

¹²⁶ Provided to the Review June 2018

Stakeholders expressed strong views about the delegation of decisions, and in particular expressed concerns that the decisions of inspectors to issue notices, for example, could be overturned. There was some suggestion that this represented interference with the inspector's delegated decision-making powers. This issue was raised in the context of a specific example that had been the subject of media attention.

The effective operation of delegations relies on clear guidance as to how that delegation, and any discretions that come with the delegations are to be exercised. Any concern about the system of delegations is best addressed through clear decision-making guidance and escalation paths.



There is formal public reporting of WorkSafe ACT's activities and actions

The review had expected a comprehensive set of performance indicators for WorkSafe ACT to be reported publicly through an annual report. The review found that information provided in the Annual Report was limited. Comprehensive and meaningful reporting would be expected to include a description of education and enforcement activities, visits, investigations, Notices, legal proceedings and outcomes, and financial information. It would also ideally include an assessment against key performance measures and an indication of the outcomes achieved.

External stakeholders suggested that the only mechanism for this type of information is through the Senate Estimates process. A significant number of issues related to performance and accountability will be addressed by introduction of a robust performance measurement and reporting process

As a starting point, significant details could be included in the annual report including a list all actions undertaken; including details of completed investigations, and actions taken against private and public workplaces over the year by WorkSafe ACT, detailed financial information at the level of the Division to specifically understand what resources are dedicated to WorkSafe ACT and what resources are shared across Access Canberra, and a clear articulation of the performance indicators that WorkSafe ACT will use over the coming financial year to achieve its intended regulator goals.



Formal stakeholder engagement arrangements are provided in the WHS Act through the Work Safety Council

The Work Safety Council represents the principle of tripartism that fundamentally underpins the regulation of work health and safety.

The role of the Work Safety Council, as defined in the WHS Act, is to advise the ministers on work safety, workers' compensation and dangerous substances laws, approval of Codes of Practice and Protocols, education and training, and promoting safety at work.

The Minister appoints Council Members on a part time basis for up to three years. The Council is comprised of thirteen members: four members representing employees, four members representing employers, and four other members appointed by the Minister and the ACT Work Safety Commissioner.

Although the functions of the Council are limited in the WHS Act to advising the Minister, there was comment made around the potential for the Council to act as an advisor to the regulator.

The review supports the continuing need for a tripartite body to provide strategic advice to the Minister.

GOVERNANCE

Role Clarity

Prevent
influence and
maintain trust

Decision
making

Accountability
and
transparency

Engagement

Funding

Performance
evaluation

A direct funding allocation would provide more accountability and transparency

In the ACT, the Regulatory Funding Levy (the Levy) is in place to fund the cost of the administration of the Workers' Compensation Act 1951 and the Work Health and Safety Act 2011. The Levy was implemented in 2013/14 as a new regulatory funding model for the ACT's private sector workers' compensation scheme. The funding model was expanded in 2014 to allow for the costs of administering the Work Health and Safety Act 2011¹²⁷ to be similarly apportioned. The aim of the Levy is:

"to allow the Territory's work health and safety regime to become self-sufficient and bring its funding model into alignment with NSW, Queensland, and Victoria, which also fund work health and safety regulatory costs via a workers' compensation levy."¹²⁸

The levy imposed on workplaces through the private sector workers compensation scheme to cover the cost of administering the WHS Act. This amount of the Levy was first set in 2013/14 based on the estimated cost of administering the Workers' Compensation Act at that time. This estimate is referred to as the Regulatory Levy Target amount. In 2013/14 the Levy target was \$1.87 million. This Levy target was apportioned across the insurers relative to the share of the premium. A cap on the annual increase of the Levy was set at 0.015 per cent of the total wages bill (on which premium is based).

With the inclusion of the cost of the administration of the Work Health and Safety Act in 2014/15, the Levy target was increased to \$6.59 million. The Levy raised in 2014/15 was \$2.95 million representing the maximum increase in the levy being applied. There was a considerable shortfall in funding for the estimated cost for administration of both the Workers' Compensation Act and the WHS Act.

There has continued to be a shortfall between the amount of the Levy collected and the estimated cost of administering the legislation. In 2018/19 it is anticipated the estimated cost of administering the legislation will be near or at the amount of the Levy collected. Figure 17 overleaf, illustrates the shortfall between the Levy raised and the estimated cost to administer the workers' compensation laws and the work health and safety laws.

Under the current funding allocation arrangements, WorkSafe ACT is allocated funding from the Access Canberra budget allocation and as part of the budget bidding process within Access Canberra. Stakeholders noted that this process has limited WorkSafe ACT's ability to articulate and effectively pursue additional resources to meet requirements. Stakeholders further noted that this has contributed to the stagnation of budget allocation to WorkSafe ACT and limited WorkSafe ACT's ability to source the required funding to effectively conduct its activities.

The review noted that there is no direct allocation of the Levy funding to WorkSafe ACT to fund its activities. A direct funding allocation from the Levy would provide more accountability and transparency for the expenditure of the levy and would demonstrate the shortfall in funding that is supplemented by government.

¹²⁷ Under Section 210, The Workers Compensation Act 1951 allows for the cost of administering workers' compensation laws and work, health and safety laws to be apportioned between workers' compensation insurers and self-insurers.

¹²⁸ Workers Compensation Amendment Bill 2013, Explanatory Statement, August 2013. Accessed at http://www.legislation.act.gov.au/es/db_48345/20130815-56017/pdf/db_48345.pdf

Figure 17 | Estimated cost to administer and Levy raised over time



Table 17 | Value of the Target and Actual Regulatory Funding Levy

Year	2013/14* ¹²⁹	2014/15	2015/16	2016/17	2017/18	2018/19
Estimated Cost to administer (Regulatory Levy Target)	\$1.871m	\$6.590m	\$6.703m	\$6.921m	\$7.128m	\$7.758m
Regulatory Levy raised financial year (Actual Levy Raised)	\$1.871m	\$2.959m	\$3.996m	\$5.136m	\$6.321m	\$7.642m
Shortfall	-	\$3.631m	\$2.707m	\$1.605m	\$0.807m	\$0.116m

Source: ACT Workers' Compensation Review of Scheme Performance Reports, 2014-2018¹³⁰

¹²⁹ Only includes the costs of administering the Workers Compensation Act.

¹³⁰ ACT Workers' Compensation Review of Scheme Performance to 30 June 2017, Chief Minister, Treasury and Economic Development Directorate, Finity Consulting, April 2018, accessed at http://www.cmd.act.gov.au/_data/assets/pdf_file/0014/1202009/R_2018_ACT-Scheme-Performance.pdf; ACT Workers' Compensation Review of Scheme Performance to 30 June 2016, Chief Minister, Treasury and Economic Development Directorate, Finity Consulting, April 2017, http://www.cmd.act.gov.au/_data/assets/pdf_file/0013/1065001/R_2016_ACT-Scheme-Performance_Public_Release.pdf; ACT Workers' Compensation Review of Scheme Performance to 30 June 2015, Chief Minister, Treasury and Economic Development Directorate, Finity Consulting, April 2016, accessed at http://www.cmd.act.gov.au/_data/assets/pdf_file/0004/912199/R_2015_ACT-Scheme-Performance_Final.pdf; ACT Workers' Compensation Review of Scheme Performance to 30 June 2014, Chief Minister, Treasury and Economic Development Directorate, Finity Consulting, April 2015, accessed at http://www.cmd.act.gov.au/_data/assets/pdf_file/0003/912198/R_2014_ACT-Scheme-Performance_Final.pdf

GOVERNANCE



There is limited evidence of effective performance evaluation

We found limited evidence of an effective performance evaluation methodology or resources with accountability for performance monitoring and reporting in WorkSafe ACT. However, the development of the draft Strategic Business Plan suggested a significant shift in approach.

Table 18 provides an example of how WorkSafe ACT is considering the link between priorities, outcomes, and indicators from the draft Strategic Business Plan. This is a good start to implementing an effective performance evaluation program.

For WorkSafe ACT to continually improve as a high performing regulator, it should be proactively identifying performance weaknesses and opportunities for improvement. Quality assurance, project management capabilities, and change management expertise are required to proactively identify, develop, deliver, and embed change across the organisation; including in areas of work practices, internal policies, and culture we discuss below.

Table 18 | Example of the performance evaluation approach adopted in the draft WorkSafe ACT Strategic Business Plan 2018-2022

Priority	Approach	Outcome	Indicator
Focus on high risk industries	<i>Target high-risk industries to reduce the number of workplace fatalities and injuries</i>	<ul style="list-style-type: none"> • Lost time injuries frequency rate • Serious injury frequency rate • Inspector activities in targeted industries • High Risk workplaces compliance standards, and at-risk workers feel supported and safe • 60% of annual workplace visits to be in targeted industries 	<ul style="list-style-type: none"> • Reduction of lost time injury rate of targeted industries • Reduction of serious injury frequency rates in targeted industries
Targeting high consequence activities	<i>Target industries and activities with high consequence incidents</i>	<ul style="list-style-type: none"> • Loss time injury frequency rate • Serious injury frequency rate • Inspector activities in targeted industries • High Risk workplaces compliance standards • 60 per cent of annual workplace visits to be in targeted industries • At risk workers feel supported and safe 	<ul style="list-style-type: none"> • Reduction of lost time injury rate of targeted industries • Reduction of serious injury frequency rates in targeted industries
Being a responsive regulator	<i>Ensure that as a regulator we respond in a timely and consistent manner aligning with the National Compliance and Enforcement Policy</i>	<ul style="list-style-type: none"> • Stakeholder feedback • Legislation is up to date as well as delegations 	<ul style="list-style-type: none"> • Stakeholder feedback • Reduction in complaints • Subordinate legislation reviewed and up to date
Engagement with the community	<i>Influence the behaviours of ACT workers and employers towards work health and safety to improve safety culture</i>	<ul style="list-style-type: none"> • Community awareness and understanding • Community Engagement 	<ul style="list-style-type: none"> • Increase in engagement activities • Reduction in notifiable incidents and complaints • Increase in number of visits to

			<ul style="list-style-type: none"> web portal and social media followers Increase in newsletter subscribers
Improve Workers Compensation Premium Pool	<i>Ensuring that employers are complying with the workers' compensation scheme and ensuring appropriate wage declarations to create an even playing field</i>	<ul style="list-style-type: none"> Lost time injuries frequency rate Serious injury frequency rate Inspectors activities in targeted industries 	<ul style="list-style-type: none"> Increase in workers compensation policies Improved wage reporting Reduction in reasonable premium rates
Ensuring Safe and Reliable Utilities	<i>Ensure safe and reliable utilities services for the ACT community</i>	<ul style="list-style-type: none"> Annual compliance report Auditing programs Inspectorate/ technical activities 	<ul style="list-style-type: none"> Compliance outcomes of: <ul style="list-style-type: none"> Compliance Report Audit Programs Development of Charter for Licensed Utility

6.4 Consideration of the appropriate institutional arrangements

The OECD model indicates the governing body structure should be determined by the nature of the regulatory activities and the regulator in administering its duties; including its level of risk, degree of discretion, level of strategic oversight required, and the importance of consistency over time. As the OECD model notes:

“How a regulator is set up, directed, controlled, resourced and held to account — including the nature of the relationships between the regulatory decision-maker, political actors, the legislature, the executive administration, judicial processes and regulated entities — builds trust in the regulator and is crucial to the overall effectiveness of regulation. Improving governance arrangements can benefit the community by enhancing the effectiveness of regulators and, ultimately, the achievement of important public policy goals.”³⁵

Drawing on the literature on optimal regulatory governance arrangements and taking account of our analysis above, we consider that role clarity and independence are the two principles most important for assessment of the design of the future governance arrangements for WorkSafe ACT.

Table 19 | Key principles considered in the design of governance arrangements

Principle	Detail
Role clarity	An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve the desired regulatory outcomes.
Preventing influence and maintaining trust	It is important that regulatory decisions and functions are conducted with the utmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring the rule of law, encouraging investment and having an enabling environment for inclusive growth built on trust.

The review has considered a spectrum of potential governance models

The current arrangement for WorkSafe ACT, as an administrative unit inside Access Canberra with an independent statutory authority providing education to the community, and advise to the relevant ministers are consistent with Model 2.

Table 20 describes the spectrum of governance models considered by the review that are informed by previous reviews.¹³¹ The review has assessed each model against the two principles most important for the work health and safety regulator.

Table 20 | Spectrum of potential governance models

Model	Model 1:	Model 2:	Model 3	Model 4:	Model 5:	Model 6:
Regulatory Authority	Director-General	Director-General	Director-General	Director-General	Commissioner	Statutory board
Administrative Arrangements	Administrative unit within a government department	Administrative unit within a government department	Administrative unit within a government department	Separate government department	Statutory entity	Statutory entity
Role of an independent officeholder	None	Community Education Ministerial advice	Direct administration of regulatory services and functions	Direct administration of regulatory services and functions	None	None
Role of a tripartite council	Ministerial advice	Ministerial advice	Ministerial advice	Ministerial advice and scrutiny	Ministerial advice and scrutiny	Ministerial advice and scrutiny
Degree of Role Clarity	LOW	LOW	MODERATE	HIGH	HIGH	HIGH
Degree of Independence	LOW	LOW	LOW	MODERATE	HIGH	HIGH

As noted in Section 6.3, the separation of the role of a Commissioner from the regulator creates confusion over role clarity and decision-making authority. While the intent of the current model is to separate the education and engagement function from the regulatory compliance and enforcement function the review considers education and engagement plays an important role in ensuring regulatory compliance and is part of the regulatory toolkit. Accordingly, education is part of the regulator’s function not separate from it.

There are two potential governance models that meet the criteria

Both Model 5 and Model 6 meet the requirements for good regulatory governance in different ways. Each would deliver clear, independent, and well-informed decision-making with appropriate oversight and accountability, as is required by the good regulatory governance principles. In considering the models in detail we have also considered the context for work health and safety regulation in the ACT. Model 5 and Model 6 are considered in detail below.

¹³¹ We have drawn on the options developed by the Work Safety Council *Scope and Structure Occupational Health and Safety Act 1989: scope and structure review: final report*. Chief Minister’s Dept, 2005.

Model 5: Regulatory authority vested in a Commissioner

A single accountability governance model seeks to ensure there is no risk of ambiguity about who holds regulatory power and is the regulatory decision-maker. A Commissioner is accountable for all regulatory decisions and may establish an organisation and advisory mechanisms to support the fulfilment of the Commissioner's responsibilities. This arrangement is depicted in Figure 18.

It is important to note that the current Work Safety Commissioner does not hold regulatory power and is not the regulatory decision-maker. As such, this model would require the abolition of the current Commissioner role as a separate statutory entity, and the creation of a new Commissioner role that has the functions of the regulator currently given to the Director-General.

Figure 18 | Governance structure for Model 5



Features

1. The statutory regulatory authority is a Commissioner appointed by the relevant Minister.

The Commissioner will possess the skills necessary to perform the function of a regulatory decision-maker who is able to apply and enforce work health and safety regulation appropriately, effectively, and efficiently.

2. The Commissioner will design and resource an organisation to support the delivery of regulatory responsibilities.

The Commissioner has the authority, subject to a budget appropriated for the purpose, to design and resource a supporting organisation that is appropriate and fit for purpose to perform the functions. The organisational structure options and arrangements are discussed in Section 7.5. The Commissioner, as the incorporated entity and regulatory authority, would employ staff for the organisation.

3. The Commissioner is accountable to the relevant Minister(s) for the operation and performance of the regulator.

The Ministers set and review the Commissioner's strategic plan. The plan should set clear expectations about annual objectives, priorities, and the independence and integrity with which the Commissioner should fulfil their role. Advisory mechanisms outside the organisation could be established at either the Commissioner's instigation, by legislation, or by a ministerial statement of expectations. For WorkSafe ACT we support the continuation of the ACT Work Safety Council.

Consideration could also be given to the establishment of a strategic board to provide support and input to the Commissioner in the strategic direction and oversight of the organisation. The board would be a strategic governance board but not responsible as part of the regulatory decision-making of the regulatory authority and would not constitute the regulatory entity. The board could be appointed by the Minister or could be arranged by the Commissioner. It would not be required to be legislated.

Model 6: Regulatory Authority vested in a Board

The joint accountability governance model seeks to ensure that a mix of appropriate expertise in a statutory Board has oversight of regulatory decision-making. The Board appoints a CEO who is given the delegations from the Board to exercise decision-making authority of the regulator. It is important to note that this model does not require a separate Work Safety Commissioner. As such, it would require the abolition of the current Commissioner role as a separate statutory entity and the creation of the Board as the Regulator with the functions currently given to the Director-General under the Act. This arrangement is depicted in Figure 19.

Figure 19 | Governance structure for Model 6



Features

- 1. The statutory regulatory authority is a Board with members nominated by the relevant Minister.**

The members of the Board must possess appropriate regulatory, work health and safety, medical, small business expertise and experience to provide balanced views. Ideally the Board would have around five members including a chair, who has previously been on boards of public sector agencies.

The responsible minister would appoint the Board and the chair of the Board on the nomination of the Ministers to whom the Board is accountable. Board members must not have any other conflict of interest.
- 2. The Board will design and resource an organisation to support delivery of regulatory responsibilities.**

As with Model 5, the Board has the authority, subject to a budget appropriated for the purpose, to resource a supporting organisation headed by a CEO. The regulatory authority employs staff for the organisation.
- 3. The Board will delegate regulatory authority to the CEO and others as appropriate.**

The Board delegates functions and powers, except the power of delegation itself, to the CEO. The CEO's responsibilities will include regulatory decision-making and day to day operational management.

The Board retains responsibility for setting the regulator's strategic direction and regulatory priorities (e.g. through the issue of guidelines and adoption of new regulatory approaches), monitoring performance, and ensuring good governance.

There are benefits and risks associated with both models

Table 21 assesses the two proposed governance models against the principles identified for the design of the governance arrangements for WorkSafe ACT.

Table 21 | Comparison of benefits and risks of the two governance models

Model 5	Model 6
Principle 1. Role Clarity	
<p>Benefits</p> <ul style="list-style-type: none"> The Commissioner is accountable for all regulatory decisions. Ministerial ACT Work Safety Council provides advice. 	<p>Benefits</p> <ul style="list-style-type: none"> The Director to whom decision-making authority is delegated has greater oversight and access to advice on regulatory strategy and priorities from a Board with sector and governance expertise.
<p>Risks</p> <ul style="list-style-type: none"> Concentration of power. Reliance on one person's capability. Ability of Ministers to provide effective oversight, compared to a dedicated management (c.f. strategic) board. 	<p>Risks</p> <ul style="list-style-type: none"> Confusion about roles of the Board and CEO. Withdrawal of delegation from the CEO's position by the Board which creates discontinuity and potential backlogs in regulatory decisions and does not overcome current concerns.
<p>Mitigating features</p> <ul style="list-style-type: none"> The person appointed should have expertise in regulatory decision-making. The Commissioner accounts to the Ministers, including through a formally agreed and reviewed strategic business plan. 	<p>Mitigating features</p> <ul style="list-style-type: none"> Transparent delineation of Board and CEO roles through delegated powers (including explanation of circumstances where delegations would be withdrawn/decisions overturned). The CEO is accountable to the Board and decisions of delegates are visible to the Board.
Principle 2. Independence from inappropriate influence	
<p>Benefits</p> <ul style="list-style-type: none"> Establishment of a separate statutory authority creates independence, in principle, from political interference and other interests. 	<p>Benefits</p> <ul style="list-style-type: none"> As for Model 5, plus: <ul style="list-style-type: none"> Distribution of authority across a Board, with delegation to a CEO whose performance is managed, mediates perceived or actual influence.
<p>Risks</p> <ul style="list-style-type: none"> Commissioner may be subject to pressure, noting there is a greater risk of political influence given the ministers' responsibility for appointment. There is no formal oversight of the Commissioner and the Commissioner's decisions. 	<p>Risks</p> <p>As for Model 5, for Board members and CEO noting there is a greater risk of stakeholder influence.</p>
<p>Mitigating features</p> <ul style="list-style-type: none"> Commissioner is a person of good standing and expertise to maintain confidence in the regulator's independence. There are formal appeal rights under the legislation. Proactive management of actual or potential conflicts of interest. The ACT Work Safety Advisory Council provides input and receives reports from the Commissioner similar to current practice. 	

The review recommends a single accountability governance model (Model 5), in which a Commissioner is the regulatory authority and is accountable for all decisions. The Commissioner may design and use organisational arrangements and advisory mechanisms to support planning, decision-making, and delivery such as a strategic board. This model meets internationally-recognised principles for sound regulatory governance and provides better clarity on who holds the decision-making authority. We recommend that legislative changes be made to enable appointment of a Commissioner as the statutory regulatory authority.

6.5 Conclusion and recommendations to improve the governance structures

Our review of the current work health and safety governance arrangement found that there is a lack of role clarity as to the role of the regulator and the role of the Work Safety Commissioner. The important point of clarity is that the Work Safety Commissioner is not the regulator, and this creates confusion about the role the Commissioner performs, especially as the current Commissioner is also the Director of the Workplace Protection Division in Access Canberra. Stakeholders have a perception that WorkSafe ACT is subject to influence, demonstrated in a reluctance to take action against government agencies on the one hand, and being too close to the unions on the other.

The decision-making framework within Access Canberra, especially the advisory role of the Regulatory Advisory Committee (RAC) was the subject of concern for some stakeholders. We found there was, when it was introduced, a lack of clarity about the role of the RAC and its impact on the exercise of discretion by individual inspectors and of the Director, Workplace Protection. We also heard concerns expressed about the exercise of delegations within Access Canberra. As noted above, there is an opportunity to improve the guidance provided to staff on the proper exercise of their delegations to inform appropriate decision-making in the use of tools in response to non-compliance.

We found there is an opportunity to be more transparent about data, about performance information, and about funding.

Stakeholders are willing to work with WorkSafe ACT to achieve improved work health and safety outcomes. WorkSafe ACT can more effectively engage with business and unions through working groups, and other consultative arrangements to develop and design programs and responses to emerging trends, and to encourage tripartite collaboration.

We examined several institutional forms for effective governance of work health and safety in the ACT, drawing on previous reviews and models in other jurisdictions and regulatory domains. We ultimately recommend a new governance arrangement that provides for an independent work health and safety regulator that has regulatory authority vested in a single Commissioner. This model best addresses the need for independent decision-making and creates role clarity.

Recommendation 19: Produce a detailed annual report that includes a list of activities; including details of completed investigations and actions taken against private and public workplaces, and financial information.

Recommendation 20: Establish more effective collaborative arrangements with stakeholders to assist with the development and delivery of programs and activities to improve the reach of information and education materials.

Recommendation 21: Establish WorkSafe ACT as an entity under the WHS Act using a single accountability governance model in which a Commissioner is appointed as the regulatory authority and is accountable for all regulatory decisions.

7 Organisation structure

7.1 Introduction

In this section we consider the effectiveness of WorkSafe ACT’s organisational structure and operating model. This section considers WorkSafe ACT’s current organisational structure and assesses the current arrangements against a set of organisation design principles. In addition to the structure, we also provide an analysis against a set of core enablers for operational effectiveness to cover a range of concerns raised by stakeholders during the review.

Our considerations in this chapter addresses the final part of our analytical framework as shown in Figure 20.

Figure 20 | Effective Operating Model



7.2 Good design criteria for organisational structure

The review has drawn on the universal tests of good design described by Goold and Campbell¹³² to assess the current structure of WorkSafe ACT and to guide the design of a recommended organisational structure. The review developed a set of principles to guide the assessment of the current organisational structure based on the consultations and our own experience in working with regulators to optimise their organisational design. These principles to guide the assessment are shown in Figure 21.

Figure 21 | Design Principles

1	Difficult links	The structure enables collaboration within and across WorkSafe ACT and with other regulators.
2	Accountability	The structure creates clear roles, responsibilities, and expectations.
3	Redundant Hierarchy	The structure creates synergy and efficiencies, removing duplication and/or replicated roles and processes.
4	Flexibility	The structure allows WorkSafe ACT to respond to emerging trends and to flex between proactive and reactive activities accordingly.
5	Specialist Skills	The structure enables WorkSafe ACT to have a balance of generalists with some specialists.

¹³² Michael Goold, Andrew Campbell, *Designing Effective Organizations: How to Create Structured Networks*, San Francisco, CA: Wiley, 1 edition, 2002

7.3 WorkSafe ACT's current organisational structure

The organisational structure of WorkSafe ACT can be considered in two parts:

- Functions within the Workplace Protection Division of Access Canberra.
- Shared functions across Access Canberra and the rest of government.

Structure within the Workplace Protection Division of Access Canberra

WorkSafe ACT is part of the Workplace Protection Division which combines the regulatory functions of WorkSafe ACT and utilities technical regulation.¹³³ Under the current arrangements the Director of Workplace Protection, who is also the Work Safety Commissioner, reports to senior management within Access Canberra.

As discussed in Section 3, for the purposes of the review the functions of work health and safety, workers compensation, dangerous goods, and support roles including activities conducted by the Industry Liaison, Healthier Work, and the Workplace Protection Division Management are defined as WorkSafe ACT.¹³⁴ The functions of the Utilities Technical Regulator and senior Access Canberra management are not considered to be part of WorkSafe ACT. They are functions performed across the broader Access Canberra organisation. This arrangement is shown in Figure 5.

WorkSafe ACT currently has three groups reporting to a Deputy Director: the Healthier Work program, an Industry Liaison, and a Compliance and Enforcement group. The Compliance and Enforcement group operates with six separate small teams responsible for compliance with specific schemes or programs. As shown in Appendix C, the majority of resources is dedicated to compliance and enforcement activity. Table 22 summarises the key accountability and resourcing allocation in the current structure.¹³⁵

Table 22 | Roles, key accountabilities and resource allocation in WorkSafe ACT 2018/19

Function	Roles	Key accountabilities
Executive management, strategic planning and program design (3.0 FTE)	ACT Work Safety Commissioner (1.0 FTE)	<ul style="list-style-type: none"> • Responsible for the functions of ACT Work Safety Commissioner and the Director of Workplace Protection Division. • The Director is responsible for all decisions taken, and for all actions taken by the Workplace Protection Division. • The Director provides advice, implements Access Canberra Executive decisions and meets the Division's objectives within a whole of government context. • The Director is entrusted to build the Division to support Access Canberra in administering the workplace protection legislation and directs the staff of the Division.
	Workplace Protection Division management (2.0 FTE)	<ul style="list-style-type: none"> • Responsibility for supporting the Work Safety Commissioner and day-to-day responsibilities for the management of the Workplace Protection Division. • Management is also responsible for strategic planning and program design.
Education and information (3.0 FTE)	Healthier Work (2.0 FTE)	<ul style="list-style-type: none"> • Supporting employers develop and implement health and well-being initiatives in their workplace. • Implementing activities, initiatives and events to actively promote workplace health and wellbeing.

¹³³ Access Canberra, *Workplace Protection Strategic Business Plan 2018-2022* [draft], June 2018

¹³⁴ The Asbestos taskforce, which was part of the Mr Fluffy program and reported into the Workplace Protection Division was considered part of WorkSafe ACT. However, the temporary appointment of these resources concluded on 30 June 2018 and were not included in the ongoing Workplace Protection Division resources from 1 July 2018. Thus, as any insight or recommendation relating to this team would be implementable going forward, the Review has not considered this team.

¹³⁵ The total 18-19 FTE budget is 52.08, including the 8.58 FTE assigned to the Utilities Technical Regulation team which, as noted, is a separate regulatory authority and not considered part of WorkSafe ACT.

Compliance and Enforcement (36.5 FTE with 10 FTE vacant)	Industry Liaison (1.0 FTE)	<ul style="list-style-type: none"> Coordinating the Division's stakeholder engagement activities (particularly events, meetings and education activities).
	Light Rail Safety (2.5 FTE)	<ul style="list-style-type: none"> Conducting educative activities with builders, operators, equity investors, and sub- contractors working on the ACT Government light rail project to support safe delivery of works. Conducting inspections during the construction, testing and evaluation, commissioning and operation phases of the light rail project.
	WorkSafe Proactive (10.0 FTE, with 5.0 FTE vacant)	<ul style="list-style-type: none"> Conducting proactive WorkSafe programs and campaigns. Developing training programs, and working with RTOs/CIT. Conducting desktop audits of major events.
	WorkSafe Reactive (8.0 FTE, with 1 FTE vacant)	<ul style="list-style-type: none"> Responding to phone and email inquiries and triage incidents and complaints to case management where required. Developing investigation plans and conducting investigations and inspections of breaches and potential breaches. Attending and providing presentations at industry meetings and events, including provision information.
	WorkSafe Compensation (7.0 FTE with 2 FTE vacant)	<ul style="list-style-type: none"> Administering the ACT Workers' Compensation Act and associated legislation. Assisting in administering the Long Service Leave Act 1976. Preparing documentation in relation to premium recoveries and court action. Providing an advisory function to clients. Investigating employee complaints. Inspecting/investigating in relation to prosecutions.
	WorkSafe Investigation (7.0 FTE with 2 FTE vacant)	<ul style="list-style-type: none"> Conducting major investigations on behalf of the Work Health and Safety regulator. Seeking to ensure compliance with WHS legislation through prosecutions, enforceable undertakings and acting as first responders and investigators for major incidents and fatalities.
	Dangerous Substances (3.0 FTE)	<ul style="list-style-type: none"> Administering the regulatory framework for dangerous substances and clinical waste. Dangerous Goods licensing including fees. Conducting targeted compliance inspections.

As Table 22 shows, the 2018/19 budgeted staffing levels of WorkSafe ACT is 42.5 FTE across all business areas including 10.0 FTE currently vacant. The majority of resources is dedicated to compliance and enforcement activity.

Shared functions across WorkSafe ACT, Access Canberra, and other parts of government

A number of regulatory and support functions are provided to WorkSafe ACT as part of Access Canberra or by the CMTEDD. These are described in Table 23.

Table 23 | Regulatory functions provide outside WorkSafe ACT

Function	Roles	Function performed by:
Enquiries	Counter enquiries and services. Telephone and online enquiries.	Initial counter, phone and online enquiries addressed to Access Canberra Service Centre (calls are then directed to WorkSafe ACT).
Education and information	Provision of information, advice, and education to increase awareness and build capability of target audiences; including development of guidance	Access Canberra provides training of HSR's and Asbestos Awareness. CMTEDD Central provides a broad range of communications and media services including ACT

	material, training materials and website content, and media management.	Government social media channels, media releases, Web content, Printed collaterals and Our Canberra publications and digital mail-outs (monthly e-newsletter).
Policy and Legislation	Review and development of legislation and government policy direction.	Function performed by CMDTEDD Office of Workplace Safety and Industrial Relationship.
Data and Intelligence	Collection and analysis of data to provide intelligence to inform WorkSafe ACT activities.	Functions performed by CMDTEDD Office of Workplace Safety and Industrial Relationship. Functions relating to data collection performed by Access Canberra IT.
Legal support	Provision of legal support for legal advice and legal proceedings.	Function performed by ACT Government Solicitor.

7.4 There is an opportunity to streamline and simplify the WorkSafe ACT structure

The current WorkSafe ACT structure emphasises compliance and enforcement activity and is arranged in small and specifically focused teams. This does not promote sufficient collaboration, skills development, the exchange of information and intelligence, and the use of data to inform its programs and activities.

The current structure lacks sufficient resourcing for strategic planning of programs and activities

The discussion in Section 5.2 noted that WorkSafe ACT has limited capacity and capability to undertake data analysis to inform its activities to ensure it undertakes appropriate risk analysis, and to identify and respond to emerging issues and trends across industries and injury types. While it is not expected a small organisation will have a depth of capability, there is a need to ensure there is someone responsible and appropriate processes for identifying issues and seeking the data analysis from an external source; in this case the CMDTEDD Office of Workplace Safety and Industrial Relations.

There are too many small teams

Changes in responsibilities and new issues requiring specific attention have led to establishment of a number of small, disjointed teams, with poorly designed reporting lines. This has the effect of siloed activities and a lack of sharing of information and intelligence, that reduces capability development and on the job learning. Internal stakeholders also noted that this also leads to a lack of flexibility and agility to respond to changing circumstances, with some staff preferring only to do the specific work of their designated team. The current structure of many small separate teams impedes WorkSafe ACT's ability to cross-skill different inspectors to develop generalist skills, and for new staff to develop into specialists.

Too few resources are dedicated to education and information

As noted in Section 5.3, providing information and education for the community, for employers, and employees is an important compliance function. WorkSafe ACT has limited resources for education, engagement, and stakeholder management functions. It does not have resources available to generate website content, guidance material and other 'collateral' to support work health and safety across the ACT, and to improve compliance rates. There is also confusion about the role of inspectors in educating about compliance during their workplace visits.

7.5 A new organisational structure will improve efficiency and effectiveness

The recommended structure has a number of features that enable WorkSafe ACT to effectively and efficiently perform its regulatory functions, meet stakeholder expectations and address the shortcomings identified with the current structure. The proposed structure satisfies the design criteria.

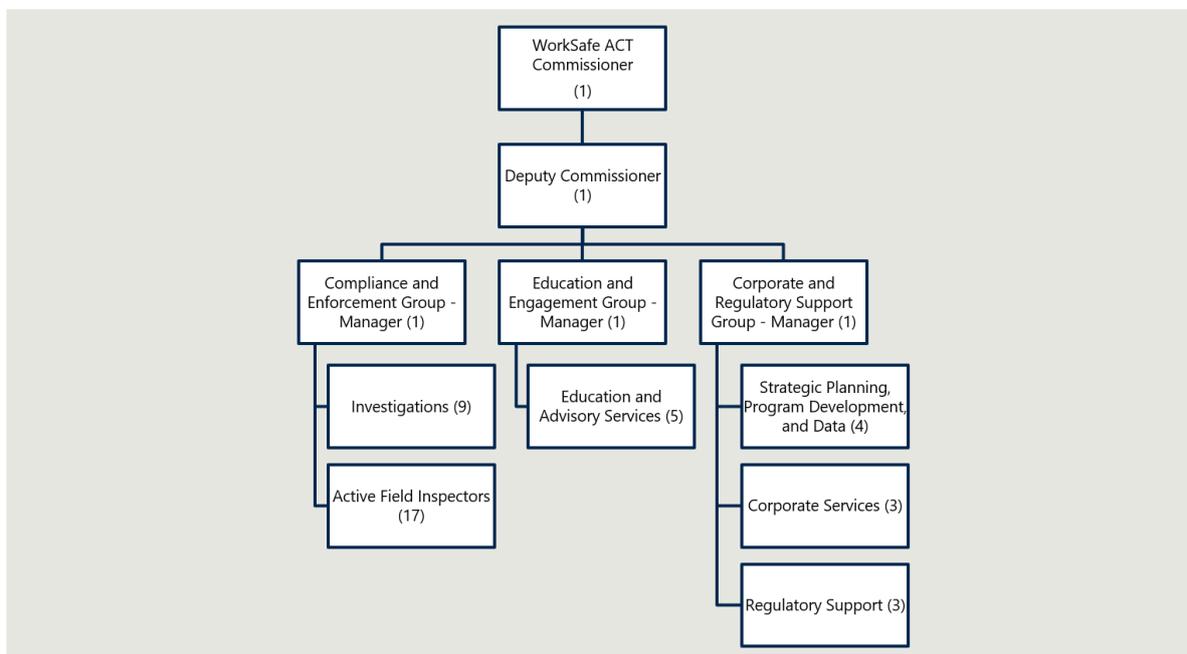
The proposed structure rebalances functional roles for effective regulation

The recommended organisational structure supports the recommended governance model of a separate independent Commissioner. It provides for dedicated resources for strategy, planning, and program development to ensure WorkSafe ACT's activities are data driven and focus on education to prevent harms, and strategic compliance and enforcement programs. The structure includes additional resources for education and information to improve the information materials, guidance, and to ensure the website is a useful and accessible source of information for the community, businesses and workers to understand their compliance obligations and how they can each play a part in improving work health and safety.

The structure streamlines the compliance and enforcement teams to provide for more flexibility to undertake specific programs of work, to respond as required to incidents and notifications, and to refer matters to a specialist investigation team.

The recommended structure for WorkSafe ACT with suggested FTE is presented in Figure 22. It is noted it is not within the scope of the review to provide specific recommendations about the level of resourcing for WorkSafe ACT and we have not done detailed analysis to inform the estimates. The suggested FTE should therefore be considered indicative only. They are also not based on comparisons with other states or territories.

Figure 22 | Proposed WorkSafe ACT Organisational Structure



Description of the roles and functions of each team

This section provides a description of each team within WorkSafe ACT.

Compliance and Enforcement Group

The new structure comprises a Compliance and Enforcement Group that includes field active inspectors with responsibility across Work Health and Safety, Workers Compensation, and Dangerous Goods. This will

potentially comprise two multi-skilled teams working across each of these responsibilities - doing both responsive inspections and programmed proactive inspections in accordance with the Strategic Business Plan and programs such as audit programs or 'compliance campaigns' that will address specific industries or injuries. The review suggests these two multi-skilled teams comprise 17 FTE.

We believe that the creation of multi-skilled teams will not reduce the specialist capability of individual inspectors and that a move toward larger teams is consistent with our view that the current arrangement of small numbers of inspectors split across proactive, reactive, dangerous goods; and workers compensation teams and completing a range of activities outside of active fieldwork is inefficient

The proposed structure also includes a specialist investigation team whose function is to undertake major investigations with a view to taking legal proceedings. This team will also be first responders and investigators for major incidents and fatalities. The suggested resourcing is 9 FTE, this includes the 7 FTE currently forming the WorkSafe Investigations team plus an additional 2 FTE consistent with our view that there should be an increased emphasis on the use of enforceable undertakings and taking timely legal proceedings.

Education and Engagement Group

The proposed structure supplements the current resourcing for the industry liaison and healthier work programs to include additional resources for conducting education activities with industry and regulated entities - to inform them of their compliance obligations and raise awareness of how those obligations can be met. This will include industry engagement and speaking events, planned workplace visits, development of guidance material and website content, development of training programs and working with Registered Training Organisations (RTOs) to target work health and safety prevention education for a range of industries.

The group will also be responsible for conducting broader community education and supporting specific 'compliance campaigns' in accordance with the Strategic Business Plan.

The group will also liaise with the CMDTEDD Central that has the scale and capability to provide communications and media services including; ACT Government social media channels, media releases, Web content, printed collateral and publications, and digital mail-outs (monthly e-newsletter). It is envisaged WorkSafe ACT will be responsible for the development of work health and safety specific content and will draw on these additional services as appropriate through formalised collaborative arrangements that currently exist. The review suggests this team comprise 5 FTE, which includes the existing 2 FTE of the Healthier Work program, 1 FTE in the Industry Liaison role, and 2 FTE from existing non-inspector roles currently resourced inside WorkSafe ACT.

Corporate and Regulatory Support Group

The Corporate and Regulatory Support Group provides the strategic and operational support for effective operation of the organisation. The regulatory support provided by the group does not duplicate corporate support provided by the shared services provider or by other outsourced providers but provides assurance that those services are being purchased effectively and ensuring day to day corporate services are also available.

This group will provide telephone and online responses to enquiries and receive and triage notifications. This will be provided in addition to any services provided directly by Access Canberra and will be the area to which Access Canberra directs calls that require a specific WorkSafe ACT response. In the current arrangements these calls are directed to the WorkSafe Reactive Team. We anticipate this team will require 3 FTE to take calls, assess and undertake triage and record in the appropriate systems for further action. These 3 FTE would come from the existing non-inspector roles currently resourced inside WorkSafe ACT.

This group will also have responsibility for the strategic planning, program development, issue identification, preliminary data analysis, and requesting specific data analysis from CMDTEDD group. The group will undertake inhouse data analysis of incident data, activity data and claims data from both internal and external sources to identify trends, inform planning and activity, and develop responsive programs and 'compliance campaigns'. This group will also be responsible for measuring, evaluating, and reporting on outcomes and continuous improvement. It will be responsible for developing the Strategic Business Plan, business plans, and for policy and procedures. As noted in Section 5.2, we confirm that the

use of SmartForms and the Access Canberra CRM system gives WorkSafe ACT considerable advantages, and suggest that WorkSafe ACT, continues to leverage this arrangement. We anticipate this team will require 4 FTE to effectively perform these functions resourced with 2.5 FTE from the existing resourcing inside WorkSafe ACT with an additional 1.5 FTE of new resourcing consistent with our view that there should be an increased emphasis strategic planning, program development, and data analysis.

In addition, we suggest there be a corporate services team that provides the day-to-day services such as internal communication, Human Resource advice and assistance, Information and Technology services, Finance services to manage budget, expenditure, financial reporting, and enterprise risk. This team would draw on the services and support of CMTEDD Central and ACT Government Shared Services as well as other shared services providers. We anticipate this group could include 3 FTE. These 3 FTE would come from existing non-inspector roles currently resourced inside WorkSafe ACT.

This new structure is estimated as requiring an increase in FTE from the current 42.5 to 46 FTE. This is driven by additional requirements across investigative resources, strategic planning, regulatory program development and data analysis. In proposing changes to the organisational structure, the Review was not tasked with costing changes to the proposed staffing complement or ongoing operational costs of the proposed arrangements.

Recommendation 22: Consider the proposed structure for WorkSafe ACT, to support the proposed governance model, including costing proposed changes.

Recommendation 23: Establish formal arrangements to define requirements and service expectations of all functions to be provided by other agencies.

7.6 Other elements that affect the operational effectiveness of WorkSafe ACT

The review received input on a range of topics relating to the WorkSafe ACT operating model that went beyond the structural arrangements. The review grouped topics relating to the effectiveness of the operating model of WorkSafe ACT into five core enablers. They are described in Table 24.

Table 24 | Core enablers of an effective operating model

Core Enabler	Description
Capability and capacity	The technical and non-technical knowledge, skills, and attributes of the workforce and the organisation’s ability to ensure sufficient staffing levels to accomplish its work processes and successfully deliver value to customers.
Climate and culture	The way in which employees within the organisation relate to each other and their work. Includes the shared mindsets and behaviours that set the expectation about what is important and valued in the organisation.
External alliance	The choices made to involve others (e.g. in partnerships, champions) in the delivery of the organisation’s strategic objectives and/or to strengthen organisational outcomes.
Technology support	The operational platforms, programs, and devices that an organisation uses/applies to deliver its work.
Physical assets	The physical assets used by WorkSafe ACT (e.g. uniforms, vehicles, and buildings).

Stakeholder views and the review’s assessment of WorkSafe ACT against each enabler is discussed in turn.

Capacity and capability

The technical and non-technical knowledge, skills, and attributes of WorkSafe ACT's workforce and the organisation's ability to ensure sufficient staffing levels to accomplish its work processes and successfully deliver outcomes is a critical part of an effective operating model.

The review considered both the capacity and capability of WorkSafe ACT. As noted in our suggested organisational structure and resourcing the current staffing levels, are below that required for WorkSafe ACT to effectively perform its regulatory role. Stakeholders reported that a lack of resources is leading to a number of matters reported to WorkSafe ACT not being investigated. Managers in WorkSafe ACT and Access Canberra agreed with the sentiment that WorkSafe ACT is 'significantly below where it needs to be'.

Stakeholders also raised concerns about the use of contract positions. For example, the Community and Public Sector Union noted in its submission that:

"The current reliance on temporary and/or insecure work arrangements is impacting the ability for the agency to carry out its responsibilities."¹³⁶

The Master Builders ACT, called on WorkSafe ACT to have "additional qualified inspectors"¹³⁷ to boost the capacity at WorkSafe ACT.

Concerns about capacity shortage may also be exacerbated by limited formal skills development programs for inspectors. Internal stakeholders noted that most education material is outdated and not archived, and that there is no induction program for new inspectors. Inspectors also raised concerns over the ad-hoc nature of education programs, especially regarding receiving training on the impact of legislative changes. Some internal stakeholders noted that this is beginning to improve, and that organisational training programs are being developed specific to the needs of WorkSafe ACT to ensure inspectors have the skills and training required to perform their duties; specifically, to address complex hazards such as manual handling and psychosocial hazards. Additional attention should also be paid to peer learning and conducting 'lessons learnt' reviews to engender a continuous improvement mindset.

A concern was also raised that there is a lack of succession planning, and with the aging workforce this could be a concern in the future.

Climate and culture

The way in which employees within WorkSafe ACT relate to each other and their work, including the shared mindsets and behaviours that set the expectation about what is important and valued in the organisation are critical factors to operational effectiveness.

There was also a concern expressed that there has been a lot of change in roles and reporting lines and this has caused both confusion and some resistance. Some internal stakeholders were of the view that there is some change resistance within WorkSafe ACT, others felt that change was not well managed and new policies or expectations were not well communicated.

The review heard a range of views relating to the workplace climate and culture within WorkSafe ACT. One union stakeholder suggested that:

"Access Canberra is so large that it has overwhelmed the ability of a business unit like WorkSafe to have its own identity."¹³⁸

The review notes that these cultural issues have been identified by WorkSafe ACT management who have implemented plans to improve the organisational culture. Increasing emphasis on training, internal communication, and effective change management will be important for improving overall effectiveness.

¹³⁶ Written submission from CPSU

¹³⁷ Written submission from Master Builders ACT

¹³⁸ Secretary of a Union at the Unions workshop, July 2018

External alliances

The choices made by WorkSafe ACT to involve others (e.g. in partnerships, champions) in the delivery of their functions as a regulator, and/or to strengthen organisational outcomes in an important part of building an effective and efficient regulator.

Best practice for regulators focuses on forming partnerships with other regulators as part of a regulatory ecosystem to ensure efficient use of resources, to co-operate to avoid duplication and overlap, and to ensure there is a shared understanding about the distinct responsibilities of each.

Throughout the review stakeholders noted that WorkSafe ACT has struggled to integrate into wider Access Canberra system. Internal stakeholders commented on the difficulties of managing and maintaining joint regulatory programs, and that WorkSafe ACT was to a large extent operating as a silo within the broader Access Canberra ecosystem. This view also extended to WorkSafe ACT's ability to easily access data and receive appropriate technology support. This has meant that the potential advantages for WorkSafe ACT inspectors to learn from other regulators to enhance capability, to enhance capacity by enabling other inspection workforces to undertake simple workplace visits, and to share information to build a more comprehensive picture about workplaces in the ACT have not been realised.

The national arrangements and harmonised laws give WorkSafe ACT the ability to leverage significant resources from SafeWork Australia and other jurisdictions. The review saw some evidence of this occurring, for example, through the sharing of SafeWork Australia guidance material over social media. There is an opportunity for WorkSafe ACT to quickly increase the quantity and quality of its engagement and education activities through better leveraging and increasing its use of the arrangement to fast-track improvements for internal training and development programs.

Both union and business stakeholders recognised there is scope for WorkSafe ACT to more effectively engage stakeholders in the development and delivery of approaches to address priority risks. WorkSafe ACT can better leverage its current arrangements; including the Work Safety Council and Committees and working groups to genuinely collaborate to develop, test, and refine solutions and to leverage stakeholder networks to extend the reach of WorkSafe ACT's messages and programs.

Stakeholders demonstrated a willingness to actively partner with WorkSafe ACT to promote work health and safety and to support compliance. For example, one union member suggested there should be:

"...greater acknowledgement of Unions as co-regulators of work, health and safety" adding that "this would assist with structural issues but also help address the resourcing issues."¹³⁹

The Canberra Business Chamber also suggested a willingness to partner with WorkSafe ACT to promote education and awareness into practical work health and safety measures that businesses could implement.

Technology support

The operational platforms, programs, and devices that WorkSafe ACT uses and applies to deliver its regulator responsibilities has an impact on its operating effectiveness.

The inclusion of WorkSafe ACT in Access Canberra has enabled significant resources to improve systems (such as SmartForms and the CRM system). However, as noted above, the introduction of these new systems is taking time to have a positive effect. WorkSafe ACT's 2017/18 business plan noted that there continues to be *"inadequate IT systems to support business"*¹⁴⁰, and internal stakeholders highlighted that the training on new systems needs to be improved.

We found that while system development and uptake is still in the process of maturing, the continued development of the systems and associated reporting capability will enable a rich data source that will provide insights to drive improved future planning and decisions.

¹³⁹ Interview with a representative from CFMEU ACT Branch, July 2018

¹⁴⁰ Access Canberra, *Construction, Environment and Workplace Protection Division Annual Business Plan 2017-18*, July 2017.

Physical assets

The physical assets of the WorkSafe ACT (e.g. buildings, vehicles, and uniforms) form an important part of the operating effectiveness and brand of the regulator.

Internal stakeholders noted difficulties using the shared services and believed that the removal of the WorkSafe ACT brand from uniforms and vehicles had contributed to a 'loss of identity'.

The review considers that the physical assets in place in the current arrangements within Access Canberra are adequate and that recent movements towards returning the WorkSafe ACT brand alongside the Access Canberra brand on vehicles and uniforms will contribute to an improvement in the brand identity of WorkSafe ACT in the community.

7.7 Conclusion and recommendations for an effective operating model

The review considered the appropriate organisational structure for WorkSafe ACT for effective regulatory operations, both within Access Canberra and in the proposed new independent regulatory entity. We found that the current structure lacks resources for strategic planning of programs and activities and too few resources dedicated to education and information. We found there are too many small teams which is limiting the scope for collaboration, multi-skilling, and means there is limited flexibility in the allocation of resources to respond to issues and emerging trends. There is also an opportunity to focus on organisational performance. The proposed structure rebalances functional roles to separate compliance and enforcement, education and engagement and organisational support. It also recognises that for a small entity there is an ongoing need for specialist services to be provided from other agencies within government.

The review also considered the core enablers to support the effective operation of WorkSafe ACT and identified there is an opportunity to improve the training and induction provided to WorkSafe ACT staff; to focus attention on change management and improving internal communications and promote better alliances with workplace partners, including business associations, unions, and HSRs.

Recommendation 24: Consider developing a formal and comprehensive internal training and development program, leveraging similar programs developed in other jurisdictions.

Recommendation 25: Consider developing a formal succession planning process to ensure knowledge, skills, and experience of the current workforce is captured and able to be transferred to new recruits.

Recommendation 26: Leverage guidance material developed by other jurisdictions, particularly for industries and programs that have received limited attention in the ACT.

Recommendation 27: Increase the visibility of the WorkSafe ACT brand on all physical and digital material, uniforms, and vehicles used by WorkSafe ACT.

Appendix A Analysis of select industries

Using claims data as a proxy we have analysed the frequency of claims across all private sector industries in the ACT. Figure 23 highlights there are six industries with consistently high claims rates.¹⁴¹ Limiting the analysis to these industries does not imply that these are necessarily the most critical industries to focus on, but rather a simple subset used by the review to highlight the industry specific activities and analyse how WorkSafe ACT is responding at the industry level.

Figure 23 | Private sector claims across industries from 2013/14 to 2016/17

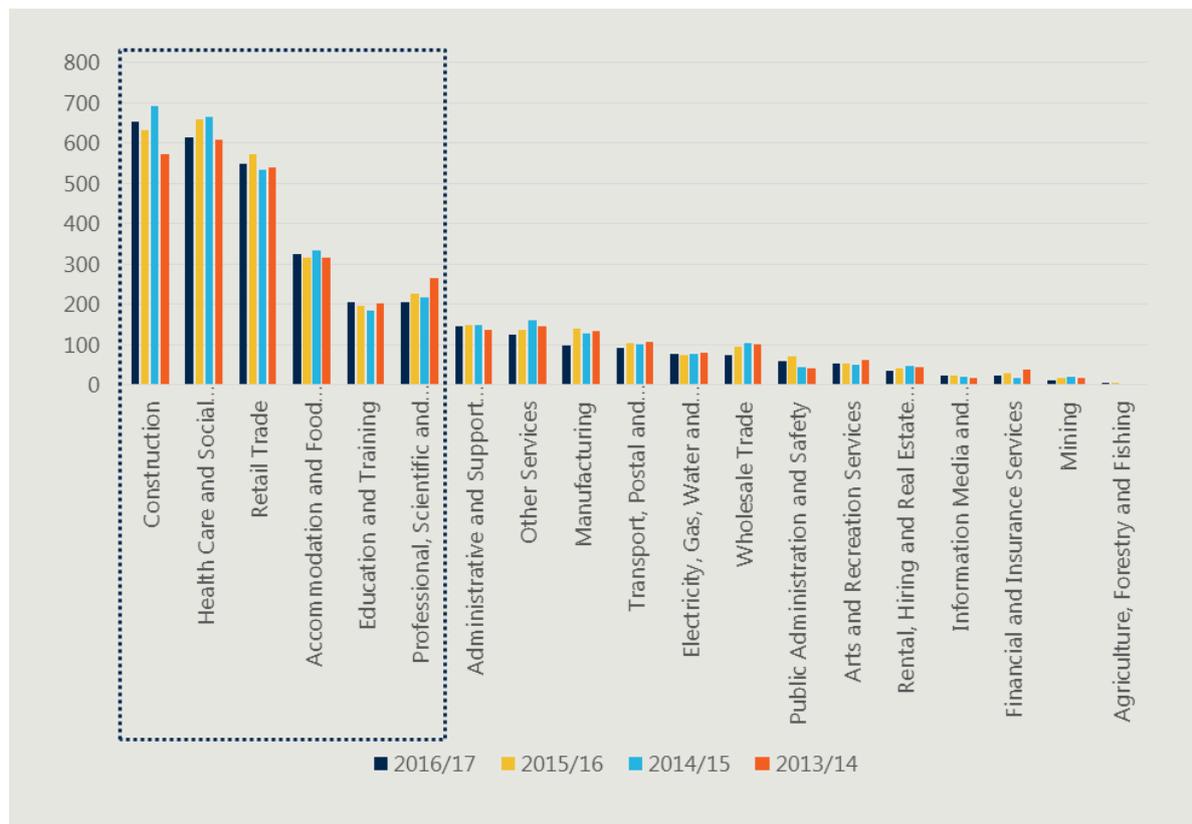


Table 25 | Select industries considered in this review

	Construction	Healthcare and social assistance	Retail trade	Accommodation and food services	Education and training	Professional, scientific and technical services	Other
Percentage of total claims	19 per cent	18 per cent	16 per cent	10 per cent	6 per cent	6 per cent	23 per cent
Percentage of serious claims	24 per cent	21 per cent	10 per cent	9 per cent	4 per cent	5 per cent	13 per cent

Figure 23 shows that over the last year, the top six industries contribute to 76 per cent of the total claims and 72 per cent of serious claims. The remaining 13 industries contribute to 24 per cent of total claims and 28 per cent of serious claims. Both construction and healthcare and social assistance industries report the highest level of total claims and percentage of serious claims. Overall, within the selected industries, the percentage of total claims and percentage of serious claims experienced small fluctuations over the last four years.

¹⁴¹ Serious claims are claims for ten or more days leave due to incident.

Within each of the selected industries:

1. **Construction:** the percentage of total claims has remained relatively stable over the last four years ranging from 17 per cent to 21 per cent. The percentage of serious claims has also remained relatively stable over the last four years ranging from 21 per cent to 24 per cent.
2. **Health Care and Social Assistance:** the percentage of total claims has remained relatively stable over the last four years ranging from 18 per cent to 19 per cent. The percentage of serious claims has trended upwards slightly over the last four years from 17 per cent to 21 per cent.
3. **Retail Trade:** the percentage of total claims has remained relatively stable over the last four years ranging from 15 per cent to 16 per cent. The percentage of serious claims has trended downwards slightly over the last four years from 14 per cent to 10 per cent.
4. **Accommodation and Food Services:** the percentage of total claims has remained relatively stable over the last four years ranging from 9 per cent to 10 per cent. The percentage of serious claims has also remained relatively stable over the last four years ranging from 7 per cent to 9 per cent.
5. **Education and Training:** the percentage of total claims has remained relatively stable over the last four years ranging from 5 per cent to 6 per cent. The percentage of serious claims has also remained relatively stable over the last four years ranging from 3 per cent to 4 per cent.
6. **Professional, Scientific and Technical Services:** the percentage of total claims has remained relatively stable over the last four years ranging from 6 per cent to 8 per cent. The percentage of serious claims has also remained relatively stable over the last four years ranging from 5 per cent to 6 per cent.

Appendix B WorkSafe ACT activity across all associated Acts over time

Table 26 | WorkSafe ACT activity and enforcement across work safety and associated Acts

Category / Act	Action	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
WorkSafe Activity	Workplace visits	2081	3046	2690	4272	4923	4134
	Asbestos related visits	-	-	-	1169	1838	941
	Reactive WPV	-	-	-	2838	2990	1752
	Proactive WPV	-	-	-	1434	1933	2452
	Complaints at time of inspection	-	-	-	1044	1283	1669
Work Health and Safety Act 2011	Improvement Notices	489	776	342	119	140	185
	Prohibition Notices	167	187	115	65	58	84
	Infringement Notices	20	42	13	0	1	25
	Non-disturbance Notices	-	2	6	7	3	1
	Enforceable Undertaking	-	0	1	0	0	2
Dangerous Substances Act 2004	Improvement Notices	55	71	27	1	1	4
	Prohibition Notices	10	25	18	3	0	1
	Infringement Notices	9	1	0	0	0	0
	Enforceable Undertaking	-	0	0	0	0	0
Workers Compensation Act 1951	Infringement Notices	-	12	1	8	0	0
	Default Notices	-	23	47	20	3	2
	Premium Recovery	-	9	12	19	5	10
	Cease Business Order	-	0	0	2	0	0

Appendix C Complete list of SOPs used by WorkSafe ACT

Table 27 | List of all standard operating procedures provided to the Review as used by WorkSafe ACT

Standard Operating Procedures currently used by WorkSafe
Cessation of unsafe work
Classification of Incidents Notified under Section 38
Confidentiality of Information to Inspector's Work
Consideration of Enforceable Undertakings
Contact with Relatives
Damage and Compensation
Dealing with alleged non-complied Provisional Improvement Notices
Dealing with requests for assistance relating to constitution of Health and Safety Committees
Dealing with requests for assistance relating to Health and Safety Representatives Training
Dealing with requests for assistance relating to the refusal of access to a person assisting the HSR
Dealing with requests for assistance relating to Work Groups
Dealing with requests for assistance to resolve right of entry disputes
Document and Questions
DPP Manual on the Preparation of Prosecution Briefs of Evidence
Enforceable Undertakings Compliance Monitoring and Assessment
Entry to Workplaces and Related Powers and Obligations
Exhibit Handling and Management
Explosives Evidence Storage Facility WorkSafe ACT
First Response to an Event or traumatic incident
Forfeiture, return and access to seized things
Handling Incoming Phone Enquiries
How to Access Standards Online
Inspection Reports copy
Inspector conflicts of interest
Interaction with Third Parties
Investigating a Workplace Bullying Complaint
Investigation Result and Review
Issue of Notices and Other General Requirements Relating to all Notice Types
Issue Resolution
Issuing and Tracking of Infringement and Reminder Notices
Issuing Improvement Notices
Issuing Non-disturbance Notices
Issuing Prohibition Notices

Legal proceedings

Lost Time Injuries Trend - By Industry - 17-18 - June 2018

Mention to Regulatory Advisory Committee

Notetaking

Obtaining and Executing a Search Warrant

Operating Guidelines for Internal and External Review

Planned Program of Work to Monitor Outcomes of Selected Inspector Interventions

Power of the regulator to obtain information

Powers of Seizure

PWSS SOP's - CRM and Objective

RAC Procedures

Regulatory Advisory Committee Procedures

Regulatory Advisory Committee Submission Template

Request for review of a PIN

Risk Management Framework

Seizing Property

Serious Incident Inspection, Investigation and Prosecution

Standard Operating Procedure - Applying for and executing a search warrant

Standard Operating Procedure - Complaint Handling Work

Standard Operating Procedure - Formal Enforcement Action Under the ACT Planning and Development Act 2007

Standard Operating Procedure - Handling of Exposed Asbestos

Standard Operating Procedure - Handling of Exposed Asbestos

Standard-for-Case-Management

Standard-for-Compliance-and-Investigation-Planning

Standard-for-Conducting-inspections

Standard-for-Conducting-Major-Investigations

Standard-for-Conducting-Records-of-Interview

Standard-for-Exhibit-Handling-and-Management

Standard-for-Field-Book

Standard-for-Interviewing

Standard-for-Notetaking

Standard-for-Regulatory-Powers

Standard-for-Using-Coercive-Powers

Standard-for-Witness-Statements

Standard-Reporting-on-Investigations

Vulnerable Workers Report

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