DECEMBER 2025

INDEPENDENT REVIEW OF EMPLOYEE REPRESENTATIVES

Interim Report

Independent Review of Employee Representatives
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Australia

Author

This Interim Report has been prepared by the Independent Reviewer, Mr Eugene White.

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Acknowledgement of Country

I acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history. I proudly acknowledge Victoria's Aboriginal Communities and recognise the value and ongoing contribution of Aboriginal people and communities to Victorian life. I pay our respect to Elders past and present.

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Glossary

Term	Description
ARREO	Authorised representative of a registered employee organisation (ARREO) means a person who holds an entry permit issued under Part 8 of the OHS Act.
ARREO framework	Provisions related to ARREOs under the OHS Act and OHS Regulations plus non-legislative support.
Boland Review	Marie Boland's *Review of the model Work Health and Safety laws: Final Report* (December 2018).
CALD	This Interim Report uses the Ethnic Communities Council of Victoria's definition of culturally and linguistically diverse (CALD). CALD is a broad and inclusive descriptor for communities with diverse language, ethnic background, nationality, dress, traditions, food, societal structures, art, and religion characteristics. CALD people are defined as those people born overseas, in countries other than those classified by the Australian Bureau of Statistics (ABS) as 'main English-speaking countries'. The set of main English-speaking countries other than Australia used by the ABS comprises: Canada, the Republic of Ireland, New Zealand, South Africa, the United Kingdom (England, Scotland, Wales, Northern Ireland) and the United States of America.
DHSR	Deputy health and safety representative (DHSR) elected under section 57 of the OHS Act.
DPP	Director of Public Prosecutions.
DWG	Designated work group (DWG) means a group of employees established under Part 7 of the OHS Act.
Employed persons	The ABS defines people as: • employed if they work one hour or more in the reference week. The vast majority of part-time employed people work more than fifteen hours • employed full-time if they worked, or usually work, thirty-five or more hours in the survey reference week. This includes people who were employed in two or more part-time jobs and in total worked more than thirty-five hours • employed part-time if they worked and usually work less than thirty-five hours in the survey reference week.
Entry permit	An entry permit issued under Part 8 of the OHS Act, which enables ARREOs to conduct OHS inspections.
Final Report	*Independent Review of Employee Representatives Final Report*.
FW Act	*Fair Work Act 2009* (Cth).
High-risk industry	An industry, sector or other group of like workplaces that face increased prevalence and/or severity of risk of injury or death.
HSR	A health and safety representative (HSR) is a representative for a DWG who has been elected and holds office in accordance with Part 7 of the OHS Act.
HSC	A health and safety committee (HSC), whether or not required by section 72 of the OHS Act.
HSR framework	Provisions related to HSRs under the OHS Act and OHS Regulations plus non-legislative support.
WorkSafe inspector	WorkSafe inspector means an inspector appointed under Part 9 of the OHS Act.
Interim Report	*Independent Review of Employee Representatives Interim Report*.

Term	Description
Maxwell Review	Hon. Justice Chris Maxwell's *Occupational Health and Safety Act review* (2004).
Model WHS laws	Model Work Health and Safety (WHS) laws developed by SWA.
Model WHS Regulations	Model Work Health and Safety Regulations 2025, developed by SWA.
OHS	Occupational health and safety (OHS).
OHS Act	*Occupational Health and Safety Act 2004* (OHS Act).
OHS Regulations	Occupational Health and Safety Regulations 2017 (OHS Regulations).
PCBU	Person conducting a business or undertaking (PCBU). Model WHS laws term.
PIN	Provision improvement notice (PIN) is a written direction that can be issued by an HSR, requiring a person (typically the employer) to remedy the contravention or likely contravention of the OHS Act.
Psychological Health Regulations	Occupational Health and Safety (Psychological Health) Regulations 2025.
REO	A registered employee organisation (REO) is an organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* (Cth).
Review	Independent Review of Employee Representatives
Robens Review	Review by the Committee on Safety and Health at Work, chaired by Lord Robens in the United Kingdom (UK), which produced *Safety and Health at Work: Report of the Committee 1970-72*.
SWA	Safe Work Australia (SWA).
VCAT	Victorian Civil and Administrative Tribunal (VCAT).
Vulnerable employee	Employees who are at an increased risk of injury or death in the workplace, and the reason for being disproportionately affected by that risk in the workplace based on their individual working arrangements, life experience, or personal characteristics.
Watson Report	*Investigation into allegations against the CFMEU Interim Report*, conducted by Geoffrey Watson SC and commissioned by the CFMEU.
Wilson Review	*Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction unions*, conducted by Gregory Wilson.
WHS permit holder	Work Health and Safety (WHS) permit holder, which is the equivalent of an ARREO under the model WHS laws.
Worker	Under the model WHS laws, a person is a worker if the person carries out work in any capacity for a PCBU, including work as: • an employee • a contractor or subcontractor • an employee of a contractor or subcontractor • an employee of a labour hire company who has been assigned to work in the person's business or undertaking • an outworker • an apprentice or trainee • a student gaining work experience • a volunteer • a person of a prescribed class. For the purposes of the model WHS laws, a police officer is a worker and at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise. The PCBU is also a worker if the person is an individual who carries out work in that business or undertaking.

Abbreviations

Stakeholder	Abbreviation
Australian Constructors Association	ACA
Australian Education Union	AEU
Australian Industry Group	AIG
Air Conditioning and Mechanical Contractors Association of Australia	AMCA
Australian Meat Industry Council	AMIC
Australian Manufacturing Workers' Union	AMWU
Australian Nursing and Midwifery Federation	ANMF
Australian Security Industry Association Limited	ASIAL
Australian Services Union	ASU
Ambulance Victoria	AV
Australian Workers' Union	AWU
Bendigo Trades Hall Council	BTHC
BeSafe Vic Regional OHS of Ballarat Regional Trades and Labour Council	BeSafe
Construction, Forestry and Maritime Employees Union – Construction and General Division	CFMEU – CGD
Fair Work Commission	FWC
Flight Attendants' Association of Australia	FAAA
Gippsland Trades and Labour Council	GTLC
Health and Community Services Union	HACSU
Housing Industry Association	HIA
Independent Education Union	IEU
Master Builders Association of Victoria	MBV
Migrant Workers Centre	MWC
Mining and Energy Union	MEU
Plumbing and Pipe Trades Employees Union – Communications, Electrical and Plumbing Union (Plumbing Division)	PPTEU
Rail, Tram and Bus Union	RTBU
Shop, Distributive and Allied Employees' Association	SDA
Timber, Furnishing and Textiles Union	TFTU
The Police Association Victoria	TPAV
Transport Workers' Union of Australia	TWU
United Firefighters' Union of Australia	UFU
United Workers Union	UWU
Victorian Automotive Chamber of Commerce	VACC
Victorian Ambulance Union	VAU
Victorian Chamber of Commerce and Industry	VCCI
Victorian Congress of Employer Associations	VCEA
Visual Media Association	VMA
Victorian Trades Hall Council	VTHC
Workplace Incidents Consultative Committee	WICC
WorkSafe Victoria	WorkSafe

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PART A: Introduction

Chapter 1: Foreword

1. In 2024/25, fifty-three people tragically lost their lives at work and there were approximately 34,700 new WorkCover claims in Victoria. Workplace safety is not just a legislative duty – ensuring that we all return home safely from work is fundamental to our wellbeing and quality of life[1].

2. This Review was established to determine whether the powers, functions and support provided to HSRs and ARREOs under the OHS Act remain effective and fit-for-purpose to deliver improved health and safety outcomes for all workers.

3. It has been twenty years since the OHS Act came into effect and since then we have experienced workplace changes, including the introduction of modern technologies and ways of working. Our work – including the ways we work and where we work – will continue to change and it is imperative that the HSR and ARREO frameworks meet the needs of workers now and in the future.

4. This Interim Report outlines what I have heard from employee and employer representatives, as well as people with lived experience, individuals, and government stakeholders, including WorkSafe. I am very appreciative of people's willingness to engage with me and share their experiences and expertise. Their input has informed the areas for further exploration I have identified in this Interim Report and will be central to the development of the Final Report's recommendations.

5. My work to date has been informed by meetings with interested parties, written submissions, and supporting data and research. From these sources I have identified areas for further exploration (see Chapter 3) that will be refined with additional consultation and research in early 2026.

6. Although my work is far from complete, I can say that the legislative underpinning and importance of HSRs and ARREOs has not been challenged. However, I heard that there are significant shortcomings with these frameworks which create difficulties for employers, employees, HSRs and ARREOs. The issues identified can be grouped into three overarching themes:

Structural issues of the OHS Act

7. It is imperative that all workers are protected by OHS legislation, including vulnerable workers or those employed or engaged under insecure working arrangements. I heard that some workers are not considered employees for the purposes of the OHS Act (such as some digital platform workers) and other employees are unintentionally excluded from genuine representation and consultation processes (such as people from non-English speaking backgrounds). Over the next three months, my work will examine and consider options to improve worker coverage.

Practical operation of the OHS Act

8. I also heard that formal representation requirements under the OHS Act, including the establishment and operation of DWGs and appointment of HSRs, are not always practical in all workplaces, such as small businesses. This shortcoming is further exacerbated by gaps in awareness and knowledge of formal and informal consultation approaches by employers and employees, including the duty to consult and the role of HSRs and ARREOs.

9. There are also shortcomings in the HSR framework, predominantly related to HSR elections, access to and timeliness of information, and the effectiveness of PINs and direction to cease work powers. I also heard that employees are reluctant to nominate to be an HSR and that discriminatory conduct provisions need to be strengthened.

10. Employer representatives are seeking to clarify and strengthen the operation of ARREO provisions, including those related to eligibility, entry notices, and powers to inspect a workplace. On the other hand, employee representatives are seeking an expansion of ARREO powers, including the ability to issue a PIN or direction to cease work when there are no HSRs in a workplace or they are unavailable. These are matters that I will need to consider carefully to ensure that any potential changes do not result in unintended consequences.

11. Some parties have also expressed concerns about non-compliance with right of entry provisions and alleged abuse of industrial powers, including as they pertain to OHS matters. To address these matters, I will explore steps that might be taken in workplaces, where HSR and ARREO powers are allegedly being misused, to support the effective operation of the OHS Act.

Regulatory oversight and compliance of the OHS Act

12. The resolution of disputes is a costly, complex, and time-consuming process for all affected parties. There are significant limitations and constraints in accessing compliance and enforcement data, which makes it difficult to grapple with the extent and nature of these matters. I will continue to examine these matters further as I have heard about the need to transform the dispute resolution process – including consideration of whether an independent state-based dispute resolution body should be established.

Eugene White

Independent Reviewer

[1] WorkSafe, "WorkSafe Annual Report 2024/25", accessed 18 December 2025, https://content-v2.api.worksafe.vic.gov.au/sites/default/files/2025-10/WorkSafe-annual-report-2024-25b.pdf

Chapter 2: My work to date

The Review's purpose

13. On 11 August 2025, I was asked by the Minister for WorkSafe and the TAC, the Hon. Ben Carroll, to undertake an independent review of the powers, functions and support of HSRs and ARREOs under the OHS Act and recommend any legislative, regulatory or operational changes to improve their effectiveness.

14. In undertaking the Review, I have been asked to give regard to contemporary issues and challenges relevant to employee representation in the OHS space, in the context of changes in working relationships and workplaces over the past twenty years since the OHS Act was introduced. In particular, I have been asked to consider:

- the effectiveness of current HSR and ARREO frameworks in supporting employees to advocate for measures to ensure a healthy and safe workplace
- opportunities to improve the effectiveness of existing HSR and ARREO powers, functions and support
- the effectiveness of penalties in promoting compliance with the OHS Act
- eligibility criteria for ARREOs, including whether there is a need to expand the range of people who can become an ARREO
- the adequacy and effectiveness of HSR and ARREO training, and potential opportunities to improve knowledge and awareness
- whether HSR and ARREO powers are exercised proportionately, and oversight, checks and balances are appropriate.

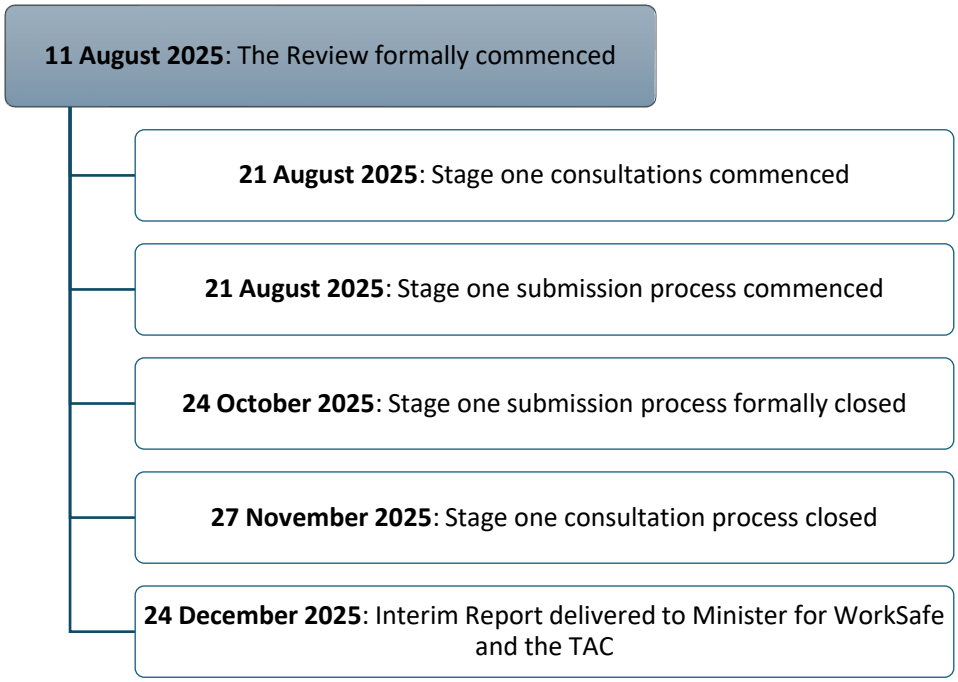
15. The full Terms of Reference (ToR) are available at Appendix A.

The Review's consultation process

16. Over the past four months, I have conducted consultations, held a public submission process, and undertaken my own research and analysis to inform the areas for further exploration identified in this Interim Report. Figure 1 provides a summary of these activities.

17. I have invited more than 140 stakeholders to be involved in the Review, with twenty-seven meetings held and forty submissions received. Employer and employee representatives, as well as people with lived experience, individuals and government departments and agencies, have all contributed to the Review. Appendix B provides a list of Stage one stakeholders.

Figure 1: Stage one process



Towards the Final Report

18. In future chapters of this Interim Report, I have outlined areas for further exploration based on the insights gathered to date. Over the coming three months, I look forward to working with interested stakeholders to refine these ideas in preparation for the Final Report. The Final Report will be delivered to the Minister for WorkSafe and the TAC by 31 March 2026.

Chapter 3: Summary of areas for further exploration

19. Table 1 provides an overview of the areas for further exploration that I have identified during Stage one consultations. The areas highlighted below are preliminary and require further analysis and stakeholder testing before the Final Report is delivered to the Minister for WorkSafe and the TAC in March 2026. Stage two consultations will build on my preliminary analysis of stakeholder feedback and inform the development of the Final Report's recommendations.

Table 1: Areas for further exploration

For the Final Report, I will consider:		
Structural issues with the OHS Act	**Duty to consult – small business** **Duty to consult – worker consultation** **Worker representation – gaps in coverage** **Worker representation – migrant workers**	• how to encourage consultation in small business, including raising awareness of formal and informal approaches • whether the definition of 'employer' and 'employee' under section 5 of the OHS Act should be amended to align with the 'PCBU' and 'worker' terminology used in the model WHS laws • opportunities to improve representation of employees from non-English speaking backgrounds, including the incorporation of culturally and linguistically inclusive requirements into consultation and participation mechanisms.
Operation of the OHS Act	**Worker consultation – awareness of HSR and ARREO powers** **Worker representation – industry-specific issues** **Worker representation – government frontline operations** **DWGs – transfer of business**	• opportunities to improve awareness of DWGs and the roles of HSRs, DHSRs and ARREOs, including guidance on effective consultation approaches, practical implementation tools and materials • whether the OHS Act should be amended to allow for the removal or temporary replacement of an HSR when they are on extended leave • options to support the operation of DWGs during the transfer of ownership.
	HSRs – reluctance to nominate	• whether Division 3, Part 7 of the OHS Act (Prohibition on coercion relating to designated work groups) should apply to the election of HSRs • whether amendments to the OHS Act are required to support the operation of:

For the Final Report, I will consider:		
	HSR powers – access to information **HSR powers – timeliness of information** **HSR powers – person assisting** **HSR powers – PINs** **HSR powers – PIN compliance times**	○ section 58(1)(a) – Powers of health and safety representatives ○ section 60(3) – Provisional improvement notices ○ section 63 – Attendance of inspector at workplace after issue of provisional improvement notice ○ section 70 – Obligation to persons assisting health and safety representatives ○ section 38 – Duty to notify of incidents ○ section 69(1)(a) – Other obligations of employers to health and safety representatives ○ section 65 – Formal irregularities or defects in provisional improvement notices • whether amendments to the OHS Act are required to support improved transparency of WorkSafe investigations and decisions.
	ARREO powers – copies of documents **ARREO powers – immediate or serious risks** **ARREO powers – entry notices** **ARREO powers – suspected contraventions** **ARREO powers – new suspected contraventions** **ARREO powers – awareness of entry notices** **ARREO powers – digital systems** **ARREO powers – regulatory burden**	• whether the OHS Act should be amended to allow ARREOs to: ○ make copies of documents and take samples ○ issue a PIN and direction to cease work ○ inspect places where members or eligible members will be expected to work ○ enter a workplace to consult with employees, subject to notice of between twenty-four hours and fourteen days • whether amendments to the OHS Act are required to clarify: ○ access to digital work systems ○ the level of detail required in an entry notice • opportunities to improve employer awareness of and access to information on ARREO entries, including publishing details of ARREO entry permits on WorkSafe's website • whether ARREOs should be allowed to enter workplaces to consult with workers and provide advice on OHS matters • whether ARREOs should be allowed to investigate new suspected contraventions without leaving a workplace.
	Alleged breaches – discriminatory conduct **Alleged breaches – discriminatory conduct threshold**	• whether Division 9, Part 7 of the OHS Act (Discrimination against employees or prospective employees) is operating as intended • whether amendments are required to the OHS Act to support the operation of: ○ section 54 – Election of health and safety representatives

For the Final Report, I will consider:		
	Disqualification – HSRs and ARREOs **Alleged breaches – impact on construction worksites** **Alleged breaches – election processes** **Alleged breaches – barriers to reporting** **Alleged breaches – recording on construction worksites**	○ section 56 – Disqualification of health and safety representatives, including the process to, and parties who can, disqualify HSRs ○ section 58(1)(ab) – Powers of health and safety representatives ○ section 81 – Who may hold an entry permit ○ section 85 – Revocation and disqualification, including the process to, and parties who can apply to, revoke ARREO entry permits and disqualify ARREOs ○ section 89(1)(ba) – Powers on entry • whether the OHS Act should be amended to improve protections for parties who report alleged breaches of the OHS Act in good faith • non-legislative mechanisms including options to strengthen and improve access to data and insights, and governance and oversight frameworks.
	HSR training – PIN and direction to cease work powers **HSR training – access** **HSR training – timeliness** **HSR training – accessible options** **HSR training – employer costs**	• HSR training entitlements, including options for delivering additional refresher training • opportunities to improve access to training, including the development of an online training hub • whether HSR training should be mandatory • DHSR training entitlements, including whether to extend HSR entitlements to attend other WorkSafe-approved courses to these roles.
	ARREO training – refresher training	• whether ARREOs should be required to undergo an annual refresher course.
	Training – middle managers and supervisors	• measures to improve knowledge and awareness of the role and functions of HSRs and ARREOs by employers, including middle managers and supervisors.
Regulatory oversight and compliance	**Dispute resolution – WorkSafe's role** **Dispute resolution – timeliness of disputes**	• whether employers should be required to provide WorkSafe an up-to-date list of HSRs, and a copy of any PINs issued, as soon as practicable after they receive the notice • whether ARREOs should be required to provide WorkSafe with a copy of any entry notices issued • whether amendments are required to improve the process for when a PIN or direction to cease work is disputed

For the Final Report, I will consider:		
	Prosecutions – other interested parties **WorkSafe oversight – baseline data**	• options to improve the function and timeliness of dispute resolution processes, including alternative models such as the establishment of an independent state-based body • whether the OHS Act should be amended to allow other parties to initiate private prosecutions • options to strengthen WorkSafe's data collection framework, including what data is required to support WorkSafe's oversight, compliance, and enforcement activities.
	Penalties – threshold levels	• the effectiveness of the penalty framework, including the appropriateness of existing penalties and thresholds • whether additional penalties should be introduced.

PART B:
The HSR and ARREO frameworks

Chapter 4: Victoria's legislative framework

Summary

20. In Victoria, the OHS Act is the main law governing OHS matters and provides a framework for improving the standards of OHS. The OHS Act is principles-based law that sets out key principles, duties of employers and rights of employees with respect to OHS matters. The OHS Act is underpinned by the following principles[2]:

> *'The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.'*
>
> *'Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.'*
>
> *'Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.'*
>
> *'Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.'*
>
> *'Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.'*

21. In 2003, the Victorian Government commissioned Chris Maxwell, KC, to review the *Occupational Health and Safety Act 1985* (1985 Act). While finding the framework structurally sound, the Maxwell Review recommended reforms to modernise the 1985 Act and ensure its relevance to Victorian workplaces[3]. These reforms included several provisions related to HSRs and ARREOs, including:

- introducing a right of entry into the workplace provision for ARREOs
- allowing DWGs to represent multiple employers and worksites
- allowing for the election of multiple HSRs and DHSRs
- introducing maximum three-year terms for HSRs
- confirming that HSRs are entitled to full pay while on initial and refresher training[4].

22. The OHS Act adopted key recommendations from the Maxwell Report[5] and came into effect via a staged approach from 1 July 2005[6].

OHS Act objects

23. The objects of the OHS Act are to:

- secure the health, safety and welfare of employees and other persons at work

- eliminate, at the source, risks to the health, safety or welfare of employees and other persons at work
- ensure that the health and safety of the public is not placed at risk by the conduct of undertakings by employers and self-employed persons
- provide for the involvement of employees, employers and organisations representing those persons, in the formulation and implementation of health, safety and welfare standards[7].

24. The OHS Act also sets out duties and rights to meet these objects and designates roles to support and enforce compliance. Notably, employers have duties to, so far as reasonably practicable, provide and maintain a working environment that is safe and without risks to health and monitor health and safety conditions[89]. Employees also have a duty to:

- take reasonable care for the health and safety of themselves
- cooperate with their employer with respect to any action taken by the employer to comply with the OHS Act and OHS Regulations[10].

OHS Regulations

25. The OHS Regulations regulate duties and obligations, and processes that support the OHS Act[11]. The OHS Regulations outline how employers should involve HSRs in consultation processes and the procedure to facilitate the resolution of OHS issues where there is no agreed procedure.

26. The OHS Regulations also prescribe the details that an ARREO entry permit must contain, including[12]:

- the name of the ARREO
- the name of the REO, or the relevant branch of the organisation, of which the ARREO is a permanent employee or officer
- the address of the REO or relevant branch of the organisation
- a photograph of the ARREO that is of the size used in Australian passports and that was taken not more than six months before it is attached to the permit
- the date of issue of the permit
- a unique number that identifies the permit
- a statement that gives effect to Schedule 19, that explains the entry powers of ARREOs and relevant offences.

27. WorkSafe has commenced a review to remake the OHS Regulations, which expire in April 2027.

Employee coverage

28. Under the OHS Act an[13]:

- ‘employee’ means a person employed under a contract of employment or contract of training
- ‘employer’ means a person who employs one or more other persons under contracts of employment or contracts of training.

29. The definition of ‘employee’ covers full-time, part-time, and casual employees, as well as apprentices, trainees, and labour hire workers. However, it excludes volunteers. The OHS Act

also covers independent contractors, and contractors and their employees or sub-contractors, in relation to matters which the employer has control over[14].

30. The OHS Act may apply to platform workers. Whether a platform worker is considered an employee depends on if they are engaged under an employment or independent contractor arrangement, and the extent the employer has control over the workplace.

31. Some Victorian workers fall under the scope of the Commonwealth's *Work Health and Safety Act 2011* (e.g. workers employed by the Australian Government).

32. Police and protective services personnel are also considered employees under the OHS Act[15].

Psychological Health Regulations

33. The Victorian Government introduced the Psychological Health Regulations, which came into effect on 1 December 2025[16]. The regulations:

- create new obligations for Victorian employers to identify and manage risks associated with psychosocial hazards in their workplaces
- set out the process for consulting with HSRs and involving them in the resolution of issues
- set out the process for involving HSRs in identifying, controlling, and reviewing hazards and risk controls.

34. Where reasonably practicable, HSRs should receive information relevant to their DWG ahead of employees and be invited to meet with the employer to consult on the matter[17]. HSRs can also ask employers to review risk control measures for psychosocial hazards[18].

Compliance codes

35. A compliance code provides a practical guide for employers on how they can comply with the OHS Act or OHS Regulations[19]. For example, the *Communicating occupational health and safety across languages to help employees from non-English speaking countries* compliance code provides guidance on how to consult with employees from non-English speaking countries[20].

Industrial relations

36. The FW Act allows union officials to enter workplaces for the purpose of investigating suspected contraventions of the FW Act and related instruments and to hold discussions with employees. Union officials need to hold a valid Fair Work entry permit, provide a valid entry notice, and meet other entry requirements to enter a workplace[21].

Discrimination

37. There are several legislative frameworks that provide protections against discriminatory conduct in Victorian workplaces, including:

Table 2: Discrimination legislation

Act	Summary
OHS Act	Contains protections and penalties for HSRs who face discriminatory conduct when undertaking their role.
***Equal Opportunity Act 2010* (EO Act)**	Places a positive duty on duty holders to eliminate discrimination, sexual harassment, and victimisation in an area of public life (such as work)[22]. The EO Act also prohibits discrimination based on a person's industrial activity, including if they join or refuse to join an industrial organisation[23].
FW Act	Prohibits adverse action against an employee or prospective employee because of protected attributes or conduct, including that they have a role or responsibility under a workplace law[24]. The General Protections laws protect employees from adverse action at work, such as not hiring a person or taking industrial action against an employer[25].

Information and privacy

38. Under the OHS Act, employers must allow HSRs access to information relating to hazards and employee health and safety[26]. Medical information must not be accessed without the employee's consent unless it is in a de-identified form and their identify cannot be reasonably ascertained[27].

39. There are several pieces of Victorian legislation that legislate the use of information and data, including:

Table 3: Victorian privacy legislation

Act	Summary
***Health Records Act 2001* (HR Act)**	Protects the privacy of an individual's health information that is held in the public and private sectors[28]. The HR Act also provides individuals with the right to access their information and an accessible framework for the resolution of complaints regarding the handling of health information.
Freedom of Information Act 1982	Provides people with the right to request access to documents held by Victorian public sector agencies[29].
***Privacy and Data Protection Act 2014* (PDP Act)**	The PDP Act provides for the responsible collection and handling of personal information in the Victorian public sector and provides remedies for interferences with an individual's privacy[30]. The PDP Act applies to public sector organisations, including Ministers and the Parliamentary Secretary, public sector agencies, councils, bodies established or appointed for public purposes, a person holding a public office or position, courts and tribunals, and Victoria Police[31]. Public sector organisations must also ensure that contracts contain provisions that prohibit the contractor from breaching or causing the agency to breach a Protective Data Security Standard in respect of any data held, used, managed, disclosed or transferred by the contractor on behalf of the agency[32].

40. The Commonwealth's *Privacy Act 1988* also protects the privacy of individuals and regulates how Australian Government agencies and organisations with an annual turnover of more than three million dollars, and some other organisations, handle personal information[33].

Model WHS laws

41. SWA published the model WHS laws in 2011, which aim to provide a nationally consistent approach to workplace safety and include model provisions covering HSRs and WHS permit holders[34].

42. For the model WHS laws or any amendments to have effect in a jurisdiction, equivalent legislation must be enacted in that jurisdiction. The Commonwealth and all states and territories in Australia, except Victoria, have adopted the model WHS laws with some variations.

Best Practice Review

43. SWA is undertaking a review of the model WHS Act and model WHS Regulations to strengthen and maintain harmonisation. The Best Practice Review is considering jurisdictional differences from the model WHS framework and recommendations from recent reviews and inquiries[35].

44. A final report is expected to be provided to Work Health and Safety Ministers in mid-2026. I will continue to monitor the progress of the Best Practice Review, including any implications for this Review, over the next three months.

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[2] *Occupational Health and Safety Act 2004* s 4
[3] Chris Maxwell, Occupational Health and Safety Act Review 2004, page 6
[4] WorkSafe Victoria, *Getting into the Act*, Second Edition (2005), pages 7-8 and 11
[5] Victoria, "Occupational Health and Safety Bill: Second Reading", *Parliamentary Debates (Hansard)*, Legislative Assembly, page 1759 [Rob Hulls, Minister for WorkCover]
[6] WorkSafe Victoria, *Summary of the Occupational Health and Safety Act 2004: A handbook for workplaces*, Edition no. 2 (2005), page 2
[7] *Occupational Health and Safety Act 2004* s 2
[8] *Occupational Health and Safety Act 2004* s 21
[9] *Occupational Health and Safety Act 2004* s 22
[10] *Occupational Health and Safety Act 2004* s 25
[11] WorkSafe Victoria, "Occupational Health and Safety Act and Regulations", accessed 15 December 2025, https://www.worksafe.vic.gov.au/occupational-health-and-safety-act-and-regulations
[12] Occupational Health and Safety Regulations 2017 reg 536
[13] *Occupational Health and Safety Act 2004* s 5
[14] *Occupational Health and Safety Act 2004* ss 21 and 35
[15] *Occupational Health and Safety Act 2004* s 5(2)(a)
[16] Occupational Health and Safety (Psychological Health) Regulations 2025 reg 3
[17] Occupational Health and Safety (Psychological Health) Regulations 2025 reg 9
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[20] WorkSafe Victoria, "Compliance code: Communicating occupational health and safety across languages", accessed 15 December 2025, https://www.worksafe.vic.gov.au/resources/compliance-code-communicating-occupational-health-and-safety-across-languages
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[26] *Occupational Health and Safety Act 2004* s 69(1)(a)
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Chapter 5: Victoria's regulatory framework

Introduction

45. Victoria's OHS regulatory framework seeks to foster a culture of collaboration among all parties, including employers, employees, and employer and employee representative groups. This collective approach aims to build trust, foster local workplace issue resolution, and strengthen compliance.

Regulatory framework

46. The following sections outline the roles and responsibilities of WorkSafe, employers, HSRs, ARREOs, and courts and tribunals in Victoria's OHS regulatory framework.

WorkSafe

47. WorkSafe administers the OHS Act and OHS Regulations and Victoria's workers' compensation scheme. The regulator has several functions under these legislative instruments, including:

- fostering a co-operative, consultative relationship between employers and their employees in relation to health, safety, and welfare
- co-operating and giving advice to organisations representing both employees and employers, and others
- disseminating information about duties, obligations, and rights
- promoting education and training
- monitoring and enforcing compliance
- formulating standards, specifications, or other forms of guidance to assist compliance with duties and obligations[36].

Other parties

48. A range of other parties and organisations are also involved in the broader regulatory framework, each contributing to consultation, issue resolution, and enforcement activities under the OHS Act and other relevant frameworks. Figure 2 provides an overview of these parties.

Figure 2: Regulatory framework

[36] *Occupational Health and Safety Act 2004* s 7(1)

Chapter 6: Duty to consult

Summary

49. The OHS Act places a clear duty on employers to consult with employees and HSRs. The following chapter outlines an employer's duty to consult under the OHS Act and OHS Regulations.

Influence of the Robens Review

50. In 1970, the UK Government commissioned the Robens Review, which was chaired by Lord Robens. One of the enduring outcomes of the Robens Review was its approach to self-regulation and advocacy of greater consultation between workers and employers. To quote the Committee's report[37]:

> *'the most fundamental conclusion to which our investigations have led us is this. There are severe practical limits on the extent to which progressively better standards of safety and health at work can be brought about through negative regulation by external agencies. We need a more effectively self-regulating system. This calls for the acceptance and exercise of appropriate responsibilities at all levels within industry and commerce. It calls for better systems of safety organisation, for more management initiatives, and for more involvement of workpeople themselves.'*

51. The Robens Review was influential in shaping OHS legislation in Australia. According to Creighton and Rozen 'between 1972 and 1991 all nine Australian jurisdictions enacted legislation which sought to give effect, to a greater or lesser extent, to the Robens approach to OHS regulation'[38]. With the exception of Victoria, this legislation has been replaced by the adoption of the model WHS laws, but the underpinning principles still remain.

Duty to consult – employers

52. Creighton and Rozen noted that the Maxwell Review 'considered that the absence of HSRs from the majority of Victorian workplaces meant that a consultation mechanism which assumed their presence was unlikely to be effective. This led Maxwell to recommend that employers be required to consult directly with their workforce about OHS matters[39].'

53. Accordingly, the OHS Act, which largely came into effect from 1 July 2005, introduced the following principles[40]:

> *'employers and employees should exchange information and ideas about risks to health and safety measures that can be taken to eliminate or reduce those risks'*
>
> *'employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.'*

54. The OHS Act and OHS Regulations set out specific requirements about when an employer is required to consult with employees[41] and HSRs[42] on OHS matters and how employers must

conduct these consultations[43], including with HSRs[44]. The OHS Regulations also contain specific consultation requirements for prescribed industries (i.e. major hazard facilities and mines).

55. Employers must consult employees, so far as reasonably practicable, when:

- identifying or assessing hazards and risks
- deciding how to control risks
- deciding on the adequacy of facilities for employees
- deciding on procedures to resolve OHS issues, consult, monitor health and workplace conditions and provide information and training
- deciding the membership of HSCs
- proposing changes that may affect the health or safety of employees to any of the following:
  - the workplace
  - plant, substances or other things used in the workplace
  - the work performed at the workplace
- any other thing prescribed by the regulations.

56. An employer who contravenes these sections is guilty of an offence[45].

Duty to consult – WorkSafe guidance

57. For consultation to be meaningful, employers must share with employees and HSRs all information about a matter involving an employee's health and safety. WorkSafe provides the following advice for employers on their website[46]:

- information should be provided in a timely way so that employees and HSRs have enough time to consider the matters, discuss them, seek advice, and then provide feedback to their employer
- information should be provided to HSRs in a reasonable time before it is provided to employees, unless it is not reasonably practicable
- information should be provided in a form that employees and HSRs can easily understand
- employees and HSRs may need information such as technical guidance about workplace hazards and risks (plant, equipment, and substances) and information about how to organise work (systems, data reports, procedures, and guidance material)
- information should not be withheld just because it is technical or may be difficult to understand
- employees and HSRs should be given time to process and seek advice on any information they have been provided
- employers should have a way to consult with employees from culturally or linguistically diverse backgrounds.

58. Before making a final decision, WorkSafe note that:

- employers need to respond to concerns and questions raised by employees and HSRs and provide feedback to them about options that were considered and explain why they made the decision
- while employers, HSRs and employees should aim to reach agreement through the process of consultation, agreement is not a required outcome under the OHS Act
- the responsibility to identify hazards and control risks in the workplace rests with the employer

- following consultation, employers should inform the HSR of the decision.

59. WorkSafe's guidance also provides examples of different consultation methods, including regular face-to-face discussions or meetings such as toolbox talks, DWG meetings, production meetings, or team meetings. They suggest that if the workplace is small and there are no HSRs, meetings or face-to-face discussions may be the best way to consult[47].

HSCs

60. HSCs are established by employers in consultation with employees. HSCs bring together HSRs, employees and employers and can improve and share OHS knowledge through discussions, the development of policies and procedures, and the distribution of meeting minutes and reports. HSCs are more common in medium to large workplaces than in smaller workplaces[48].

61. An employer must establish the HSC within three months after being requested to do so by an HSR or if required by the OHS Regulations to do so.

62. Under the OHS Act, the functions of HSCs include:

- facilitating co-operation between the employer and employees in instigating, developing, and carrying out measures designed to ensure the health and safety of employees
- formulating, reviewing, and disseminating (in other languages if appropriate) to the employees the standards, rules and procedures relating to health and safety that are to be carried out or complied with at the workplace
- other functions that are prescribed by the regulations or agreed between the employer and the committee[49].

63. Employers must, so far as is reasonably practicable, consult with employees when determining the membership of the HSC[50]. WorkSafe guidance notes that[51]:

- at least half of the committee should be employees and, so far as reasonably practicable, HSRs or DHSRs
- if the number of employee positions on the HSC is less than the number of willing and available HSRs, then all the employee positions should be HSRs
- employer representatives on the HSC should be persons involved at senior management levels in the organisation who are able to make decisions about health and safety.

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[37] Committee on Safety and Health at Work, *Safety and Health at Work: Report of the Committee 1970-72*, (London: 1972), page 12
[38] Creighton, Breen and Peter Rozen, *Health and Safety Law in Victoria*, 4th Edition (The Federation Press: 2017), pages 5 to 6
[39] Creighton, Breen and Peter Rozen, *Health and Safety Law in Victoria*, 4th Edition (The Federation Press: 2017), page 366
[40] *Occupational Health and Safety Act 2004* s 4
[41] *Occupational Health and Safety Act 2004* s 35(1)
[42] *Occupational Health and Safety Act 2004* s 35(4)
[43] *Occupational Health and Safety Act 2004* s 35(3)
[44] Occupational Health and Safety Regulations 2017 reg 21
[45] *Occupational Health and Safety Act 2004* s 35(6)
[46] WorkSafe Victoria, *Employee representation: A comprehensive guide to Part 7 of the Occupational Health and Safety Act 2004*, accessed 16 December 2025, https://www.worksafe.vic.gov.au/employee-representation-guide-part-7-ohs-act-2004

[47] WorkSafe Victoria, "Consultation: Safety basics", accessed 16 December 2025, https://www.worksafe.vic.gov.au/consultation-safety-basics
[48] WorkSafe Victoria, "Health and safety committee", accessed 18 December 2025, https://www.worksafe.vic.gov.au/health-and-safety-committees
[49] *Occupational Health and Safety Act 2004* s 72(3)
[50] *Occupational Health and Safety Act 2004* s 35(1)(e)
[51] WorkSafe Victoria, "Health and safety committees", accessed 16 December 2025, https://www.worksafe.vic.gov.au/health-and-safety-committees

Chapter 7: Health and safety representatives

Overview

64. The following chapter outlines the functions of DWGs and the role of HSRs under the OHS Act and OHS Regulations. The concept of DWGs[52] and the current HSR role was first introduced 40 years ago by the 1985 Act.

HSRs – employer obligations

65. As noted previously, the OHS Act imposes a duty on employers to consult with HSRs on OHS matters. This includes sharing relevant information, consulting with them, and considering their views. Employers also have obligations under Division 6, Part 7 of the OHS Act, as outlined in Table 4.

Table 4: Employer obligations under the OHS Act

Provision	Employer obligation
Other obligations of employers to health and safety representatives – section 69(1)(a)	Allow an HSR for the DWG to have access to information that the employer has relating to the health and safety of members, and actual or potential hazards that arise from the conduct of the undertaking of the employer or the plant or substances used for the purposes of that undertaking. HSRs cannot access medical information unless the employee provides consent, or the information does not identify an employee, and their identity cannot be reasonably ascertained.
Other obligations of employers to health and safety representatives – sections 69(1)(b) and 69(1)(c)	Allow an HSR to be present at an interview, between the person and the WorkSafe inspector or the person and an employer or its representative, concerning OHS matters, if the DWG member or a person the HSR represents consents.
Other obligations of employers to health and safety representatives – section 69(1)(d)	Allow an HSR to take time off work with pay to exercise their powers or take part in any training course (see Chapter 7 for further details).
Other obligations of employers to health and safety representatives – section 69(1)(e)	Provide facilities and assistance to an HSR to enable them to exercise their powers.
Obligation to persons assisting health and safety representatives – section 70	Allow a person assisting an HSR access to the workplace unless they consider the person to be unsuitable because they have insufficient OHS knowledge. The HSR can apply to the Magistrates' Court for an order to allow the person assisting access if denied.

66. Additionally, an employer must keep:

- an up-to-date list of HSRs and DHSRs and display it at each workplace or otherwise have it readily accessible to all employees[53]
- records of notifiable incidents (e.g. workplace deaths or treatment for spinal injury or electric shock) and make them available for inspection by the HSR[54].

DWGs – formation

67. Employees, by agreement with employers, can establish DWGs in workplaces[55]:

- operated by a single employer at one location, or at multiple locations (e.g. catering companies or businesses with multiple branches)
- with employees of more than one employer at one or more workplaces if all the parties agree (e.g. retail or industrial sites or industries that work remotely, such as farming).

68. The OHS Act also allows for multiple employer arrangements to increase options for workplace representation. These provisions allow employers to share training costs.

69. If an employee raises a request to establish a DWG, employers must do everything reasonable to ensure that negotiations commence within fourteen days[56]. There is no statutory time limit imposed for completion of negotiations.

70. Negotiations must only be directed at the following matters:

- the grouping of employees
- the number of HSRs and DHSRs
- the duration of their term (up to three years)
- whether a DWG may include independent contractors and their employees[57].

71. The following matters must be considered in negotiations concerning a DWG, including agreement variations, and determining unresolved matters[58]:

- the number of employees at the workplace or workplaces
- the nature of each type of work performed at the workplace or workplaces
- the number and grouping of employees who perform the same or similar types of work or who work under the same or similar arrangements
- the areas at the workplace or workplaces where each type of work is performed
- the nature of any hazards at the workplace or workplaces
- any overtime or shift working arrangements at the workplace or workplaces
- whether the employees speak other languages.

72. Unlike single-employer DWGs, the OHS Act does not authorise WorkSafe inspectors to resolve disputes regarding the formation of multiple-employer DWGs. However, WorkSafe is available to offer guidance throughout the negotiation process.

73. The OHS Act allows HSRs to represent independent contractors (and their employees) but only the employees of the principal employer can be involved in establishing the DWG and electing HSRs. Employees of an independent contractor may establish a DWG with their direct employer[59].

HSRs – eligibility and election

74. Under the OHS Act, HSRs are not mandatory. To be eligible to be an HSR, a person must be a member of a DWG. DHSRs are elected using the same process as HSRs and can exercise powers when the HSR is unavailable[60].

75. The members of a DWG determine how an election will be conducted. If they cannot reach agreement within a reasonable time, any member may ask a WorkSafe inspector to conduct the election or, if it is considered appropriate by the inspector, for another person to conduct the election. An election does not need to be conducted if the number of candidates equals the number of vacancies.

HSRs – powers

76. The OHS Act sets out the specific powers of HSRs. The HSR may use these powers for the purpose of[61]:

- representing members of the DWG/s or independent contractors, or a class of independent contractors, engaged by any of the employers, and any employees of such independent contractors, who work at a workplace at which members of the DWG/s work in regard to health and safety
- monitoring measures made by the employer or employers to comply with the OHS Act and OHS Regulations
- enquiring about anything that poses a risk to the health and safety of their DWG at the workplace or workplaces or arising from the undertaking from the employer or employers
- attempting to resolve OHS issues with their employer or employers in accordance with an agreed procedure, or prescribed procedure if there is no agreed procedure.

77. HSRs may also exercise these powers in relation to another DWG if there is a serious risk to that group, or if assistance is sought and their HSR is unavailable[62]. Table 5 provides a summary of HSR powers.

Table 5: HSR powers under the OHS Act

Power	Detail
Inspection powers – section 58(1)(a)	HSRs can inspect any part of the DWG's workplace at any time after giving reasonable notice[i] to the employer or its representative, and immediately in the event of an incident or any situation involving an immediate risk to the health or safety of any person.
Take photographs or measurements or make sketches or recordings – section 58(1)(ab)	HSRs can take photographs or measurements and make sketches, except during an interview or in workplaces or places restricted or prohibited by other legislation, such as airports or courts.

[i] *The OHS Act does not define reasonable notice for section 58(1)(a). WorkSafe's Employee representation handbook for workplaces, edition 5 notes that 'what is reasonable notice depends on the circumstances in any given case, and on what the employer and HSR jointly consider is reasonable. In any case, WorkSafe considers it should be within 24 hours'.*

Power	Detail
Accompany an inspector during an inspection – section 58(1)(b)	HSRs can accompany a WorkSafe inspector provided the matter is related to their DWG.
Require the establishment of a HSC – section 58(1)(c)	HSRs can request the establishment of a HSC.
Be present at an interview for a person the HSR represents – sections 58(1)(d) and 58(1)(e)	HSRs can attend an interview if the person consents.
Whenever necessary, seek the assistance of any person – section 58(1)(f)	HSRs can seek the assistance of another person whenever necessary.
Issue a PIN – sections 60 and 61	HSRs can issue a PIN, following consultation with an employer or a person who has management responsibility for the contravention or likely contravention. The PIN must specify the grounds for issuing the notice and a date to rectify the matter (at least eight days from the date the notice is issued).
Access to information concerning workplace hazards or risks – section 69(1)(a)	The OHS Act does not prescribe the types of information HSRs can request. However, they can access items such as safety data sheets, technical specifications, hygiene measurements, consultant reports, HSC minutes, and safe work procedures. HSRs cannot access medical information unless the employee provides consent, or the information does not identify an employee, and their identity cannot be reasonably ascertained.
Direction to cease work – section 74	HSRs can issue a direction, after consulting with the employer or their representative, if there is an immediate threat to a person's health or safety, and the nature of the threat and degree of risk do not allow issue resolution procedures to be implemented. The employer or the HSR may, after consultation between them, direct that the work is to cease. If consultation is not timely enough to address the risk, employees may also, at any time exercise their common law or contractual right to stop performing any work that places them in danger[63].

HSRs – removals and disqualifications

78. An employer may apply to the Magistrates' Court to disqualify an HSR on the ground that an HSR intended to cause harm to the employer or the undertaking of the employer by doing one of the following things:

- issued a PIN without a reasonable belief
- issued a direction to cease work under section 74
- exercised any other powers under Part 7 – Representation of employees
- used any information that they acquired from the employer for a purpose that is not connected with their exercise of powers[64].

79. The Magistrates' Court can disqualify an HSR for a period of time or permanently.

80. A majority of DWG members can resolve in writing that the HSR should no longer represent the group. The DWG members can only remove an HSR where they have been in the role for at least twelve months[65].

81. An HSR also ceases to hold office if a DWG is varied unless it is agreed or a WorkSafe inspector determines that the variation should not affect the HSR's term of office[66].

HSRs – WorkSafe support

82. WorkSafe has industry and representation support teams which provide dedicated support to HSRs, ARREOs and other industry stakeholders to ensure that all representatives are informed and empowered to support Victorian workplaces. As of October 2025, these teams comprised of seven inspectors, two industry liaison officers, two HSR support officers, one group leader and one manager.

83. WorkSafe triages HSR-related service requests through the industry and representation support teams to ensure consistent outcomes across the state. Some HSR matters are referred to their multi-disciplinary inspectorate, subject to capacity and other operational requirements.

84. WorkSafe provides the following HSR support:

- a dedicated webpage which houses guidance and resources relevant to HSRs and employers, including information about the importance of HSRs, a guide to employee representation and support available to HSRs from WorkSafe
- HSR support officers who provide support and advice to HSRs by clarifying the interpretation and use of Part 4 and Part 7 of the OHS Act, supporting HSRs via phone, email or in person and accompanying a WorkSafe inspector to a worksite where appropriate
- Industry liaison officers who provide information and support to duty holders in relation to the powers and obligations of HSRs
- a monthly newsletter for HSRs and employers which provides relevant guidance and keeps HSRs up to date about health and safety news
- a quarterly healthcare-specific newsletter and network meeting
- an HSR Podcast series and a YouTube channel that cover a range of broad topics about the roles and responsibilities of HSRs.

HSRs – training entitlements

85. HSRs and DHSRs can attend employer-funded initial and refresher courses if they provide at least fourteen days' notice to their employer[67].

86. The initial five-day course covers topics such as the OHS legislative framework, representation in the workplace, participation in consultation and issue resolution, and PIN and direction to cease work powers.

87. The one-day refresher training course covers the following subject matters:

- plant safety
- stress (to be replaced with psychological health in 2026)

- occupational violence
- gendered violence including sexual harassment
- hazardous manual handling (online and in-person training to be released in 2026).

88. Employers must also pay for any associated costs of the HSR and DHSR attending training, including[68]:

- the HSR or DHSR's normal wages, including entitlements such as shift work, regular overtime, higher duties, allowances, and penalty rates
- travel
- accommodation
- meals
- incidental expenses.

89. HSRs or DHSRs may request WorkSafe assistance when they cannot reach agreement on a course with their employer. WorkSafe will first attempt to facilitate agreement before selecting a course. Employers must not unreasonably refuse an HSR or DHSR's attendance at the course selected by WorkSafe, with penalties for non-compliance[69].

90. HSRs may also access other relevant WorkSafe-approved training to support them undertaking their role. Employers must provide time off and normal wages for additional WorkSafe-approved training but do not need to cover the cost of the course and other related expenses[70].

HSRs – training providers

91. WorkSafe is responsible for approving all HSR training courses[71]. As of October 2025, there were a total of fifty-five approved HSR training providers. OHS consultancy services and unions accounted for just over sixty per cent of approved providers. Table 6 below provides a breakdown of the provider type.

92. A list of HSR training providers is available via the HSR Training Provider Directory on WorkSafe's website. The directory provides information to HSRs and interested employees about the HSR training providers across Victoria and the training courses they provide.

Table 6: HSR providers by training provider type[72]

Provider type	Number
OHS consultancy services	18
Unions	16
TAFEs	9
Other (e.g. education and training, private, sole traders)	9
Employer associations	3

93. Training is evenly delivered by registered training organisations (twenty-seven providers or 49.1 per cent) and non-registered training organisations (twenty-eight providers or 50.9 per cent).

94. WorkSafe monitors HSR training through a number of avenues, including via:

- annual reporting by all approved providers

- its audit program, which consists of training observation audits, marketing and communications audits, and administrative audits (see Table 7)
- HSR training surveys
- external HSR training evaluations.

Table 7: HSR training provider audits[73]

Year	Number of audits
2024	60
2023	70
2022	57
2021	46
2020	34

95. HSR training providers are approved for five years and must re-apply at the end of this period. WorkSafe advised that:

- new providers are audited within the first year of being approved
- audits are then conducted every three years unless the regulator has identified non-conformances and follow-up audits are required on a more frequent basis.

HSRs – training attendance

96. A significant limitation in assessing the effectiveness of HSR training initiatives is the absence of comprehensive data on the number of HSRs and DHSRs in Victoria. Due to data limitations, it is not possible to determine with confidence the proportion of HSRs and DHSRs who have been trained or to evaluate whether training is reaching those most at risk. However, WorkSafe noted that approximately 7,284 HSRs and DHSRs attended training in 2024. Table 8 below provides a breakdown by year and course.

Table 8: HSR and DHSR training attendance[74]

Year	Total	Initial	Refresher
2024	7,284	4,552	2,732
2023	7,410	5,126	2,284
2022	7,012	4,591	2,421
2021	6,209	4,003	2,206
2020	5,034	3,087	1,947

97. OHS training is not mandatory for employers, including middle managers and supervisors. HSR training is predominantly attended by HSRs and DHSRs. However, approximately one in eight attendees in 2024 were categorised as managers or supervisors, HSC members, and others (see Table 9 for total attendance).

Table 9: HSR training attendance of all participants[75]

Year	Total	Initial	Refresher
2024	8,340	5,264	3,076
2023	8,315	5,792	2,523
2022	8,000	5,276	2,724

Year	Total	Initial	Refresher
2021	7,103	4,575	2,528
2020	5,741	3,537	2,204

HSRs – training costs

98. Table 10 provides an overview of the costs for HSR training courses. To date, I have been unable to identify any costings for the associated costs of attending these courses.

Table 10: HSR training – cost by selected training providers[ii]

Training provider	Cost
VCCI – Melbourne and Ballarat[76777879]	**Initial training** – $950 (GST excl.) for members and $1,450 (GST excl.) for non-members, and $199 per make-up day. **Refresher training** – $395 (GST excl.) for members and $610 (for non-members), covering one of the following: • Plant theme • Work-related stress • Work-related violence
Pinnacle Safety and Training – Braeside and Port Melbourne[80]	**Initial training** – $875 for public courses (quote can be arranged for group bookings)
VTHC[81]	**Initial training** – $1,200 + GST for general, or $990 + GST for the education sector until 1 January 2026 (then increases to $1,200 + GST) **Refresher training** – $450 + GST for general, or $380 + GST for the education sector until 1 January 2026 (then increases to $450 + GST), covering one of the following • OHS training • work-related gendered violence, including sexual harassment • education specific OHS training.
Fire and Safety Australia – Sunshine West and Mulgrave[8283]	**Initial training** – $995 **Refresher training** – $395
Chrisholm Institute – Berwick, Mornington Peninsula, Dandenong, and Cranbourne[8485]	**Initial training** – $1,059 **Refresher training** – $320
WAM Training – Laverton[8687]	**Initial training** – $880 **Refresher training** – $297

[ii] The information contained within Table 10 is based on publicly available information as of 10 December 2025. Not all providers indicate whether GST is included without progressing through the enrolment process.

Training provider	Cost
HAZCON – Notting Hill, Traralgon, Warragul, Sale, Bairnsdale, Melbourne, Geelong, and Bendigo[8889]	**Initial training** – $1,199 to $1,399 **Refresher training** – $440 to $475
BeSafe – Ballarat, Portland, and Shepparton[9091]	**Initial training** – $990 **Refresher training** – $370
The Centre for U (ETU)[9293]	**Initial training** – Free for ETU members or $943 for non-members **Refresher training** – Free for ETU members or $291 for non-members

[52] Johnston, Richard and Michael Tooma, *Work Health and Safety Regulation in Australia* (The Federation Press: 2022), page 189
[53] *Occupational Health and Safety Act 2004* s 71
[54] *Occupational Health and Safety Act 2004* s 38(4)
[55] *Occupational Health and Safety Act 2004* pt 7 divs 1 and 2
[56] *Occupational Health and Safety Act 2004* s 43(3)
[57] *Occupational Health and Safety Act 2004* ss 44 and 48
[58] *Occupational Health and Safety Act 2004* ss 46 and 49
[59] WorkSafe Victoria, "Establishing and negotiating designated work groups", accessed 16 December 2025, https://www.worksafe.vic.gov.au/establishing-and-negotiating-designated-work-groups
[60] *Occupational Health and Safety Act 2004* s 57
[61] *Occupational Health and Safety Act 2004* s 58(2)
[62] *Occupational Health and Safety Act 2004* s 59
[63] WorkSafe Victoria, "Provisional improvement notices and direction to cease work", accessed 16 December 2025, https://www.worksafe.vic.gov.au/provisional-improvement-notices-and-direction-cease-work
[64] *Occupational Health and Safety Act 2004* s 56
[65] *Occupational Health and Safety Act 2004* s 55(2)(d)
[66] *Occupational Health and Safety Act 2004* s 55(2)(e)
[67] *Occupational Health and Safety Act 2004* s 67
[68] *Occupational Health and Safety Act 2004* s 67(4)
[69] *Occupational Health and Safety Act 2004* s 67(7)
[70] *Occupational Health and Safety Act 2004* s 69(1)(d)
[71] *Occupational Health and Safety Act 2004* ss 67(3)(a) and 69(1)(d)(ii)
[72] WorkSafe, unpublished data
[73] WorkSafe, unpublished data
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Chapter 8: Authorised representatives of registered employee organisations

ARREOs – overview

99. As noted previously, the Maxwell Review laid the foundation for significant reforms to Victoria's OHS framework, including the introduction of provisions that provide union officials the right to enter workplaces to investigate OHS matters.

100. When the OHS Act was first introduced, the then Bracks Government noted that it was the government's belief 'that unions have a positive role to play in supporting employees and employers in resolving workplace health and safety issues and creating a cooperative and more proactive culture when it comes to risk prevention[94]'. The second reading speech also noted that[95]:

> *'government's expectation is that the need for sanctions will not arise, but in the event that any individual does not hear the message — improper use of the right of entry will not be tolerated and tough sanctions will apply.'*
>
> *'it is critical for the proper implementation of the right of entry that the powers are exercised appropriately and promote cooperation in the workplace in the interests of health and safety.'*
>
> *'WorkSafe will be available to assist the parties in relation to the operation of these provisions.'*

101. Prior to the introduction of the OHS Act, union officials did not have explicit rights to enter a workplace to investigate OHS matters. Under the 1985 Act, they could enter the workplace to assist an HSR, unless the employer considered them an unsuitable person. This provision was not limited to union officials — it could be any person with OHS knowledge[96].

ARREOs – eligibility

102. A person is eligible to apply for an ARREO entry permit for a period of three years if they:

- are a permanent employee or officer of a union
- have satisfactorily completed a WorkSafe-approved training course
- are not disqualified from holding an entry permit by the Magistrates' Court.

103. The Magistrates' Court (Occupational Health and Safety) Rules 2025 (Court Rules) prescribe the forms for applications to the Court under sections 83 and 85 of the OHS Act (Issue of entry permits and Revocation and disqualification). The Court Rules are made under section 16 of the *Magistrates' Court Act 1989*.

104. The Magistrates' Court considers whether the person has been convicted or found guilty of an offence against Part 8 of the OHS Act, or an indictable offence in the five years prior to the application, when issuing the entry permit.

105. WorkSafe issues the Magistrates' Court a statement of completion certificate that is signed by the Chief Health and Safety Officer to provide evidence that a person has satisfactorily completed the training approved in accordance with section 81(b) of the OHS Act.

106. Entry permits expire three years after they are issued, or when the ARREO ceases to be a permanent employee of an REO or when the organisation ceases to be an REO.

107. ARREOs must also have a Fair Work entry permit, which is issued by the FWC under section 512 of the FW Act. The FWC can issue an entry permit to an official of an REO if the Commission is satisfied that the official is a fit and proper person to hold an entry permit. An official is a person who holds an office or is an employee of the REO.

ARREOs – entry powers

108. An ARREO can enter a workplace, during working hours, to enquire into suspected contraventions of the OHS Act. They may only do so if they reasonably suspect a contravention of OHS Act, which relates to, or affects a member or person they are authorised to represent[97].

109. Upon entry, an ARREO must take all reasonable steps to notify the employer (or person with management and control of the work at the place) and an HSR of their entry by[98]:

- producing their valid ARREO entry permit and Fair Work entry permit[99] for inspection
- giving a notice outlining a description of the suspected contravention(s).

110. The ARREO must produce their entry permit for inspection if asked to do so when exercising any of their powers[100].

111. An ARREO can undertake the following actions under section 89 of the OHS Act, provided that it is reasonable for the purpose of enquiring into the suspected contraventions:

- inspecting any plant, substance, or other thing at the place (including a document)
- observing work at the place
- taking photographs or measurements or making sketches or recordings (including audio or film)
- consulting with one or more employees (with their consent) at the place, who are members or are eligible to be members of the REO
- consulting with any employer at the place about anything relevant to the matter into which the ARREO is enquiring.

112. If an issue arises between the ARREO and the employer, or a person who has management control of the workplace, about the exercise of any of those powers, either party can ask WorkSafe to arrange for an inspector to attend at the place to enquire into the issue[101].

113. WorkSafe must ensure that an inspector attends the place as soon as possible after the request is made and the inspector:

- must as soon as possible enquire into the issue
- may perform any of their functions or exercise any of their powers under the OHS Act that they consider reasonably necessary in the circumstances[102].

ARREOs – limitations

114. ARREOs need consent to enter places used for residential purposes and cannot exercise their powers in a way that would stop work unless they have employer approval[103]. However, ARREOs can issue a warning to employees if they reasonably believe there is an immediate and significant risk of serious injury or death.

115. ARREOs cannot seize property or copy documents.

ARREOs – revocation and disqualification

116. WorkSafe or an employer may apply to the Magistrates' Court to revoke an ARREO entry permit if they[104]:

- intentionally hindered or obstructed any employer or employee in exercising their power
- acted unreasonably or for a purpose other than exercising an ARREO power
- intentionally used or disclosed, for a purpose not reasonably connected with the exercise of ARREO powers, information that was acquired from any employer or employee.

117. The Magistrates' Court must find on the balance of probabilities that any of the above matters have occurred, before being able to revoke the permit. The Magistrates' Court must consider the extent of harm, loss, or damage, and the ARREO's past record in exercising their powers[105].

118. The Magistrates' Court may make an order to disqualify the ARREO from holding an entry permit for up to five years[106].

119. The FWC can impose conditions on, suspend, or revoke a Fair Work entry permit issued under the FW Act[107].

ARREOs – WorkSafe support

120. ARREO support is predominantly provided by the VTHC and their unions.

121. WorkSafe provides ARREOs with guidance when a WorkSafe inspector attends a workplace and a dispute arises over exercise of their powers. The regulator also publishes guidance for both employers and ARREOs about right of entry powers. This guidance was updated in December 2025.

ARREOs – training

122. ARREOs must undertake a WorkSafe-approved training course to be eligible to apply for an entry permit. This training covers off on topics including basic OHS, the OHS Act and the operation of Part 8.

123. The VTHC is the only approved training provider for ARREOs. The VTHC's training is delivered in two parts, with an option for attendees to have prior learning recognised and only attend Part B. As of December 2025, the cost for Part A and Part B was $550 plus GST each[108].

124. The course materials consist of two components:

- Part A: outlines the OHS legal framework and contains information taken from the first two days of the VTHC's WorkSafe-approved HSR initial OHS training course

- Part B: a two-day program covering the legislative requirements and practical application of Part 8 of the OHS Act.

125. WorkSafe evaluates the VTHC's training course material and provides input. They also attend each course to confirm the attendance of the listed participants, which forms part of the regular authorisation process[109]. In addition, WorkSafe noted that:

- the last review of the ARREO training course was carried out approximately 18 months ago (as of October 2025)
- they worked collaboratively with the VTHC to review materials for this course to ensure it is fit-for-purpose and appropriate
- WorkSafe's Occupational Health and Safety Advisory Committee, which is made up of a number of subject matter experts, union secretaries and employer representatives, were consulted on and reviewed updated training materials for this course in the first quarter of 2024.

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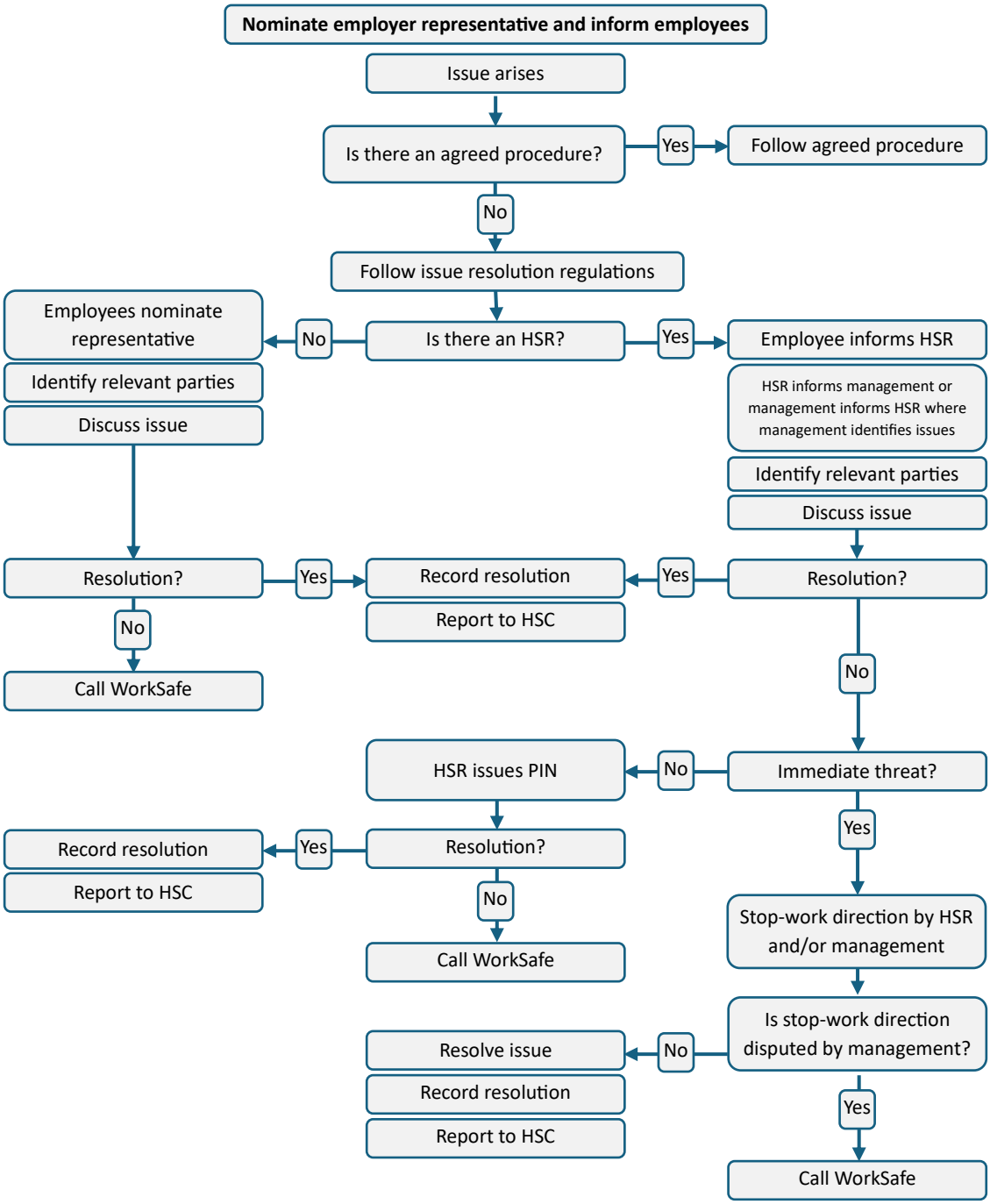
[94] Victoria, "Occupational Health and Safety Bill: Second Reading", *Parliamentary Debates (Hansard)*, Legislative Assembly, page 1762 [Rob Hulls, Minister for WorkCover]
[95] Victoria, "Occupational Health and Safety Bill: Second Reading", *Parliamentary Debates (Hansard)*, Legislative Assembly, page 1763 [Rob Hulls, Minister for WorkCover]
[96] Creighton, Breen and Peter Rozen, *Health and Safety Law in Victoria*, 4th Edition (The Federation Press: 2017), page 427
[97] *Occupational Health and Safety Act 2004* s 87
[98] *Occupational Health and Safety Act 2004* s 88
[99] *Fair Work Act 2009* (Cth) s 494
[100] *Occupational Health and Safety Act 2004* s 89(2)
[101] *Occupational Health and Safety Act 2004* s 89(3)
[102] *Occupational Health and Safety Act 2004* s 89(4)
[103] *Occupational Health and Safety Act 2004* s 90
[104] *Occupational Health and Safety Act 2004* s 85(1)
[105] *Occupational Health and Safety Act 2004* s 85(5)
[106] *Occupational Health and Safety Act 2004* s 85(4)(b)
[107] *Fair Work Act 2009* (Cth) s 510
[108] We Are Union, "ARREO Training Course", accessed 22 December 2025, https://www.weareunion.org.au/arreo_training
[109] WorkSafe Victoria, unpublished information

Chapter 9: Oversight, compliance, and enforcement

Issue resolution and disputes

126. The OHS Act sets out the process for resolving an OHS issue in the workplace. Employers and employees must attempt to resolve the OHS issue by following an agreed procedure, if one has been established between themselves, or otherwise the procedure set out under the OHS Regulations[110]. Figure 3 sets out the issue resolution process for both situations.

Figure 3: Issue resolution procedure flowchart[111]



127. The issue resolution process must involve the employer or a representative who has appropriate seniority and is sufficiently competent to act on an employer's behalf, and employees affected by the issue or their HSR. These parties can also ask for other parties to be involved, such as an employer association or an ARREO[112].

128. WorkSafe has guidance on the OHS issue resolution process on its website[113]. The guidance explains that OHS issues can cover any number of matters, such as the detection of a potential workplace hazard or the proposed introduction of new plant, equipment, or work processes.

129. This guidance also explains how WorkSafe applies the legislation in practice. WorkSafe considers an agreed procedure must[114]:

- be genuinely agreed between the employer, HSRs and employees
- describe a process or steps to follow to resolve issues
- include a way to facilitate the resolution of issues and not only set out a process to notify an HSR or supervisor of the issue
- be in place for the purpose of resolving OHS issues
- be consistent with the OHS Act.

130. If the agreed procedure does not meet the above criteria, the procedure under the OHS Regulations applies. Part 2.2 of the OHS Regulations provides for a default OHS issue resolution procedure (see Figure 3) and requires the details of an agreement or resolution to be reported to the HSC (if one exists). HSRs may issue a PIN or direction to cease work when an agreement is not reached.

WorkSafe – workplace visits

131. Table 11 below provides an overview of the total workplace visits WorkSafe made in relation to DWGs, HSRs and ARREOs in 2024/25. The top three reasons for a visit was a disputed PIN, alleged section 76 discrimination, and non-complied PIN.

Table 11: WorkSafe visits by reason, 2024/25

Visit Reason	Total Visits	Total Notices	Total Improvement Notices
ARREO power of entry dispute	45	9	8
Alleged section 76 discrimination	128	12	10
DWG unresolved particulars	43	2	1
Disputed PIN	328	51	8
Employee consultation dispute	21	1	1
HSR election dispute	54	0	0
HSR training	2	0	0
HSC dispute	6	0	0
Issue resolution (general)	9	0	0
Non-complied PIN	73	19	19
Work cessation dispute	42	5	5

WorkSafe – incident response framework

132. WorkSafe's Incident Response Framework articulates all notification types and system response levels. When WorkSafe receives a notification, an assessment is made based on the injury level, highest potential injury level, current risk level, the location and type of risks. System response levels are indicated from numbers one to eleven, with one being the highest response level.

133. An example of a Response Level 1 is 'a significant incident has occurred resulting in multiple serious or life-threatening injury/s and or deaths with residual risk'. Under this classification an inspector, investigator and others as required would attend within two hours for metropolitan Melbourne and four hours for regional Victoria.

134. In July 2025, WorkSafe introduced a new process to provide a consistent compliance and enforcement approach to HSR and ARREO matters. After an HSR or ARREO issue has been given a response level, it is then allocated to the representation support team (RST) for triaging and action. Prior to this time, cases were directed to the local multidisciplinary team.

135. WorkSafe has implemented a Service Level Agreement which outlines the required times for responding to HSR and ARREO matters (see Table 12).

Table 12: HSR and ARREO incident response times

Case type	WorkSafe response time
ARREO power dispute	Two hours (four hours regional) – phone contact within fifteen minutes
Alleged s76 discrimination	One working day (phone contact)
DWG unresolved particulars	Ten working days
Disputed PIN	Prior to compliance date
Employee consultation dispute	Ten working days
HSR election dispute	Ten working days
HSR training	Ten working days
HSC dispute	Ten working days
Issue resolution (general)	Immediate risk – two hours (four hours regional) Non-immediate risk – ten working days
Non-complied PIN	Immediate risk – two hours (four hours regional) Non-immediate risk – ten working days
Work cessation dispute	Two hours (four hours regional)
Incident injury (*for comparison*)	Two hours (four hours regional) Five working days if no potential for further risk / injury to person/s
Health and safety concern (*for comparison*)	Immediate risk – two hours (four hours regional) Non-immediate risk – ten working days (optional response)

136. Overflow response work is allocated to local teams with support available from the RST for guidance and attendance at visits and interviews. Since the new triage model commenced in July 2025, one ARREO dispute has been directed to the local multidisciplinary team (as of 17 December 2025).

WorkSafe's – issue resolution and disputes

137. WorkSafe can assist when an OHS issue is not resolved within a reasonable time or is the subject of a direction to cease work. A WorkSafe inspector may visit the workplace to investigate the issue[115]. WorkSafe's guidance notes that 'reasonable time' will vary depending on the circumstances. They recommend that minor matters should be resolved within one week, and for complex matters, two to three weeks[116].

138. A WorkSafe inspector must attend a workplace as soon as possible after either party makes a request[117]. They have dedicated powers and functions and can take remedial action for a suspected breach of the OHS Act through issuing enforcement instruments. Table 13 provides an overview of these enforcement instruments[118]:

Table 13: Summary of enforcement measures

Enforcement measure	Summary
Non–disturbance notice	Issued to ensure that an incident site is preserved for investigation. This notice requires the occupier to stop the use or movement of, and prevent interference with, specified plant, substances, or other things. A WorkSafe inspector may decide that further inspection is necessary to determine whether a prohibition notice should be issued and/or that a comprehensive investigation should be undertaken to determine whether a contravention that may warrant prosecution has occurred.
Improvement notice	An improvement notice is appropriate when a WorkSafe inspector considers that an activity does not involve an immediate risk but requires corrective steps to comply with OHS laws. If the duty holder does not comply with the improvement notice by the specified date, a comprehensive investigation (see WorkSafe – investigations) can commence and may lead to a prosecution for failure to comply and/or the alleged contravention for which the improvement notice was originally issued.
Prohibition notice	A prohibition notice is issued when there is a reasonable belief that there is an immediate risk to health and safety, and a WorkSafe inspector determines that the activity must stop until the risk is removed. A prohibition notice requires that the activity cease (or cease occurring in the specified way) until the risk has been remedied. If the prohibition notice is not complied with, an investigation will usually commence with a view to prosecute for failure to comply with the prohibition notice and/or any alleged contravention of OHS laws that resulted in the immediate risk. WorkSafe also has the power to apply to the Supreme Court for an order compelling a person to comply with a prohibition notice.

Enforcement measure	Summary
Directions	A WorkSafe inspector may give directions (either orally or in writing) to a person at a workplace if they reasonably believe that it is necessary because of an immediate risk to the health or safety of any person. It is an offence to refuse or fail to comply with these directions without having a reasonable excuse. If a direction is not complied with, a comprehensive investigation will usually commence with a view to prosecute for failure to comply with the direction.
Affirm, modify, or cancel a PIN	A WorkSafe inspector will either affirm (with or without modification) or cancel the PIN. Prior to determining the appropriate action, an inspector should endeavour to discuss a PIN with the HSR who issued it. Within seven days of the PIN being issued, the person who was issued the PIN (or their employer) may request for an inspector to review the notice. The WorkSafe inspector must decide to affirm with or without changes, or cancel the PIN, as soon as possible following an enquiry[119]. Alleged non-compliance with a PIN will generally be investigated by WorkSafe in the same manner as non-compliance with a notice issued by an inspector.

139. WorkSafe inspectors can also attend a workplace when a dispute occurs between an ARREO and the employer or their management representative. They must enquire into the issue and may use any of their powers as reasonably necessary[120].

WorkSafe – investigations

140. WorkSafe uses a risk-based compliance strategy, weighing the likelihood and impact of non-compliance. WorkSafe's compliance strategy incorporates a constructive compliance approach which recognises the importance of providing information and education about OHS duties and responsibilities[121].

141. WorkSafe conducts investigations (which WorkSafe calls 'comprehensive investigations') before deciding to prosecute. They conduct these investigations to determine whether a contravention of the OHS Act has occurred and to gather information that can assist in preventing future OHS contraventions.

142. WorkSafe applies specific enforcement criteria – strategic value, risk level, and offender culpability – to determine the course of its comprehensive investigations, which typically apply in high-risk or strategically significant cases, including:

- non-compliance with a notice or direction
- offence against a WorkSafe inspector
- offence against an HSR or HSC
- offence against an ARREO
- discrimination
- coercion
- incident notification and site preservation.

143. After a comprehensive investigation there is a range of options available to WorkSafe, including: initiating prosecution proceedings, taking no further action, issuing a letter of warning or caution, and accepting an offer to enter into an enforcement undertaking or undertake a criminal justice diversion program.

144. Any person may request that WorkSafe commence a prosecution if they consider that an offence under the OHS Act has occurred, and the regulator has not commenced a prosecution within six months of the alleged offence. Within three months of receiving a valid request, WorkSafe will investigate the matter.

Appealing WorkSafe decisions

145. The regulator's Internal Review Unit (IRU) can review the following WorkSafe inspector decisions[122]:

Table 14: Reviewable decisions under the OHS Act

Reviewable decision	Who can apply
Determination of unresolved particulars concerning DWGs – section 45	• An employee whose interests are affected by the decision • An employer whose interests are affected by the decision.
Appointment of a person to conduct an election of an HSR – section 54(4)(b)	• An employee whose interests are affected by the decision • An employer whose interests are affected by the decision.
Decision to affirm or cancel a PIN – section 63(3)(b)	• The person to whom the PIN was issued • The HSR who issued the PIN • An HSR who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision • An employee whose interests are affected by the decision • An employer whose interests are affected by the decision.
Determination that there was reasonable cause for employees to be concerned for their health and safety – section 75(4)(b)	• An employee whose interests are affected by the decision • An employer whose interests are affected by the decision • An HSR whose direction under section 74 to cease work gave rise to the decision.
Non-disturbance notice – section 110(1)	• The person to whom the non-disturbance notice is issued • An HSR who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision • An employee whose interests are affected by the decision • An employer whose interests are affected by the decision.

Reviewable decision	Who can apply
Improvement notice – section 111(1) **Certification that matters the subject of an improvement notice have been remedied – section 111(3)(a)**	• The person to whom the improvement notice is issued • An HSR who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision • An employee whose interests are affected by the decision • An employer whose interests are affected by the decision.
Prohibition notice – section 112(1) **Certification that matters the subject of a prohibition notice has been remedied – section 112(1)**	• The person to whom the prohibition notice is issued • An HSR who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision • An employee whose interests are affected by the decision • An employer whose interests are affected by the decision • An HSR whose direction under section 74 to cease work gave rise to the decision.
Variation or cancellation of a non-disturbance notice, improvement notice or prohibition notice – section 114	• The person to whom the notice concerned was issued • An HSR who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision • An employee whose interests are affected by the decision • An employer whose interests are affected by the decision • In the case of a prohibition notice, an HSR whose direction under section 74 to cease work gave rise to the notice.

146. An application for an internal review must be made within fourteen days after the person becomes aware of the notice. In some circumstances, the IRU may provide a person more time[123].

147. If a relevant party is not satisfied with the internal review decision, they may apply to VCAT for review. An application must be made to VCAT within fourteen days of the applicant becoming aware of the decision or receiving a statement of reasons (whichever period ends last)[124]. VCAT can make decisions, such as affirming, varying, and setting aside the decision and make another decision or remitting the decision for re-consideration by the decision maker[125].

Discriminatory conduct

148. Section 76 of the OHS Act prohibits employers from discriminating against HSRs.

149. Discrimination under this provision refers to employers or prospective employers who dismiss, disadvantage, or deny employment opportunities. This could be based on a person's role as an HSR or member of the HSC. It could also be based on actions taken in response to the exercise of powers under the OHS Act, including assisting or raising concerns with a WorkSafe inspector, an HSR or ARREO, a member of the HSC or an employee of the employer.

150. An employer may only be found guilty of an offence if the reason mentioned is the dominant reason the employer or prospective employer engaged in the conduct[126]. If all the facts constituting the offence other than the reason for the conduct of the accused are proved, the

accused bears the onus of proving that the reason alleged in the charge was not the dominant reason the accused engaged in the conduct[127].

151. If an employer or prospective employer is convicted or found guilty, the Magistrates' Court may make an order that the offender pay damages, the HSR be reinstated or re-employed to their former role or a similar role (if the original role is not available) or the prospective employee be employed in the position that they applied for or a similar position[128].

152. WorkSafe received fifty-four reports of discriminatory conduct in relation to sections 76 and 78D of the OHS Act in 2025 (see Table 15). There have been six prosecutions between 2012 and 2022 relating to section 76 of the OHS Act. Two cases resulted in a fine without conviction and one with a fine and conviction (see Table 16).

Table 15: Number of reports of discriminatory conduct[129]

Calendar year	Number
2021	49
2022	88
2023	100
2024	91
2025 (as of 31 October)	54

Table 16: Number of prosecutions for discrimination – section 76 of the OHS Act[130]

Duty holder	Date prosecution completed	Outcome	Penalty fine
Lamilla Nominees Pty Ltd	03/07/2012	Charges withdrawn	N/A
Woods Auto Shops (Holdings) Pty Ltd	26/02/2014	Pleaded Guilty - Fined without conviction	$35,000
Eugene McKeogh	26/02/2014	Charges withdrawn	N/A
Patrick Stevedores Holdings Pty Ltd	17/12/2018	Pleaded not Guilty - Convicted and fined	$475,000
Department of Health and Human Services	19/08/2022	Notice of Discontinuance filed by the DPP	N/A
Transdev Melbourne Pty Ltd	25/08/2022	Pleaded Guilty - Fined without conviction	$30,000

[110] *Occupational Health and Safety Act 2004* s 73
[111] WorkSafe Victoria, "Resolution of health and safety issues", accessed 16 December 2025, https://www.worksafe.vic.gov.au/resolution-health-and-safety-issues
[112] WorkSafe Victoria, "Resolving occupational health and safety issues", accessed 16 December 2025, https://www.worksafe.vic.gov.au/resolving-occupational-health-and-safety-issues
[113] WorkSafe Victoria, "Resolution of health and safety issues", accessed 16 December 2025, https://www.worksafe.vic.gov.au/resolution-health-and-safety-issues
[114] WorkSafe Victoria, "Resolving occupational health and safety issues", accessed 16 December 2025, https://www.worksafe.vic.gov.au/resolving-occupational-health-and-safety-issues
[115] *Occupational Health and Safety Act 2004* s 75(1)

[116] WorkSafe Victoria, "Resolution of health and safety issues", accessed 16 December 2025, https://www.worksafe.vic.gov.au/resolution-health-and-safety-issues
[117] *Occupational Health and Safety Act 2004* s 75(2)
[118] *Occupational Health and Safety Act 2004* pt 9 and s 63
[119] *Occupational Health and Safety Act 2004* s 63
[120] *Occupational Health and Safety Act 2004* s 89(4)
[121] WorkSafe Victoria, *A guide for employers: Occupational health and safety compliance and enforcement policy*, Edition 2 (2021), pages 5 to 6
[122] *Occupational Health and Safety Act 2004* s 127
[123] *Occupational Health and Safety Act 2004* s 128
[124] *Occupational Health and Safety Act 2004* s 129
[125] *Victorian Civil and Administrative Tribunal Act 1996* s 51
[126] *Occupational Health and Safety Act 2004* s 76(3)
[127] *Occupational Health and Safety Act 2004* s 77
[128] *Occupational Health and Safety Act 2004* s 78
[129] WorkSafe, unpublished data
[130] WorkSafe, unpublished data

Chapter 10: Penalty framework

The penalty framework

153. Tables 17 and 18 outline the offences and maximum penalty units relevant to HSRs and ARREOs under the OHS Act.

154. Penalty units determine the amount a person can be penalised when they commit an offence. From 1 July 2025 to 30 June 2026, the value of a penalty unit is $203.51. The penalty unit is set annually by the Victorian Treasurer and is updated on 1 July each year.

155. If the Victorian Treasurer does not fix an annual rate for a financial year (or does not fix a rate by 1 March), the annual rate that was determined for the previous financial year is to be the rate by which the amount of a penalty unit is adjusted for the financial year[131].

Table 17: HSR-related penalties under the OHS Act

Offence	Maximum penalty
Breach of provisions in relation to displaying or giving notice of a PIN issued by an HSR – section 60 **Failure of employer to ensure written list of HSRs is up to date and accessible to employees – section 71**	Natural person: five penalty units ($1,018) Body corporate: twenty-five penalty units ($5,088)
Failure of employer to start negotiations to establish DWG within fourteen days after a request – section 43 **Failure of employer to give written notice to employees on the establishment of DWG, or its variation – sections 44 and 48** **Failure of employer to establish an HSC within three months of being requested to do so by an HSR or if required by OHS Regulations – section 72**	Natural person: ten penalty units ($2,035) Body corporate: fifty penalty units ($10,176)
Coercion relating to DWGs – section 53 **Refusal by employer to allow HSR to attend HSR training course as determined by WorkSafe without reasonable excuse – section 67** **Failure of employer to comply with obligations to HSRs – section 69:** • **providing an HSR access to information** • **allowing an HSR to be in interview concerning OHS matters** • **allowing an HSR to take time off work with pay to exercise their powers or attend training** • **providing facilities and assistance to an HSR to enable them to exercise their powers**	Natural person: sixty penalty units ($12,211) Body corporate: 300 penalty units ($61,053)

Offence	Maximum penalty
Employer providing an HSR access to an employee's medical information without their consent (unless in a de-identified form) – section 69 **Failure of employer to ensure employer representative is not an HSR and has sufficient seniority when attempting to resolve health and safety issues – section 73**	
Contravening a PIN – sections 62 and 63 **Discrimination by an employer (or prospective employer) against an employee (or prospective employee) for being an HSR, or HSC member, or assisted or raised concerns in relation to health and safety – section 76**	Natural person: 500 penalty units ($101,755) Body corporate: 2,500 penalty units ($508,775)
Breach of provisions relating to employer duty to consult with employees (including an HSR if they are representing employees) – section 35	Natural person: 180 penalty units ($36,632) Body corporate: 900 penalty units ($183,159)
Failure of employer to keep a copy of record of a notifiable incident and make it available for inspection by an HSR or HSC member – section 38	Natural person: 240 penalty units ($48,842) Body corporate: 1,200 penalty units ($244,212)

Table 18: ARREO-related penalties under the OHS Act

Offence	Maximum penalty
Offences by ARREOs (hindering, obstructing, intimidating, or threatening an employer or employee, and improper use of powers) – section 91	Sixty penalty units ($12,211) A person who suffers significant loss or damage because of the offence may recover the costs from the REO (section 92 – Loss or damage by an authorised representative)
Refusing an ARREO entry to a workplace – section 93 **Hindering, obstructing, intimidating, or threatening an ARREO – section 93**	Natural person: sixty penalty units ($12,211) Body corporate: 300 penalty units ($61,053)
Impersonating an ARREO – section 94	Sixty penalty units ($12,211)

[131] *Monetary Units Act 2004* s 5

Chapter 11: Victorian workplaces

Overview

156. Working relationships and workplace environments are constantly evolving, driven by the rise of modern technologies such as artificial intelligence (AI), the emergence of new work processes and demographic shifts. These developments have introduced new opportunities and risks in the workplace.

157. Traditional working arrangements are giving way to remote and hybrid models which enable greater flexibility for workers, but also raise critical questions regarding equity, isolation, and the accessibility of worker representation. The dynamics of working arrangements, as detailed in the table below, necessitate adaptable and responsive strategies for worker representation and consultation to ensure fairness and inclusivity across the workforce.

158. Table 19 provides an overview of working arrangements in Australian workplaces, and where the data or insights make possible, Victorian workplaces.

Table 19: Overview of current working arrangements

Working arrangement	Summary
In Victoria there are over 718,000 small businesses	Approximately 97.0 per cent of businesses are classified as non-employing, micro or small. Small businesses are responsible for approximately 39.0 per cent of private sector employment. Additionally: • 22.0 per cent of small businesses are in regional areas • 33.0 per cent of small business owners are female • 35.0 per cent of small business owners are migrants[132].
Two-thirds of employed persons in Victoria work full-time	In October 2025, approximately 2.6 million (67.7 per cent) employed persons in Victoria worked full-time, compared to 1.8 million (71.4 per cent) in October 2005[133].
One-third of employed persons in Victoria work from home	In August 2025, approximately 37.8 per cent of employed persons in Victoria usually worked from home, compared to 33.0 per cent in August 2015[134].
One in fifteen employed persons in Australia work for multiple employers	In September 2025, approximately 6.5 per cent of employed persons worked for multiple employers. The multiple job-holding rate remained stable between five per cent and six per cent between 1994 and 2019. The rate declined during COVID but since June 2022 has increased to between 6.4 per cent and 6.7 per cent[135]. Younger people (20 to 24 years) are most likely to have more than one job (8.2 per cent), followed by those aged 15 to 19 years (6.5 per cent).
Approximately one in thirteen employed persons in Victoria work as an independent contractor	In August 2024, there were approximately 287,800 independent contractors in Victoria, an increase from 258,900 in August 2014. Independent contractors represented approximately 7.6 per cent of employed persons in August 2024 (compared to 9.0 per cent in August 2014).

Working arrangement	Summary
The prevalence of digital platform workers is low	In 2024/25, there were approximately 48,400 people who undertook digital platform work in the last twelve months in Victoria (or 27.1 per cent of people nationally)[136]. Nationally, the most common digital platform work tasks undertaken in the last twelve months were delivering food or other goods (50.0 per cent) and providing personal transport (39.2 per cent). Nationally, less than half (38.7 per cent) reported that digital platform work was their main job. 15.9 per cent reported feeling unsafe while doing digital platform work in the last four weeks.
Just over one in eight employees are trade union members	In August 2024, 13.3 per cent of employees in Victoria were trade union members, compared to 16.5 per cent in August 2014[137]. Anecdotally, WorkSafe understands that HSR representation in Victoria is higher in unionised workforces, such as emergency services, nursing, construction, education, and manufacturing.

Vulnerable workers

159. The Review's ToR ask me to consider the effectiveness of the HSR and ARREO frameworks in supporting vulnerable or insecure workers. From an OHS perspective, I have defined a 'vulnerable worker' as a person who is at increased risk of being injured or dying in the workplace, and the reason for this increased risk is their individual working arrangements, life experience, or personal characteristics.

160. SWA's *Australian Work Health and Safety Strategy 2023-2033* notes that factors known to affect a worker's OHS vulnerability include being younger, working alone, being from a CALD background or working in a more complex contractual chain (e.g. labour hire)[138].

161. Table 20 provides an overview of cohorts of workers who may be at increased risk of being injured or dying. I have drawn on insights from SWA and WorkSafe to identify potential cohorts of employees who may be at increased risk of being injured or dying in the workplace. In presenting these insights, I am cognisant that not all employees that fall within these cohorts are vulnerable, and that there will be employees who fall outside these cohorts but are at risk of being vulnerable due to their life experience or personal characteristics.

162. Tables 20 and 21 refer to standardised claims. According to WorkSafe 'standardised claims are used to enable comparisons of claim numbers over a period of time, taking account of changes in the way claims have been treated over time. A standardised claim is one with weekly benefit payments that exceed (or is expected to exceed) the employer threshold of 10 days, or medical treatment expenses that exceed (or is expected to exceed) the threshold'. Claims that are closed with no payments or closed buyout claims which have not reached either excess are excluded[139].

Table 20: Overview of vulnerable worker cohorts

Worker cohort	Summary
Hazardous manual handling – CALD	From 2019 to 2024, manufacturing represented 16.7 per cent of all standardised hazardous manual handling (HMH) claims – the second highest claiming industry after healthcare and social assistance (20.4 per cent). Childcare represents 46.2 per cent of all standardised HMH claims in social assistance[140].
Healthcare – female CALD workers	Healthcare is over-represented by at-risk workers, including highly casualised and precarious employment. According to Victorian Department of Health data, the workforce is 'becoming increasingly diverse, with a growing proportion of the workforce born overseas.' In 2021, approximately 78.0 per cent of the Victorian workforce was female with the average age being 42.5 years, and 39.0 per cent of workers were born overseas[141].
Young workers	WorkSafe research shows employers of young workers (15 to 24 years) often do not adequately induct, train, or provide appropriate channels to communicate OHS issues. In the 2024 calendar year, 3,054 Victorian workers under the age of twenty-five received workers' compensation (8.5 per cent of all claims). On average, 8.5 per cent of all claims received are from young workers each year (2019 to 2024 calendar years). Of the young workers injured in 2024, approximately: • 25.0 per cent were working in the construction industry • 11.0 per cent were working in healthcare and social assistance • 9.0 per cent were working in manufacturing • 9.0 per cent were working in accommodation and food services (hospitality) • 8.5 per cent were working in retail. The most common causes of injuries to young workers were: • moving objects hitting them (35.0 per cent) • body stress (27.0 per cent) • falls, trips and slips (22.0 per cent) • hitting objects with part of the body (6.0 per cent) • mental injury (6.0 per cent).
Apprentices and trainees	Apprentices experience higher rates of workplace injury as they are often new to a job and may be inexperienced. SWA national data, which WorkSafe advised reflects trends in Victoria, indicates that 93.0 per cent of apprentices are under thirty years, 62.5 per cent were male and 23.7 per cent work in the construction industry. The majority of serious claims for apprentices and trainees were for technicians and trades workers (87.3 per cent, compared to 16.8 per cent for non-apprentices and trainees). The construction, manufacturing and other services industries accounted for more than two-thirds of all serious workers' compensation claims for apprentices and trainees[142].

Worker cohort	Summary
Farming – older males	On average, eight people have died every year on farms over the past five years (2019/20 to 2023/24). Farming is an overwhelmingly older male dominated workforce. Men account for 94.0 per cent of fatalities in farming[143].

High-risk industries

163. WorkSafe's *Statement of Regulatory Intent 2025-26* (Regulatory Statement) identifies five priority industries: healthcare and social assistance, construction, government, agriculture, and manufacturing and logistics.

164. WorkSafe's focus is on key hazards causing the most harm, including falls from height, occupational violence and aggression, hazardous manual handling, bullying and harassment, occupational illness and disease, loading and unloading, and operating mobile plant.

165. Overall, these five industries accounted for nearly 60.0 per cent of workplace deaths and injuries over the past five years[144].

Table 21: Overview of industry sectors

Sector	Summary
Healthcare and social assistance	*Healthcare and social assistance* Over the past five years to 2023/24, the healthcare and social assistance sector has a higher number of claims than any other industry (17.3 per cent), with the social assistance industry representing 28.5 per cent of these claims. In August 2024, the healthcare and social assistance sector accounted for 15.8 per cent of total employed persons in Victoria[145]. In the healthcare industry, hospitals and aged care facilities represent the highest claiming sub-industries. In the social assistance sector, the early childhood education and other social assistance services sub-sectors accounted for 85.0 per cent of total claims. Representation and consultation have been identified as a focus area for this industry[146].
Agriculture	Over the past five years to 2023/24, the agriculture sector accounted for 2.2 per cent of all standardised claims. The agriculture sector accounted for 10.0 per cent of workplace deaths. In August 2024, the agriculture sector accounted for 2.3 per cent of total employed persons in Victoria[147].
Manufacturing and logistics	*Manufacturing* Over the five years to 2023/24, the manufacturing industry accounted for 14.5 per cent of all standardised claims. Within this sector, the food

Sector	Summary
	product manufacturing sub-industry contributed almost one-third of manual handling claims (29.1 per cent), followed by fabricated metal product manufacturing (13.1 per cent) and transport equipment manufacturing (8.9 per cent), which together comprise the top three sub-industries[148]. In August 2024, the manufacturing sector accounted for 7.4 per cent of total employed persons in Victoria[149]. *Logistics* Logistics is a high-risk activity accounting for 18 per cent of fatalities from the traumatic injury category over the past five years. Transport, postal and warehousing, wholesale trade, manufacturing, agriculture, and construction are the industries that have the most worksite deaths due to logistics activities. Transport, postal and warehousing, manufacturing and wholesale trade have the most injuries[150].
Government	Over the five years to 2023/24, the government sector accounted for 12.0 per cent of all standardised claims. Standardised claims have increased from 3,065 in 2019/20 to 4,688 in 2023/24. The highest risk sub-sectors include police services, ambulance services, and local government administration[151]. Representation and consultation have been identified as a focus area for this industry.
Construction	Over the past five years to 2023/24, the construction industry accounted for 13.9 per cent of all standardised claims. WorkSafe classifies construction as one of the state's most hazardous industries with significant fatalities and injuries each year. The highest risk sub-industries include heavy and civil engineering, housing and non-residential. Young males (20 to 29 years) are the most likely to make a WorkCover claim[152]. In August 2024, the construction sector accounted for 9.6 per cent of total employed persons in Victoria[153].

Psychological safety

166. In recent years, the types of injuries experienced by workers have also changed. While new WorkCover claims are predominantly related to physical injuries, work-related mental injuries accounted for 18 per cent of all new WorkCover claims in 2023/24 – up from 11 percent in 2013/14 (or up from 3,020 in 2013/14 to 6,296 in 2023/24)[154].

167. One of WorkSafe's Regulatory Statement's key focus areas is workplace psychological health. According to WorkSafe:

- the top industries in mental injury claims are healthcare and social assistance, public administration and safety, and education and training
- the majority of mental injury claims are in medium and large businesses
- employers are at varying levels of capability, capacity, and confidence to meet new obligations under new Psychological Health Regulations[155].

168. The Regulatory Statement's key actions include developing, refining and promoting psychosocial hazard specific HSR refresher training, and scoping a Psychological Health Basics Education Program for small and medium duty holders[156].

Artificial intelligence

169. AI has the potential to significantly transform the workplace. Within the OHS space, AI has many potential applications including health monitoring, hazard detection, real-time monitoring, training and simulation, and incident investigation and reporting. For example, AI chatbots can provide OHS resources to HSRs, ARREOs and employees and AI sensors can be used to detect hazardous gasses and fire risks[157].

170. The widespread adoption of AI in the workplace presents potential OHS benefits, such as the ability to improve job quality by assigning dangerous or unfulfilling tasks to AI. However, it also comes with risks. Employers need to be prepared to navigate the complexities that come with the adoption of this technology, including concerns around data privacy, intellectual property, and algorithmic bias and its impact on workers[158] [159] [160]. A study commissioned by SafeWork NSW found that:

> *'harm from AI use was more likely to impact workers psychologically than physically. However, workers' physical safety and health might still be impacted if the use of AI influences the intensification of workflows or surveillance in the workplace, causing workers to accelerate their pace of work and thus creating new hazards[161].'*

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PART C:
Structural issues with the OHS Act

Chapter 12: What I heard – Structural issues with the OHS Act

Summary

171. Part C of the Interim Report outlines the perspectives I heard from employer and employee representatives, as well as people with lived experience, individuals, and government stakeholders on structural issues with the OHS Act, highlighting both legislative and non-legislative gaps in its application.

172. I heard from employer and employee representatives and government stakeholders that consultation between employers and employees should be actively encouraged, as it fosters stronger workplace relationships and builds a culture of trust. All stakeholders agreed that WorkSafe should promote local issue resolution approaches, provided that robust safeguards are in place to ensure matters can be escalated when these processes are ineffective.

173. This observation is consistent with the findings of the Boland Review, which noted that 'the laws make it clear that consultation should be about more than merely sharing information but should be a two-way conversation in which workers have a reasonable opportunity to participate in the resolution of WHS matters at a workplace[162]'.

174. Stakeholders expressed divergent views on the effectiveness of the HSR and ARREO frameworks in facilitating effective consultation in Victorian workplaces. I heard that in practice the formal representation requirements under the OHS Act are not operating effectively, with some employer representatives calling for these requirements to be removed. While other stakeholders, including employer and employee representatives, expressed concerns that the framework is not operating effectively in all workplaces (such as small businesses) and for all workers (such as gig workers and migrant workers). These matters require further examination, in particular, to identify options that address these matters in a practical sense.

What I heard

Duty to consult – formal representation

175. The VCEA affirmed its support for the principle of health and safety representation in the workplace but noted that it is important to clarify the roles of HSRs. They also suggested that the OHS Act should be amended to 'remove the formal encouragement of formal employee representation to better reflect the primary focus on direct consultation between employers and employees in contemporary Victorian workplaces – the vast majority of which are small business.'

176. The HIA and the VACC also indicated their support for the VCEA's position. The VACC submitted that the current OHS framework, as it relates to formal employee representation, is not fit-for-purpose. They noted that the:

> *'appropriateness of such union representation in the increasingly 'non-union' typical Victorian private sector workplace, is further influenced by continuing high-profile abuses of power by union ARREOs and HSRs, showcased in Royal*

> *Commissions and mainstream media, that have eroded public trust in these positions. This loss of trust has, in VACC's view, been exacerbated by a demonstrated lack of willingness by regulators and government to act upon the evident need for improved oversight and accountability for these roles under the current framework. The result, in VACC's view, is the current practical reality that HSRs and ARREOs do not play a role in the vast majority of Victorian workplaces.'*

177. Conversely, the VTHC suggested that HSRs and ARREOs give workers an essential voice in identifying hazards, raising concerns, and negotiating safer systems of work. They put forward the position that:

> *'Notwithstanding this legislative framework, one of the most common concerns raised by HSRs and ARREOs is that employers fail to engage employees and their representatives in genuine discussion on health and safety matters. This failure may occur for any number of reasons, including failing to understand consultation obligations under the OHS Act, refusing to concede that proposed changes may affect health or safety onsite, or engaging in processes that shut down open dialogue. Whatever the reason, health and safety protections are inevitably compromised when employees and their representatives are not consulted, increasing the risk of injury, illness and even death.'*

178. The ANMF noted that it is 'critical that this review is considered in the context of the underpinning principles of the *Occupational Health and Safety Act 2004* (and its precursors). These are based on a tripartite system, which functions as a result of consistent and continuous collaboration and cooperation to improve safety outcomes for workers. HSRs will only be able to implement effectively in their role as positioned by the Act, where there is a willingness from employers to recognise, appreciate and value their voice and input, and workers will only be willing to take on a voluntary role such as this where they feel protected and safe in their employment, and acknowledged for the benefits that they can bring'.

179. Additionally, the PPTEU noted that one of the most common concerns raised by HSRs and ARREOs is that employers fail to engage employees and their representatives in genuine discussion on OHS matters. They suggested that this failure may be for a number of reasons, including poor employer understanding of consultation obligations under the OHS Act and employers engaging in processes that shut down open dialogue.

Duty to consult – small business

180. Several employer representatives noted that the size of a business is an important consideration in determining the effectiveness of the HSR framework. As noted in Chapter 11, the majority of businesses in Victoria are small businesses. Employer representatives noted that direct consultation was more common in these workplaces and that in practice, they are unlikely to have formal representation mechanisms (such as HSRs).

    180.1. The AIG expressed the view that 'elected HSRs can be an important method of consultation, where the size of the organisation warrants it and workers are willing to take on this extra role and exercise significant powers.' They also noted that 'representation may not be possible, appropriate, or necessary in small business.

180.2. The AMCA noted that in smaller or specialist contracting environments, formal HSR structures can be difficult to maintain and that in high-risk sectors, such as mechanical services and heating, and ventilation and air conditioning, work is often undertaken by specialist subcontractors, who have limited representation in site-wide safety forums. The AMCA also highlighted the importance of encouraging collaboration across multiple employers on the same worksite and enhancing upward communication within existing structures so that specialist contractors are accurately represented.

180.3. The VTHC noted that practically speaking 'we know that most small businesses do not adopt formal representation structures as set out in the OHS Act. In many situations the owner of the business is actively engaged in the day to day running of the business and is personally known by his or her workforce, meaning OHS issues can be raised and addressed directly. Imposing or requiring that a model be adopted when the status quo is working is unnecessary.' They suggested that WorkSafe should continue to fund initiatives such as their Business Essentials Program and to encourage and support OHS literacy through community outreach, and industry and local networks.

Duty to consult – worker consultation

181. Employer representatives and government stakeholders noted that in some workplaces formal representation is not always necessary or practical, as alternative consultation processes are in place. They noted that these processes, such as regular team meetings and communications, HSCs, safety champions, working groups or direct engagement between managers and staff, help facilitate open and collaborative consultation between employers and employees.

181.1. The AIG noted that while 'HSRs are one form of consultation, the central tenet of the [OHS] Act is to have genuine and effective methods of consultation that suit the business and its employees.' They suggested that increasing the understanding and implementation of effective consultation mechanisms may result in more effective outcomes than trying to force traditional representation in situations where working arrangements are fundamentally different to those that existed when the framework was introduced in 1985. The AIG called out the role of HSCs and safety champions in supporting effective consultation.

181.2. The AMIC suggested that 'in workplaces without formally elected HSRs, the role of employee representatives (including informal representatives) in workplace consultation and issue resolution is nonetheless critical to an employer's exercise of their positive and other duties under the Act.'

181.3. The MBV noted that it is 'important not to overlook that most employers have open, collaborative, and constructive relationships with their workforces in respect of safety (and other matters). In these circumstances, there is less need for formal representation from within the work group in respect of safety as management and workers work together effectively in managing safety.'

182. Employer representatives said that they would not support reforms that mandated HSRs or HSR ratios. Conversely, several employee representatives were supportive of the concept of mandating HSRs.

Worker representation – gaps in coverage

183. I heard that some Victorian workers, such as gig workers, may fall outside the scope of the OHS Act and are not covered by other OHS legislation (such as Australian Government workers – see Chapter 4). Whether these workers fall within the scope depends on the nature of their employment and whether they are considered 'employees' under the OHS Act (see Chapter 4). I also heard that in practice these workers face barriers to participating in consultation processes, as the reality is that they are unlikely to have direct representation due to the nature of their working environment.

184. In response to these concerns, the VTHC recommended amending the OHS Act's definitions of employer and employee to harmonise with the PCBU and worker terminology used in the model WHS laws. They argue that the OHS Act only protects independent contractors and labour hire workers engaged by employers in certain circumstances, as these protections generally only operate if a business is an employer. They also noted that digital labour platform businesses often argue they are not employers of gig workers. Similar contracting models are also used in healthcare.

185. The RTBU also raised concerns that the HSR and ARREO frameworks under the OHS Act are no longer appropriate. They recommended adopting the Swedish worker representation model. They noted that the Swedish *Work Environment Act (1977:1160)* provides for a dual system of safety officers (akin to HSRs) and regional safety representatives. The regional safety representative is a union official appointed to take on the equivalent role of an HSR. The TFTU also recommended establishing a roving ARREO model which can support proactive safety visits, audits, and education in small business.

Worker representation – migrant workers

186. Several stakeholders called for me to consider options to improve representation for employees from non-English speaking backgrounds. For example, the MWC noted that migrant workers are often excluded from genuine consultation processes due to language barriers and/or the absence of trained representatives. They said that when WorkSafe inspectors and/or ARREOs want to interview workers as part of an investigation or inspection, they may be directed instead to informal or untrained bicultural intermediaries, who act as 'go-to' persons on behalf of workers. While often well-intentioned, this practice can distort or filter workers' accounts, limiting inspectors' access to accurate information about workplace risks and safety. It can also lead to incomplete or unreliable assessments of compliance.

Areas for further exploration: consultation and representation

187. The areas for further exploration outlined in Table 22 emerged from the Stage one consultation process and are intended to:

- improve the effectiveness of the HSR and ARREO frameworks in supporting employees to advocate for measures to ensure a healthy and safe workplace, including vulnerable and insecure workers, workers working remotely or in hybrid environments, and workers in high-risk workplaces

- potential additional measures to improve knowledge and awareness of the role and functions of HSRs and ARREOs across workplaces, including tailored measures for industries that are high-risk and/or dominated by insecure or vulnerable workers.

Table 22: Areas for further exploration: consultation and representation (structural)

For the Final Report, I will consider:	
Duty to consult – small business **Duty to consult – worker consultation** **Worker representation – gaps in coverage** **Worker representation – migrant workers**	• how to encourage consultation in small business, including raising awareness of formal and informal approaches • whether the definition of 'employer' and 'employee' under section 5 of the OHS Act should be amended to align with the 'PCBU' and 'worker' terminology used in the model WHS laws • opportunities to improve representation of employees from non-English speaking backgrounds, including the incorporation of culturally and linguistically inclusive requirements into consultation and participation mechanisms.

[162] Boland, Marie, *Review of the model Work Health and Safety laws: Final report* (2018), page 60

PART D: Operation of the OHS Act

Chapter 13: What I heard – Operation of the OHS Act

Summary

188. Part D of the Interim Report outlines the perspectives I heard from employer and employee representatives, as well as people with lived experience, individuals, and government stakeholders on the operation of the OHS Act, highlighting both the practical challenges and opportunities identified in its implementation.

189. During Stage one consultations, I heard about how the OHS Act functions in practice – what is working well, what is not working and requires fixing and how its provisions apply across different workplaces. I heard that legislation often fails in implementation not just because of flaws or gaps in drafting (as discussed in Part C), but often due to the complexities of implementation, especially when the provisions apply to a broad range of workplaces.

190. I heard that the formal requirements to establish a DWG and elect HSRs do not work in practice in some workplaces – such as small businesses, workplaces that operate in high-risk settings (e.g. emergency services) or industries with unique requirements (e.g. the aviation industry).

191. I am keen to understand further the different consultation methods used in workplaces that do not have HSRs or access to ARREOs. I acknowledge that it may not be practical to have HSRs in all workplaces but in their absence, it is critical that there is strong guidance and support for employers and employees to understand their obligations and rights under the OHS Act. This is an area I will be exploring further over the next three months.

192. During Stage one consultations, I heard examples of HSRs, employers, and employees not understanding the relevant provisions under the OHS Act. This is a topic that I would like to explore further, in particular how interested parties can work together to build awareness of the relevant provisions under the OHS Act. I am also interested in understanding how to build awareness and develop practical guidance that works for all workplaces and workers, regardless of their role.

193. I heard that some breaches of the OHS Act are not intentional. In some situations, minor breaches, or misapplication of the OHS Act may stem from a misunderstanding, lack of awareness or insufficient training rather than intentional misconduct. In the first instance, such behaviours can often be addressed through initiatives like targeted education, clear guidance, awareness campaigns, or refresher training, all of which serve to strengthen people's understanding of their responsibilities (see Chapter 14).

194. However, I also received examples of serious alleged breaches of the OHS Act. These alleged breaches have in some circumstances been characterised to me as deliberate and repeated violations that result in significant harm or risk. Many of the alleged breaches raised during the Review are not exclusive to Victoria and as stakeholders have pointed out are also being dealt with in other jurisdictions.

195. Finally, I heard that further action is required to address alleged misconduct on construction worksites, including by HSRs, and union officials and delegates. While addressing alleged

criminality is outside the Review's scope, there are still options that can be considered that give regard to achieving the objects of the OHS Act. For example, options to strengthen eligibility criteria and improve transparency measures.

Operational issues with the OHS Act

Worker consultation – awareness of HSR and ARREO powers

196. Employer and employee representatives expressed concerns about the limitations of existing information on employer consultation obligations. They suggested that greater clarity and transparency on the roles of HSRs, DHSRs and ARREOs is required, including on the limitations of these roles in the context of legislative, regulatory, or operational requirements. Stakeholders noted that:

- employers, in particular middle management and supervisors, do not always understand the process for determining DWGs and the role of HSRs and ARREOs
- small and medium sized businesses do not always know where to look for information or what words to search
- AI is providing opportunities to find information more easily, but the answer is not always correct which creates further confusion
- employers lack clarity on the authority and accountability of HSRs and ARREOs once elected, including the distinction between industrial and health and safety matters.

197. I heard that WorkSafe has a bigger role to play in improving employer awareness of their obligations under the OHS Act. Employers are seeking more guidance on effective worker consultation approaches that is written in plain English and is easily accessible to a range of businesses. I heard that employers are also seeking practical implementation tools and materials, such as templates that assist in the formation of DWGs and HSR elections.

197.1. The AMCA noted that they support 'initiatives that enhance awareness among both employers and employees about the functions and limits of ARREO and HSR roles' and suggested that 'improved education can prevent unnecessary conflict and foster cooperation.' In particular, the AMCA is looking for guidance material (such as case studies and online modules) clarifying how HSRs and ARREOs can engage with subcontractors and how site managers can manage HSR participation and ARREO visits.

197.2. The VCEA suggested that 'awareness campaigns led by WorkSafe and industry bodies can improve understanding.' The VCEA also suggested that government should provide clear guidance that fosters collaboration between employers, employees, and representatives. The AIG put forward a similar position, noting that small businesses need additional information about the importance of consultation. They suggested that WorkSafe should promote the benefits of consultation as a method to obtain valuable information from workers and increasing engagement, and not just to meet a legislative requirement. The VACC and the VCEA supported this position.

197.3. The AMIC also highlighted the need for more accessible resources to improve knowledge and awareness of the role and functions of HSRs and ARREOs. They suggested that these resources should be 'industry-specific, written in plain English, available in additional accessible formats including in languages other than English and

for employee cohorts with low literacy.' The AMIC also called for WorkSafe to convene a working group to facilitate cooperation and information sharing between the Victorian Government, the regulator and peak employer and employee associations.

197.4. The VMA noted that employers can experience a lack of clarity relating to the authority and accountability of employee representatives, employer consultation obligations and the distinction between industrial representation and OHS representation. They expressed concerns that this 'lack of specificity can at times lead to confusion, duplication, and in some instances, conflict about the appropriate scope of engagement.'

198. BeSafe called for mandated notification of OHS rights for all new workers, similar to the Fair Work Information Statement. They suggested that this measure would ensure all employees have a clear understanding of their safety rights and how to exercise them.

199. People with lived experience recommended several measures to improve baseline literacy across all workplaces, including:

- introducing a mandatory requirement for all workers to be notified of their OHS rights, such as the Fair Work Information Statement. Employers must give new employees a copy when they start their job (or as soon as possible)
- running a public awareness campaign, and a targeted campaign for non-unionised workforces to raise awareness about workplace safety rights
- introducing a requirement for employers to undertake OHS training at a key point, such as when they apply for an Australian Business Number or register for WorkCover insurance
- mandating HSR elections to be held in all workplaces.

Worker representation – industry-specific issues

200. I heard that the effective operation of the HSR and ARREO frameworks differs between industries, with some workplaces having inherent factors and attributes that mean the duty to consult does not work as intended.

200.1. The FAAA noted that cabin crew work across multiple jurisdictions, spend most of their shifts in mobile workplaces, and often have limited direct access to management or HSCs. They recommended that WorkSafe and the Civil Aviation Safety Authority (CASA) work together to clarify the frameworks that apply to the sector.

200.2. The AEU noted that in the early childhood sector there is limited opportunity for employees to consult with their employer on OHS matters. They said that formal consultative structures are largely absent, and factors such as a strong focus on child safety, a low awareness of the role of HSRs and workplaces spread across multiple sites result in inconsistent and often inadequate worker representation.

200.3. The AEU also noted that in the school sector HSRs have limited capacity to undertake their role due to the way schools function, which makes it difficult for them to be released from activities such as collaborative planning sessions or supervising students. They suggested that there needs to be clear expectations set by the department that HSRs will be provided time to perform their duties.

200.4. The TFTU noted that their industries are heavily characterised by multi-layered subcontracting, labour hire, and mobile worksites, making the existing DWG models difficult to apply. They also noted that the majority of furniture, joinery, textile, and upholstery workplaces are micro-enterprises with fewer than ten workers and that these workplaces often lack formal HSR elections or HSCs.

Worker representation – government frontline operations

201. Government stakeholders raised concerns about the operation of DWGs and HSRs in some operational settings, in particular those that are highly regulated or have increased exposure to OHS hazards and risks. They noted that the HSR framework assumes that HSRs are always available to represent employees, but in frontline operational settings this is not always realistic. In practice, factors such as rosters, operational and legislative requirements, leave and frontline duties may impact on an HSR's availability.

202. They suggested that I should consider mechanisms:

- that allow other employees to step in when HSRs are unavailable, with checks and balances to ensure the legislative provisions are not misused
- to address circumstances where an HSR remains formally appointed but is absent from the workplace for an extended period. For example, if the employee is on parental leave, long-term sick leave, or a secondment
- that allows for a DWG to be disbanded when both parties agree that it is no longer necessary.

203. I also heard that in frontline operational environments employees are regularly exposed to risks when carrying out their legislative duties. Government stakeholders suggested that:

- more sector-specific guidance on the role of HSRs is required, including how employers and HSRs can work together in settings where operational matters may not allow for the immediate release of an HSR
- further education and awareness about the role that HSRs can play in prevention or early intervention would be useful
- advice on how to deal with real or perceived conflicts of interest when an employee is both an HSR and union representative is needed.

DWGs – transfer of business

204. Employee representatives suggested that the OHS Act should be amended to allow for the continuity of a DWG while the transfer of business is completed. The VTHC noted that DWGs must be renegotiated and new HSR elections held, which can leave employees unrepresented during this period (which may take months). They put forward the following case study to support their case:

> *'Recently the Victorian Government ran a tender process to run a part of the public transport network and awarded the contract to a new operator. Under the transfer of business clause in the Enterprise Agreement negotiated by the RTBU all employee entitlements, service and accruals were recognised by the new operator. There was no break in service and employees continued to perform the exact same work for their new employer. There are multiple*

policy reasons to allow for such a transmission including protecting workers negotiated conditions and ensuring the change of employer does not wipe out previous hard-won gains. It also helps the new operator retain experienced staff and maintain operational continuity.

However, the OHS Act does not contemplate what should occur to OHS arrangements in the same situation. In one case, the RTBU argued that the elected HSRs should continue to act in that capacity, but the employer insisted that the DWGs needed to be signed off, and new elections held in every DWG. WorkSafe advised the parties that any worker who was an HSR of the previous employer had no standing to exercise the statutory rights or powers of HSRs with their new employer. As a result, some DWGs went months before new HSRs could be elected meaning workers in these areas lost the OHS representative structures that they had negotiated.'

Areas for further exploration: consultation and representation

205. The areas for further exploration outlined in Table 23 emerged from the Stage one consultation process and are intended to consider:

- how to improve the effectiveness of the HSR and ARREO frameworks in supporting employees to advocate for measures to ensure a healthy and safe workplace
- potential additional measures to improve knowledge and awareness of the role and functions of HSRs and ARREOs across workplaces.

Table 23: Areas for further exploration: consultation and representation (operational)

For the Final Report, I will consider:	
Worker consultation – awareness of HSR and ARREO powers **Worker representation – industry-specific issues** **Worker representation – government frontline operations** **DWGs – transfer of business**	• opportunities to improve awareness of DWGs and the roles of HSRs, DHSRs and ARREOs, including guidance on effective consultation approaches, practical implementation tools and materials • whether the OHS Act should be amended to allow for the removal or temporary replacement of an HSR when they are on extended leave • options to support the operation of DWGs during the transfer of ownership.

HSRs – reluctance to nominate

206. I heard that it can be difficult to get employees to nominate to be an HSR. There is no definitive evidence for why employees are reluctant to nominate for the role. However, stakeholders put forward the following suggestions, including:

- limited interest, in particular in high-stress workplaces where employees work in demanding environments
- fear of reprisal if they nominate to be an HSR, in particular, for employees in insecure, casual, and labour-hire arrangements

- perceived belief that the role of an HSR comes with additional obligations or may impact their career progression
- concerns about having to run meetings, with some employees having limited or no exposure to these activities
- high turnover rates in some industries or workplaces, which means that there are times where there are no HSRs available
- operational fragmentation, across isolated, mobile, and remote work, which creates confusion around accountability, especially when multiple employers are involved.

207. One government representative submitted that they make reasonable attempts to recruit HSRs but there is limited interest in the role. They noted that they have a focus on proactive engagement with HSRs, union delegates, peer support workers and employees who are involved in a range of working groups.

HSR powers – access to information

208. Employee representatives, including the IEU, ANMF, VAU and AWU, expressed concerns that HSRs do not always have adequate access to information they require to effectively perform their roles. They noted that the OHS Act requires employers to provide HSRs access to OHS information, but there is a lack of clarity on how these provisions should operate in practice.

    208.1. The IEU suggested amending the OHS Act to clarify what 'access' means. They noted that HSRs have reported to them that some employers and managers respond to requests by either refusing to grant access, unreasonably delaying responding to the request, or providing limited access to information.

    208.2. The ANMF raised concerns that employers often cite privacy as a reason that HSRs are unable to access incident reports. The ANMF noted they have received reports of HSRs being denied access to information needed to assess equipment safety, delays in HSRs receiving audit reminders and HSRs being excluded from consultations on a medication trolley rollout.

    208.3. The AWU noted that when employers engage occupational hygienists, whether as an independent contractor or as a direct hire, it is accepted practice for them to require a non-disclosure agreement. This requirement limits the occupational hygienist's ability to speak to results or key findings and recommendations at the site. They noted that employees are often given limited information, such as a brief summary or data table, which can make it difficult for them to understand the issues.

    208.4. The VAU also expressed concerns about access to inspect workplaces, particularly where DWG members are spread across multiple sites or locations. They recommended that the term 'reasonable notice' be clearly defined to remove ambiguity surrounding HSR powers under section 58 of the OHS Act.

HSR powers – timeliness of information

209. Some employee representatives, including the VTHC, UFU, and PPTEU, expressed concerns about employer timeliness in providing information to HSRs, and the impact this has on them in performing their role effectively. For example, the VTHC noted that HSRs have a right to inspect any part of a workplace where a member of their DWG works immediately in the event

of an incident. However, they suggested that in practice, this right is not actionable as HSRs often do not find out about incidents until days or weeks after an event. They noted that this is particularly evident in DWGs with members working in separate locations or on different shifts. They recommended amending the OHS Act to:

- introduce a positive duty for employers to notify the relevant HSR of an OHS incident affecting their DWG or a part of the workplace at which a member of their DWG works, with a penalty provision for failing to share information
- require HSRs to be provided with safety information requested under section 69 of the OHS Act within 48 hours from the request.

HSR powers – person assisting

210. A number of employer representatives, including the MBV and AIG, raised concerns about the type of person who is able to attend the workplace to assist HSRs. In Victoria, anyone is able to assist an HSR, but the employer may refuse access if they consider the person lacks sufficient OHS knowledge. They suggested that if a person has had an entry permit denied or revoked, they should be restricted from entering a worksite to assist an HSR. They recommended that I consider options to close what they describe as a loophole. The MBV also recommended that an HSR should provide at least twenty-four hours but no more than fourteen days' notice before the entry of an assistant.

HSR powers – PINs

211. A number of employee representatives noted that HSR powers are legally strong but HSRs are not confident using their PIN or direction to cease work powers. This is primarily due to a fear of retaliation, employers challenging the validity of PINs and operational requirements which limit the controls that can be implemented in a workplace. Employee representatives also noted that PINs are sometimes cancelled for technical errors.

    211.1. The UWU noted that PINs are underutilised because workers fear retaliation and employers often challenge their validity. They recommended that there should be stronger legal protections for HSRs who issue PINs, streamlined WorkSafe inspector response times, and penalties for employers who intimidate HSRs.

    211.2. The AEU noted that PINs are often challenged which can undermine HSRs using their powers. They suggested that this approach delays the implementation of meaningful controls and can prolong exposure to risk for school staff as the process becomes drawn out and the possible contravention continues to occur. They also noted that there are unique school settings which hinder the effectiveness of PINs. For example:

> *'in situations where a health and safety risk is severe and results from violent behaviour demonstrated by a student, reducing exposure to the risk is not deemed suitable or appropriate because of the obligation to maintain a student's right to access education and only make certain adjustments with parental consent, which means that there is no scope to adjust the education program delivered through an alternate classroom or setting, there are no limitations that can be placed on student attendance such as modified commencement times. Other*

controls that might be deemed to be reasonably practicable, such as employing additional staff to enable job rotations or installing a fence to limit access to certain areas, are often unavailable due to lack of finances or access to a workforce.

The result is that when a PIN is issued, often they result in meetings being called to consider controls, controls being discussed, many controls being determined to be not feasible, the current controls continuing and no additional controls being implemented. The perception amongst HSRs and school staff who have experienced this is that PINs are ineffective and do not result in improved safety outcomes, and as such are not often pursued by HSRs in school settings.'

HSR powers – PIN compliance times

212. Some employer representatives expressed difficulties complying with the timeframes to resolve issues raised in PINs. They noted that this was predominantly due to the fact that employers must exercise their right of appeal to WorkSafe within seven days. As a result, appeals are being lodged purely due to impractical compliance dates, rather than substantive disagreement with the notice itself. They also noted that while HSRs have broad discretion in setting PIN compliance dates, they regularly opt for the minimum eight-day timeframe. Accordingly, they recommended a range of options to address these issues, including:

- establishing a tiered compliance timeframe model that distinguishes between immediate and serious risks, and complex or systemic issues
- explicitly recognising an unreasonable compliance timeframe as a valid ground for appeal to WorkSafe.

Areas for further exploration: HSR powers

213. The areas for further exploration outlined in Table 24 emerged from the Stage one consultation process and are intended to improve the effectiveness of HSR powers and functions.

Table 24: Areas for further exploration: HSR powers

For the Final Report, I will consider:	

HSRs – reluctance to nominate
HSR powers – access to information
HSR powers – timeliness of information
HSR powers – person assisting
HSR powers – PINs
	• whether Division 3, Part 7 of the OHS Act (Prohibition on coercion relating to designated work groups) should apply to the election of HSRs
	• whether amendments to the OHS Act are required to support the operation of:
	  ○ section 58(1)(a) – Powers of health and safety representatives
	  ○ section 60(3) – Provisional improvement notices
	  ○ section 63 – Attendance of inspector at workplace after issue of provisional improvement notice
	  ○ section 70 – Obligation to persons assisting health and safety representatives

For the Final Report, I will consider:	
HSR powers – PIN compliance times	○ section 38 – Duty to notify of incidents ○ section 69(1)(a) – Other obligations of employers to health and safety representatives ○ section 65 – Formal irregularities or defects in provisional improvement notices • whether amendments to the OHS Act are required to support improved transparency of WorkSafe investigations and decisions.

ARREO powers – copies of documents

214. Employee representatives raised concerns that while ARREOs can inspect any plant, substance, or thing at a workplace to the extent that it is reasonable for the purpose of enquiring into the suspected contravention, the OHS Act does not allow them to make copies. Several employee representatives, including the VTHC, have recommended that the OHS Act be amended to:

- require the relevant employer to allow ARREOs to inspect, and make copies of, any document that is relevant to the suspected contravention
- introduce a penalty for when an employer, without a reasonable excuse, refuses or fails to comply with this requirement, and that the evidential burden to prove that an excuse was reasonable be placed on the employer.

ARREO powers – immediate or serious risks

215. Employee representatives raised concerns that ARREO powers under the OHS Act are inadequate, and that they can only warn employees when there is an immediate and significant risk of serious injury or death. They noted that to address these matters, ARREOs must share their concerns with parties who do have the power to intervene, such employers, HSRs or WorkSafe. They suggested that ARREOs should be able to issue a PIN or direction to cease work in these situations, and that a penalty be introduced for employers who fail to comply with these notices.

216. Employee representatives also suggested amending the OHS Act to introduce a statutory right for employees to refuse unsafe work. This provision would codify the existing common law right to cease work in Victoria and reflect current arrangements under the model WHS laws.

ARREO powers – entry notices

217. Employer representatives, including the AIG and MBV, suggested that ARREOs should provide at least 24 hours' written notice before entering a workplace, except where there is a reasonable concern of immediate or imminent risk to health or safety.

    217.1. The AIG expressed concerns that the current arrangements do not require ARREOs to provide prior notice. They noted that in some industries entry powers are being used as a loophole to gain access for industrial purposes, which undermines the integrity of genuine OHS investigations.

    217.2. The MBV submitted that 'where advanced notice is provided, duty holders will have an opportunity to ensure that appropriate personnel and relevant workers are available at

the premises at the time of the entry to assist with the ARREO's enquiry and undertake an initial assessment of the suspected issue.' They also recommended amending the OHS Act to limit the advance notice to fourteen days.

ARREO powers – suspected contraventions

218. Some employer representatives expressed concerns that it is difficult for employers to understand and take steps to remedy suspected contraventions when ARREOs do not provide sufficient or clear information in their entry notices. I also heard that there is a perception that WorkSafe provides limited practical assistance to resolve these matters. To address these matters, employers are seeking additional guidance on the level of detail required in entry notices and consideration of whether the concept 'reasonably suspects' should be codified.

    218.1. The AIG noted that they regularly receive feedback from employers that the basis on which ARREOs enter sites to enquire into a suspected contravention can be questionable. They explained that entry notices often have ambiguous information about the suspected contravention and when employers have sought assistance from a WorkSafe inspector they have been told that the information is sufficient. This has led to a general approach by businesses to no longer seek further detail.

    218.2. The MBV echoed this position. They noted that its members reported that it is common for an ARREO to seek entry to a workplace but not provide sufficient information on the reason for entry. As such, their members are unable to efficiently determine what they need to do to identify and address the issue. For example, the MBV noted its members received notices that provided reasoning such as 'inadequate first aid,' 'inadequate first response' or 'inadequate safe systems of work.'

    218.3. The MBV referred me to the 2017 decision of the NSW Industrial Relations Commission in the case of *Construction, Forestry, Mining and Energy Union (New South Wales Branch) v Acciona Infrastructure Australia Pty Ltd and Ferrovial Agroman (Australia) Pty Ltd t/as the Pacifico Acciona Ferrovial Joint Venture*. They noted that this case provides a practical standard on the threshold needed for an ARREO to hold a reasonable suspicion.

ARREO powers – new suspected contraventions

219. Several employee representatives, including the VTHC, UWU, UFU, CFMEU and PPTEU, raised concerns that ARREOs are required to issue a new entry notice and re-enter the workplace when a new suspected contravention of the OHS Act is identified during an inspection. In Victoria, ARREOs may only enter a workplace in response to a suspected contravention of the OHS Act. They recommended amending the OHS Act to allow an ARREO to provide notice of a further suspected contravention onsite without exiting and re-entering the workplace. To support their position, the VTHC provided the following case study:

    'An ARREO with the UWU undertook an inspection at a dairy production facility because he was informed that pallets of product had been stacked in front of the emergency exits creating a barrier to safe evacuation in the event of an emergency.

Whilst inspecting the emergency exits he observed several areas of the warehouse that had poorly designed and signed areas of mixed pedestrian and forklift traffic. He also observed the lighting in one of the aisles was not working. Rather than being able to properly inspect these areas and monitor the traffic flow he needed to leave the site, complete a new record of suspected contravention and re-enter at reception. This was not only a waste of time but frustrated the warehouse manager who had to be called back 5 minutes after seeing the official offsite'.

220. The VTHC also noted that WHS permit holders have the right to enter workplaces in the absence of a suspected contravention to consult with workers and provide advice about OHS matters, subject to notice of between twenty-four hours and fourteen days. They suggested that ARREOs should be provided with the same power.

ARREO powers – awareness of entry notices

221. Employer representatives also suggested that more guidance and support is required to raise employer awareness of entry notice obligations. They noted that, when presented with an entry notice, some employers may not be familiar with ARREO right of entry powers and are unable to verify the validity of the notice on the spot.

    221.1. The MBV submitted that 'the form of the notice of suspected contravention is not at present easily accessible on the regulator's website nor is the form of the State permit. Some duty holders have not received a notice before or even seen an ARREO permit, and when presented with them for the first [time], may not be able to verify it or appreciate its legal import.'

    221.2. Employer representatives, including the VCEA and MBV, also raised concerns that there is no publicised list of ARREOs in Victoria. They suggested that an easily accessible list of ARREOs would help improve transparency and assist employers to quickly verify entry permit details. Stakeholders suggested that WorkSafe could publish a list on their website, similar to the FWC (see Part E: Regulatory oversight and compliance for more information).

ARREO powers – digital systems

222. Some employee representatives raised concerns about how employers are using digital systems in the workplace to monitor employees and shape workload and performance expectations. I note that using digital systems to monitor workplaces is not a new concept but acknowledge concerns raised by these parties that there have been technical advances that increase the pace and extent of how work is managed. The increased use of digital systems has also coincided with the growing number of employees working from home and conducting more of their work within digital environments.

223. I heard that ARREOs face barriers in accessing OHS information stored on digital systems. Employee representatives recommended that I consider recommending similar reforms to those currently being debated by the Parliament of New South Wales (NSW Parliament)[163]. The Work Health and Safety Amendment (Digital Work Systems) Bill 2025 (Bill), which was introduced into the NSW Parliament on 19 November 2025, proposes to introduce 'a primary duty of care for a [PCBU] to ensure that the health and safety of workers is not put at risk from

the use of a digital work system'. The Bill also requires PCBUs to provide WHS entry permit holders with reasonable assistance to access and inspect a digital work system.

ARREO powers – regulatory burden

224. Some employer representatives, such as the MBV, VCEA, VCCI and ASIAL, do not support the expansion of ARREO powers and functions as they believe it will create unnecessary regulatory burden for businesses. Instead, they recommended that WorkSafe focus on fostering voluntary compliance, and building awareness of OHS obligations across all involved parties – including HSRs, ARREOs, employers and employees.

Areas for further exploration: ARREO powers

225. The areas for further exploration outlined in Table 25 emerged from the Stage one consultation process and are intended to improve the effectiveness of ARREO powers, including notice of entry requirements, powers to hold discussions with employees and inspection of documents.

226. For the Final Report, I will consider how the areas for further exploration compare with ARREO powers, functions, and support under the model WHS laws.

Table 25: Areas for further exploration: ARREO powers

For the Final Report, I will consider:	

ARREO powers – copies of documents
ARREO powers – immediate or serious risks
ARREO powers – entry notices
ARREO powers – suspected contraventions
ARREO powers – new suspected contraventions
ARREO powers – awareness of entry notices
ARREO powers – digital systems
ARREO powers – regulatory burden
	• whether the OHS Act should be amended to allow ARREOs to:
	  ○ make copies of documents and take samples
	  ○ issue a PIN and direction to cease work
	  ○ inspect places where members or eligible members will be expected to work
	  ○ enter a workplace to consult with employees, subject to notice of between twenty-four hours and fourteen days
	• whether amendments to the OHS Act are required to clarify:
	  ○ access to digital work systems
	  ○ the level of detail required in an entry notice
	• opportunities to improve employer awareness of and access to information on ARREO entries, including publishing details of ARREO entry permits on WorkSafe's website
	• whether ARREOs should be allowed to enter workplaces to consult with workers and provide advice on OHS matters
	• whether ARREOs should be allowed to investigate new suspected contraventions without leaving a workplace.

Alleged breaches of the OHS Act

Alleged breaches – discriminatory conduct

227. Employee representatives submitted that HSRs face discrimination when performing their role and raising OHS concerns. I heard that it was common for HSRs to feel targeted and that they

will face disciplinary actions, such as being demoted or dismissed, or excluded from decision making. The UWU expressed concerns that dismissal of HSRs 'sends a clear message to other workers and representatives that raising OHS issues will result in punishment, intimidation, or removal.' They recommended that WorkSafe report annually on enforcement outcomes under section 76 of the OHS Act.

228. Employee representatives also submitted that without proper protections HSRs do not feel they can exercise their powers. For example, the VAU noted that 'HSRs and employees who raise OHS issues are not adequately protected, either by internal processes or by the enforcement of legislative provisions.' They noted that:

> *'when fear of retribution and intimidation exists in a workplace, workers are less likely to raise OHS concerns, report hazards or incidents, volunteer to become HSRs or participate in consultation processes. HSRs are unlikely to expose themselves further by using their powers or attempt to access the full extent of their entitlements.'*

229. The VTHC suggested that REOs should be able to refer disputes concerning alleged discrimination of HSRs and other OHS matters to a state-based resolution body. They submitted that existing dispute resolution structures do not provide adequate protection for HSRs for breaches of section 76 the OHS Act. They noted that one of the consistent concerns raised by HSRs is that advocating for better OHS practices at times means challenging decisions made by their employer and that they will face personal consequences for doing so.

Alleged breaches – discriminatory conduct threshold

230. Employee representatives expressed concerns that the evidentiary threshold for discrimination under section 76 of the OHS Act is too high. I heard that the current threshold prevents alleged discriminatory action being reported and progressed. The VTHC suggested that the high evidentiary threshold makes it difficult to prove alleged discrimination cases. Accordingly, they recommended that the OHS Act be amended to:

- expand the definition of discriminatory conduct to include the meaning 'treats a worker less favourably than other workers of the person'
- include both direct and indirect discrimination
- reduce the requirement that the reason for the discrimination be the 'dominant reason' to 'a substantial reason' to better align with equal opportunity laws in Victoria as well as WHS laws around Australia.

231. The TPAV and VAU also suggested mirroring the adverse action provisions under section 361 of the FW Act.

Disqualification – HSRs and ARREOs

232. Employer representatives raised concerns that employers are unlikely to apply to have an HSR disqualified or an ARREO entry permit revoked. I heard that the current process of applying to the Magistrates' Court is cumbersome, time-consuming, and costly, making it impractical for many employers.

233. To address this issue, employer representatives suggested broadening the parties that can initiate an application to disqualify an HSR. Some employer representatives also suggested that WorkSafe should have the power to disqualify HSRs.

234. Several employer representatives suggested that WorkSafe should be empowered to respond quickly to improper behaviour by suspending an ARREO entry permit and that the regulator should be able to commence suspension processes on its own motion or by referral from an employer and that they should not be bound by the rules of evidence.

Alleged breaches – impact on construction worksites

235. During consultations, employer representatives submitted that HSR and ARREO powers are being misused to drive industrial agendas. They raised examples of alleged misconduct, including groups of ARREOs arriving on site at the same time, multiple entries on the same day and over multiple days and union officials allegedly pressuring HSRs to issue PINs. For example, the MBV noted that its members have reported conduct by ARREOs, such as failing to comply with reasonable safety directions from management, verbally abusing management and disrupting work.

236. The ACA submitted that 'OHS laws are frequently used to achieve outcomes that have no relationship to the health and safety of workers. They are used to intimidate and coerce employers and workers into making decisions or taking actions that benefit a union, often financially. These actions typically involve the use of cease work powers and right of entry to disrupt worksite productivity, not to address legitimate safety risks.' They also noted that employees are allegedly being exposed to bullying, harassment and intimidation from union officials as they seek to control activity on a work site and exert undue influence over the operations of a project or site.

237. The Wilson Review recorded that the Watson Report 'found that violence was an accepted part of the culture within the union [CFMEU] and that reports were rarely made to the police. He also found that organised crime figures and outlaw motorcycle gangs have infiltrated the CFMEU and placed themselves and colleagues in delegate positions through employment with third parties, often through labour hire agencies, with the aim of being placed in positions of commercial, as well as industrial, power'[164].

Alleged breaches – election processes

238. Employer representatives noted that individuals are allegedly being placed into HSR roles without proper elections being held. For example, the AIG noted that they are aware of situations where individuals are appointed as full time HSRs but are not expected to fulfil a substantive role within the business. They suggested that this approach puts into question whether the HSRs have been duly elected.

239. I note that the construction industry has been the subject of previous government reviews, such as the Wilson Review. The Wilson Review also heard that 'workers have been elected unopposed as HSRs, despite not working within a DWG before their election.' Additionally, the Wilson Review heard that:

> *'it has been reported that this enables them to collect a salary without performing the duties, or to misuse the powers of an HSR to intimidate others*

by, for example, threatening to call a stop work on safety grounds if a sub-contractor who is not favoured by the CFMEU is allowed on site'.

'Contractors often accept these behaviours without reporting them to relevant authorities to avoid retribution, disruption to operations, and associated cost implications. It has been reported that the easiest and most cost-effective pathway for contractors is often to accede to demands[165].'

240. Similar to the Wilson Review, I heard about the need for stricter provisions relating to the election of HSRs. Several employer representatives, including the AIG, VCEA and VACC, supported a 'fit and proper person test' for HSRs or ARREOs.

241. The AMCA also expressed concerns that the exercise of ARREO powers on some construction sites can at times extend beyond legitimate safety purposes – allegedly resulting in unnecessary disruption or full-site stoppages when issues are confined to a single area. These actions can have significant productivity and safety implications for other workers who are not affected by the issue in question. This position was echoed by the ACA, which recommended the introduction of a 'fit and proper person test' for HSC members and HSRs, and that the appointment or election of these roles be conducted or monitored by WorkSafe.

Alleged breaches – barriers to reporting

242. Employer representatives submitted that employers are hesitant to speak publicly about alleged misconduct on some construction worksites. Stakeholders noted that employers allegedly face reprisals, with their projects targeted for speaking out about the alleged misconduct. Additionally, employers have indicated that they are reluctant to make formal complaints for fear of industrial retaliation, reputational damage, or strained commercial relationships with head contractors.

Alleged breaches – recording on construction worksites

243. The MBV raised concerns that ARREO powers to take recordings are allegedly being used in a manner that negatively impacts employers. They estimated that between 1 July 2022 and 1 July 2023, the CFMEU posted over 150 videos on its VIC-TAS Facebook page relating to footage taken by ARREOs during entry to premises.

244. They noted that these videos go beyond the purpose of inquiring into a suspected contravention and are allegedly being used for industrial purposes. They allege that the videos are highly edited to portray a particular state of affairs around inadequate site health and safety, managerial incompetence, or to bring the client into disrepute.

245. The MBV expressed concerns that the OHS Act and WorkSafe guidance does not clarify when filming is permitted during a visit. They noted that while the legislative power to take photographs and recordings is clear, the scope and reach of that power is uncertain, including whether:

- filming is only permitted of the specific subject matter of the suspected contravention
- it extends to include conversations with management and others about that suspicion
- it extends to conversations about other matters
- it includes anything and everything from the moment of entry to the site to the time the ARREO leaves.

246. Accordingly, they are seeking amendments to the OHS Act which they believe will strengthen the operation of these provisions, including:

- prohibiting photographing, filming secretly, or recording any person without their express consent
- limiting the use of photographs or film to the following purposes: providing a copy to the duty holder, providing a copy to the regulator, or facilitating discussions between them and their workers
- limiting photography and filming to the plant, substance or other thing, or a specific work process and only to the extent that it is directly relevant and reasonable to inform the enquiry of the suspected contravention
- suspending an ARREO's entry permit when they film another without their consent or for a reason not allowed during a right of entry.

Areas for further exploration: alleged breaches

247. The areas for further exploration outlined in Table 26 emerged from the Stage one consultation process and are intended to:

- improve the effectiveness of current HSR and ARREO frameworks in supporting employees to advocate for measures to ensure a healthy and safe workplace, including in high-risk workplaces
- improve the effectiveness of existing HSR and ARREO powers
- strengthen oversight and compliance functions and ensure that the powers of HSRs and ARREOs are exercised in a proportionate manner.

Table 26: Areas for further exploration: alleged breaches

For the Final Report, I will consider:	

Alleged breaches – discriminatory conduct
Alleged breaches – discriminatory conduct threshold
Disqualification – HSRs and ARREOs
Alleged breaches – impact on construction worksites
Alleged breaches – election processes
Alleged breaches – barriers to reporting
Alleged breaches – recording on construction worksites
	• whether Division 9, Part 7 of the OHS Act (Discrimination against employees or prospective employees) is operating as intended
	• whether amendments are required to the OHS Act to support the operation of:
	  ○ section 54 – Election of health and safety representatives
	  ○ section 56 – Disqualification of health and safety representatives, including the process to, and parties who can, disqualify HSRs
	  ○ section 58(1)(ab) – Powers of health and safety representatives
	  ○ section 81 – Who may hold an entry permit
	  ○ section 85 – Revocation and disqualification, including the process to, and parties who can apply to, revoke ARREO entry permits and disqualify ARREOs
	  ○ section 89(1)(ba) – Powers on entry
	• whether the OHS Act should be amended to improve protections for parties who report alleged breaches of the OHS Act in good faith
	• non-legislative mechanisms including options to strengthen and improve access to data and insights, and governance and oversight frameworks.

[163] Work Health and Safety Amendment (Digital Work Systems) Bill 2025 (NSW), accessed 6 December 2025, https://www.parliament.nsw.gov.au/bill/files/18847/First%20Print.pdf
[164] Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions, accessed 23 December 2025, https://www.vic.gov.au/sites/default/files/2024-12/Final-Report-Formal-Review-into-Victorian-Governent-Bodies%27-Engagement-with-Construction.pdf
[165] Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions, accessed 23 December 2025, https://www.vic.gov.au/sites/default/files/2024-12/Final-Report-Formal-Review-into-Victorian-Governent-Bodies%27-Engagement-with-Construction.pdf

Chapter 14: What I heard – Training

Summary

248. During consultations I heard many diverging views about the effectiveness of training provisions under the OHS Act. However, all stakeholders agreed that it is essential that employers, HSRs, ARREOs and employees are equipped with the knowledge to appropriately apply their obligations and powers under the OHS Act. During consultations, stakeholders expressed concerns that without a shared understanding of the OHS Act's provisions, there is a heightened risk of inconsistency, misinterpretation, and misuse.

249. I heard that the OHS Act grants HSRs and DHSRs broad powers and that to ensure HSRs and DHSRs can exercise their statutory powers effectively, access to appropriate training is essential. Stakeholders noted that training equips HSRs and DHSRs to identify hazards, engage in constructive consultation with employers, and advocate for the health and safety interests of their DWGs.

250. I also heard that employers, in particular middle managers and supervisors, need support to build their understanding of their duties and obligations under the OHS Act. When these parties understand their obligations under the OHS Act, it helps them to engage with and support HSRs and DHSRs to effectively undertake their roles. I understand that access to tools varies between industry and business type, with some workplaces having well-developed training and guidance to support effective consultation between employers and employees. However, I heard that this experience is not always the case.

251. Finally, I heard about the need for more accessible training options that can complement existing formal training requirements, such as online training modules and access to case studies.

252. My work regarding training is far from complete. The areas for further exploration, that I have put forward in this Interim Report, address existing challenges presented to me to date. I will continue to work with interested parties to understand the challenges associated with delivering high-quality accessible training to the above parties, as I consider it critical to improving the effectiveness of the HSR and ARREO frameworks.

What I heard

HSR training – PIN and direction to cease work powers

253. Employer representatives raised concerns that HSRs have significant powers but are not required to attend training. They noted that HSRs can issue a PIN or direction to cease work, which can disrupt operational activities and impose significant costs on employers. The VACC recommended amending the OHS Act to require an HSR to undertake training conducted by WorkSafe in order to issue a PIN or direction to cease work. The AIG also put forward a similar position noting that HSRs should attend mandatory training before being able to issue a PIN or a direction to cease work. They also recommended competency-based training for HSRs.

HSR training – access

254. Several employee representatives raised the need for additional refresher training. For example, the UWU suggested that HSRs should be eligible for a second refresher training day, which could focus on emerging issues such as AI surveillance in the workplace, and psychological hazards. They believe that HSR training entitlements are not sufficient, especially in workplaces dealing with multiple types of hazards. The AMWU echoed this position, noting that additional refresher training should be targeted towards areas where REOs receive complaints or issues arise.

    254.1. The ANMF noted that there are consistent barriers for HSRs in accessing training. The predominate factors that impact HSRs accessing training include limited availability of WorkSafe-approved training providers with an industry specific focus, and a perception that employers are unwilling to fund travel or time off for training. For example, some regional Victorian nurses attend training that contains content unrelated to their workplaces (e.g. farm work). The ANMF highlighted the need for industry specific HSR training that is adequately contextualised for high-risk environments such as healthcare. The BTHC also expressed concerns that it can be difficult to access training in regional Victoria.

    254.2. The AEU also raised concerns that access to training depends on an HSR's location and the size of the workplace. They noted that the VTHC run WorkSafe approved education-specific HSR training courses and HSRs are able to attend. However, HSRs in regional and rural areas experience difficulties receiving approval to access Melbourne-based education courses. They noted that HSRs are often unable to be released to attend training, due to factors including the distance required to attend training, low numbers of staff and limited access to replacement staff.

    254.3. The VTHC recommended extending HSR training entitlements under section 69 to cover DHSRs. This section allows HSRs to take time off with pay to take part in any OHS course approved or conducted by WorkSafe (in addition to initial and refresher training). The UWU also recommended adopting the South Australian model, which provides HSRs with access to 10 days training over a three-year period.

HSR training – timeliness

255. Some employee representatives expressed concerns about the timeliness of training request approvals. In Victoria, there is no obligation for employers to ensure that an HSR attends training within a particular time period.

256. There were diverging views on the appropriate response time, ranging from fourteen days to six months. One employee representative also recommended the Queensland model, which requires a five-day training course to be completed within twenty-eight days of an HSR's election (or as soon as possible if a course is unavailable).

HSR training – accessible options

257. Employer and employee representatives put forward a number of options for consideration that are aimed at improving the delivery of training, including developing:

- resources to support an HSR training needs analysis

- more training topics or modules, such as critical risks, psychosocial hazards, ethical decision making, conflict resolution and professional boundaries for HSRs
- additional training modules that can be accessed online or via webinars
- further guidance for employers on what is considered a reasonable cost to attend training
- a digital training hub that could host additional training modules, provide access to micro-learning modules, support scenario-based learning and provide access to case studies
- an education campaign on the separation of roles under the OHS Act and the role of WorkSafe.

HSR training – employer costs

258. The AIG advised me that they have received feedback from employers in regional or remote locations that training can result in significant travel and accommodation costs, and access issues for people with caring responsibilities. To address these concerns, they recommended that I consider options to improve access to virtual training for HSRs.

259. Government representatives also noted it would be costly to put all managers and supervisors through training, especially in larger departments and agencies.

ARREO training – refresher training

260. Some employer representatives suggested that ARREOs should be required to complete a minimum number of continued professional development hours per year. They put forward the position that other occupations are required to complete continued professional development to maintain their licenses and/or permits.

    260.1. The ANMF is also supportive of refresher training for ARREOs. They recommended providing voluntary accredited periodic refresher training for ARREOs, encompassing legislative changes and relevant WorkSafe updates and data.

    260.2. One employee representative put forward an alternative recommendation. The TWU recommended that the ARREO initial training course should be one day in duration.

Training – middle managers and supervisors

261. Some employee representatives noted that when HSRs attend training it can have a positive impact on raising awareness of OHS powers and obligations at a workplace. However, this was not the case for everyone.

262. Employee representatives, including the UWU, ASU, FAAA and IEU, raised concerns that middle managers and supervisors have limited knowledge about HSRs. This concern was also shared by a regional training provider, BeSafe and people with lived experience.

263. The IEU noted that it is common for HSRs to attend an initial training course delivered by the union to return to their school and face challenges consulting with their employer as their knowledge of the OHS Act surpasses that of the principal who manages their school. They provided the following examples to support their case:

> *After completing the five-day Initial Training Course, a DHSR returned to school and discussed with the HSR and then the DWG the idea that due to the size of the staff, the DWG may be better represented by two HSRs rather than*

one HSR and one DHSR. The HSR spoke to the school's Health and Safety Manager about commencing consultation on this matter. They were told by email 'I will contact [Organisation X] to determine if we are bound by the OHS Act Vic 2004 (in a school environment) as none of our other schools appear to have this order in place'

Union members at a large multi campus independent school in Victoria, with the support of the IEU, called on their employer to begin the process of establishing DWGs. The school released a role description with KPIs and an application process, which allegedly breaches sections 54 and 58 of the OHS Act.

264. There were diverging views about whether training for employers, in particular middle managers and supervisors, should be mandatory. Some employee representatives, including the PPTEU, IEU, ANMF and TPAV, supported this position. On the contrary, employer representatives and government stakeholders did not support mandatory training. They cited operational difficulties in achieving compliance with this requirement, in particular in high-risk operating environments or larger organisations.

    264.1. The PPTEU suggested that the OHS Act should be amended to make it 'clear that to the extent that an employer delegates power to managers and supervisors to discharge the employer's OHS duties and obligations, the employer has a duty to ensure that those individuals have the skills, knowledge, experience and training to discharge those obligations competently'. They also recommended introducing penalties for all employers who fail to take steps to ensure their managers and supervisors have sufficient knowledge and competence.

    264.2. TPAV recommended mandated formal training for all supervisors and managers, based on the size and risk profile of the employer. They suggested that the training should 'include comprehensive education on the role, rights, and functions of HSRs, as well as the importance of their presence and participation in workplace safety systems.'

    264.3. The GTLC believe that employers and OHS representatives should be trained together to create a better understanding of their responsibilities and rights to provide a safe workplace.

265. Government stakeholders noted that while they support mandatory training in theory, in practice it can be difficult to ensure that all managers and supervisors are trained. They cited legislative and operational requirements as the main inhibitors to achieving one hundred per cent compliance. For example, achieving compliance may be impacted by a constantly changing workforce (due to reasons such as secondments, higher duties, and extended leave).

Areas for further exploration: Training for HSRs, ARREOs and employers

266. The areas for further exploration outlined in Table 27 emerged from the Stage one consultation process and are intended to improve the effectiveness of HSR and ARREO training, including consideration of existing employer obligations, such as facilitating attendance, providing paid time off, and covering associated costs for HSR initial and refresher courses.

Table 27: Areas for further exploration: training for HSRs, ARREOs and employers

For the Final Report, I will consider:	
HSR training – PIN and direction to cease work powers **HSR training – access** **HSR training – timeliness** **HSR training – accessible options** **HSR training – employer costs**	• HSR training entitlements, including options for delivering additional refresher training • opportunities to improve access to training, including the development of an online training hub • whether HSR training should be mandatory • DHSR training entitlements, including whether to extend HSR entitlements to attend other WorkSafe-approved courses to these roles.
ARREO training – refresher training	• whether ARREOs should be required to undergo an annual refresher course.
Training – middle managers and supervisors	• measures to improve knowledge and awareness of the role and functions of HSRs and ARREOs by employers, including middle managers and supervisors.

PART E:
Regulatory oversight and compliance

Chapter 15: What I heard – Oversight, compliance and enforcement

Summary

267. Part E of the Interim Report outlines the perspectives I heard from employer and employee representatives, as well as people with lived experience, individuals, and government stakeholders on the effectiveness of the OHS Act's oversight and enforcement mechanisms.

268. All interested parties to the Review submitted that constructive engagement, open dialogue, and shared responsibility are essential for resolving disputes. It was a shared view among the parties that I spoke to, during consultation or who submitted a submission, that local resolution processes should be encouraged and promoted ahead of invoking WorkSafe or other formal mechanisms. However, these parties also noted that formal mechanisms are a valuable safeguard, ensuring that when local workplace-based mechanisms prove insufficient or disputes escalate beyond their internal capacity, there are clear resolution pathways available for all impacted parties.

269. The effectiveness of the HSR and ARREO frameworks, as intended by the OHS Act, depends on strong mechanisms that ensure appropriate use of powers and compliance with relevant provisions by all parties. I heard that oversight and compliance functions serve not only as a safeguard against misconduct but also promote transparency and accountability.

270. When compliance functions are not operating effectively, it can lead to an erosion of trust with the regulator. I heard that there is a perception that WorkSafe has limited oversight over HSRs and ARREOs, and as such, is reluctant to investigate disputes or prosecute alleged breaches of the OHS Act in some situations. I also heard that existing dispute resolution mechanisms are complex, slow, and expensive. I am keen to explore this matter further, in particular, the role of WorkSafe in relation to HSRs and ARREOs and the perceived limitations with existing dispute resolution mechanisms.

271. Finally, I also heard about the limitations in WorkSafe's data frameworks, in particular, that the regulator has limited data on HSRs, ARREOs and related enforcement tools (such as the number of PINs or entry notices issued by HSRs and ARREOs). Effective regulation depends on a solid foundation of data and evidence, and WorkSafe should ground its activities in evidence to ensure that decisions are proportionate, transparent, and defensible.

What I heard

Dispute resolution – WorkSafe's role

272. Employee representatives expressed concerns that in some situations WorkSafe does not intervene when there are breaches of the OHS Act. They also raised concerns that WorkSafe does not always consult with all relevant parties to an OHS matter, including on the outcomes of a dispute. The VTHC reported that a survey of 987 HSRs found that of the 636 HSRs that had reported an onsite inspection:

- 47.8 per cent were able to accompany a WorkSafe inspector

- 30.2 per cent who were willing and able to accompany an inspector only found out about the visit after the inspection had concluded.

272.1. The SDA noted that when employers refuse to cooperate with ARREOs and share relevant documentation to suspected contraventions, WorkSafe has allegedly refused to step in to resolve the matter. The VAU also noted that 'there is no penalty for employers who regularly dispute or ignore a PIN and direction to cease work, WorkSafe rarely intervenes favourably or supports HSRs in these situations.'

272.2. The RTBU noted that WorkSafe's powers are 'appropriate in theory, such as the investigation, examination and enforcement roles held by inspectors. However, they are seldom used. RTBU officials have reported that on almost all occasions after contacting WorkSafe, the safety issue is logged but they are subsequently provided with either no time frame, or an unreasonable time frame for a WorkSafe inspector to attend the site. This not only presents a barrier to effectively addressing and mitigating safety risks, but any incidental powers such as prosecution of employers' legislative breaches.'

272.3. The ANMF raised concerns that section 71 of the OHS Act, which requires employers to maintain a written list of HSRs and DWGs, is rarely enforced. This then means that when WorkSafe inspectors attend a workplace, they do not know which HSR to engage with. The IEU and ASU also noted that HSRs are not always notified when WorkSafe inspectors attend a workplace. As noted previously, the IEU provided an example where an HSR was in another part of the school at the time of the WorkSafe inspector's visit and was not advised that the inspector was onsite.

272.4. The FAAA noted interactions with WorkSafe have been limited. They suggested that inspectors rarely, if ever, board aircrafts, the primary work environment, and focus instead on office-based compliance such as signage or noticeboards. They suggested that WorkSafe should establish a dedicated aviation liaison function and ensure that inspectors assigned to the sector are trained in aviation operations, including regulatory overlap with CASA.

272.5. The ANMF suggested that there is an increased need for specialist inspectors. They noted that the health-led inspectorate trial is an example of an effective approach as inspectors involved in the trial come from healthcare backgrounds and understand the risks within the sector.

272.6. The AEU submitted that the majority of HSRs in Victorian government schools are classroom-based teachers or education support staff. When WorkSafe inspectors conduct onsite visits HSRs are often not released or informed of the visit and are told after the visit has taken place – meaning they have not had an opportunity to meet with the WorkSafe inspector and speak to them about the issue in question. Where principals do try to accommodate HSRs being released to meet with WorkSafe inspectors, they often struggle due to limited staffing and budget constraints, particularly where there has not been ample notice.

272.7. The AWU raised concerns that WorkSafe inspectors are not engaging with all relevant parties, including HSRs and ARREOs. They noted that:

> *'most inspectors are general inspectors and are not experts on the particulars of all industries they are inspecting – and nor are*

they expected to be – but workers are experts in their workplaces, and this is one of the reasons the HSR provisions are in the legislation – introduced in 1985 to give workers a formal, elected voice in occupational health and safety, as previous laws were dangerously inadequate.

Although inspectors have the ability to escalate and engage subject matter experts (SME) within WorkSafe (Occupational Hygiene unit, Ergonomic Unit etc) or outside of the WorkSafe, this often delays much needed outcomes and if the inspector is not consulting directly or meaningfully with an [HSR] or ARREO, they cannot be expected to make an informed decision based on the information on hand'.

273. Employer groups also raised similar concerns about WorkSafe's perceived reluctance to intervene in the resolution of disputes on construction worksites.

    273.1. The MBV noted that its members have no confidence in the ability or preparedness of the regulator to enforce the law when ARREOs enter construction worksites. The MBV submitted that WorkSafe is, in their experience, either unwilling or unable to become practically involved with ARREOs and entries.

    273.2. The AIG noted that some of its members encountered issues when requesting WorkSafe assistance in a direction to cease work dispute in the construction industry. They said that it has been the experience of some of their members that the 'inspector agrees that the issue does not warrant a cessation but says that it is clearly an industrial issue and they will not attend the site.' They recommended that WorkSafe inspectors should attend a workplace when a direction to cease work has been issued and is disputed. The ACA also supported this recommendation.

    273.3. More broadly, the AIG noted that 'the feedback we receive from members is that the inspectorate generally responds well when asked to address a PIN or direction to cease work when they have asked for assistance.'

Dispute resolution – timeliness of disputes

274. Employee representatives expressed concerns that WorkSafe appears reluctant to bring forward prosecutions. The VTHC put forward the following case study as an example of a matter that has not been resolved in a timely manner:

'The CPSU are currently supporting HSRs who work for a government department. In July 2023 one of these HSRs issued a PIN on their employer for an unsafe system of work concerning occupational violence. This PIN was challenged by the employer, but the PIN was upheld by both the inspector and in internal review. The employer then challenged WorkSafe's decision at VCAT. At the time of writing this submission it has been 3 years since the PIN was served on the employer and, although there was a compulsory VCAT conference in March 2025, there is still no hearing scheduled for a definitive resolution of the matter. The CPSU has written to the CEO of WorkSafe who

responded that 'unfortunately the timeframes set by VCAT are beyond WorkSafe's direct control.'

Meanwhile the substantive issue being an unsafe system of work continues to operate pending a binding decision. The issues identified by HSRs in their PIN, a PIN that was upheld by WorkSafe, continue to expose workers to unnecessary risk of injury.'

275. Employee representatives put forward a number of options aimed at improving the timely resolution of disputes, including:

- replacing WorkSafe's internal review process with an independent state-based resolution body that is required to hear matters within a set time
- amending the OHS Act to:
  - provide a statutory requirement for WorkSafe inspectors to investigate the subject of a PIN even if the notice has been cancelled
  - shorten the time for reviewable decisions to align with the *Work Health and Safety Act 2020* (WA)
  - broaden the range of matters that are eligible to be referred for review
- increasing the use of options to deal with disputes without the need for prosecutions, such as infringements, cautions and improvement notices.

276. Employer representatives also put forward a number of options, including:

- introducing mandated dispute resolution times where the matter is time sensitive and has the ability to have significant costs
- adopting the Queensland dispute resolution model
- introducing clearer and more detailed dispute resolution pathways that do not involve the Magistrates' Court in the first instance
- providing for a tribunal to issue, review and revoke permits rather than the Magistrates' Court.

Prosecutions – other interested parties

277. Employee representatives, including the VTHC, VAU, UWU, PPTEU, CFMEU and TFTU, suggested that REOs should be able to initiate private prosecutions for OHS matters, where WorkSafe and the DPP have not acted within a certain time.

278. The VTHC noted that REOs in New South Wales have this option. Under the *Work Health and Safety Act 2011* (NSW), REOs can commence proceedings for civil penalty provisions where they have consulted with SafeWork NSW, and the regulator declines to act or fails to do so within twelve months. They also suggested that:

- courts should be allowed to direct a portion of fines from successful prosecutions to unions. This is a feature of recent legislative reforms in New South Wales, which come into effect in March 2026
- WorkSafe be required to give unions access to investigative information, which is also a feature of the NSW reforms.

WorkSafe oversight – baseline data

279. Employer representatives expressed concerns about WorkSafe's limited oversight over the HSR and ARREO frameworks. They suggested that WorkSafe's oversight of HSR and ARREO activities is constrained by gaps in data collection and reporting, which limit the regulator's ability to monitor compliance, intervene in disputes and ensure that representatives are acting within their remit. For example, the VCCI noted that 'limited reporting on enforcement actions, permit status, and complaints against HSRs and ARREOs undermines accountability. Without clear data, it is challenging to identify patterns of misuse or areas needing improvement.'

    279.1. The MBV also emphasised the importance of data and that 'having reliable and detailed data can better inform the regulator's allocation of resources, policy positions, and education priorities.'

    279.2. The VCEA submitted that 'the inability of WorkSafe to monitor HSRs and ARREOs enforcing the Occupational Health and Safety laws reflects a broader failure in transparency, and regulatory oversight.' They also noted that WorkSafe does not collect information on the number of HSRs in Victoria, whether HSRs have been duly elected or when HSRs exercise their powers. The VCEA recommended that WorkSafe should be notified when a PIN or direction to cease work is issued.

280. I was unable to quantify the number of HSRs in Victoria due to data limitations. WorkSafe confirmed that they do not collect this data, as HSRs are not required to be registered. Several employer representatives suggested that HSRs should register with WorkSafe or an up-to-date list of HSRs be provided to the regulator to improve oversight of HSRs. Under the OHS Act, employers are required to display or make readily available to employees a copy of an up-to-date list of HSRs.

Areas for further exploration: oversight, compliance, and issue resolution

281. The areas for further exploration outlined in Table 28 emerged from the Stage one consultation process and are intended to strengthen oversight and compliance functions and ensure that the powers of HSRs and ARREOs are exercised in a proportionate manner.

Table 28: Areas for further exploration: oversight, compliance, and issue resolution

For the Final Report, I will consider:	
Dispute resolution – WorkSafe's role **Dispute resolution – timeliness of disputes** **Prosecutions – other interested parties** **WorkSafe oversight – baseline data**	• whether employers should be required to provide WorkSafe an up-to-date list of HSRs, and a copy of any PIN issued, as soon as practicable after they receive the notice • whether ARREOs should be required to provide WorkSafe with a copy of any entry notices issued • whether amendments are required to improve the process for when a PIN or direction to cease work is disputed • options to improve the function and timeliness of dispute resolution processes, including alternative models such as the establishment of an independent state-based body • whether the OHS Act should be amended to allow other parties to initiate private prosecutions

For the Final Report, I will consider:	
	• options to strengthen WorkSafe's data collection framework, including what data is required to support WorkSafe's oversight, compliance, and enforcement activities.

Penalties – threshold levels

282. I heard that it can be difficult for WorkSafe to progress compliance and enforcement activities as employers, HSRs and other impacted parties are unwilling to give evidence about alleged misconduct. However, some employee representatives have suggested when matters are progressed to prosecution stage, the penalties are too low and should be increased.

282.1. The FAAA submitted that the monetary penalties are too low to act as a real deterrent, particularly for large corporations. They noted that a fine of $10,000 or even $60,000 is negligible to major aviation operators which recoup these amounts through normal business operations. The FAAA also noted that these penalties have negligible impact on institutional behaviour, even where evidence of discrimination, obstruction, or interference with HSRs exists. Accordingly, they suggested a tiered penalty system that scales with company revenue and severity of the breach.

282.2. The VTHC recommended amending the OHS Act to include a new section equivalent to section 47 of the 1985 Act. They noted that several sections of the OHS Act have no penalty attached to their breach. Under section 47 of the 1985 Act, a person who contravenes or fails to comply with the Act and its regulations is guilty of an offence and may be liable for a penalty. The section also notes that an offence against the 1985 Act (that is not a contravention of or failure to comply with a provision of the regulations) is an indictable offence.

282.3. The PPTEU also recommended attaching penalties to the following provisions for when employers:

- refuse to abide by a lawful direction to cease work
- frustrate or mislead WorkSafe inspectors with regard to an HSR's availability or relevance to the safety issue being discussed
- withhold information from HSRs in relation to section 69 of the OHS Act
- without reasonable excuse, refuse or fail to comply with a new proposed provision that would allow ARREOs to copy documents and that the evidential burden to prove that an excuse was reasonable be placed on the employer
- take no action in response to a notice issued by an HSR or ARREO.

283. Employer representatives also raised concerns about the effectiveness of the penalty framework.

283.1. The VCEA recommended that civil penalties should apply to HSRs who have been disqualified because they have intended to cause harm to the employer or their undertaking. They also recommended that a new provision and penalties be introduced for when an ARREO refuses to leave a site within a reasonable time if requested to do so, and recommended that Division 4, Part 8 of the OHS Act be amended to increase the

maximum penalty for contravention to the equivalent of 1,000 (federal) penalty units. This position was echoed by the VACC.

283.2. The AIG submitted that 'there are really no penalty frameworks that effectively apply accountability to HSRs. The only penalty that could be applied to a HSR is to be disqualified. This requires an employer to make an application to the Magistrates' Court, which is highly unlikely to occur.' They recommended introducing a warning or feedback system that could be provided to HSRs if a WorkSafe inspector formed a reasonable view that they were not genuine in exercising their powers.

283.3. The MBV noted that 'HSRs have a number of important powers available to them to achieve this, namely, the ability to invite others on to site to assist them, the ability to issue a [PIN], and the power to direct, after consultation, that work ceases. The latter two powers are significant, especially in circumstances where the HSR themselves does not carry any real personal financial or legal responsibility for the consequences of the exercise of those powers.' They noted that:

> *'currently, an HSR who, intending to do harm to an employer, issues an unreasonable PIN or direction to cease work, can be removed from office by application to the Magistrate's court. MBV is not aware of any court matters in recent history where this has occurred (or been attempted). Making an application to a court, even the Magistrates' Court, is expensive and very few employers have the time or resources to do so. This makes the provision ineffective.'*

Areas for further exploration: penalties

284. The areas for further exploration outlined in Table 29 emerged from the Stage one consultation process and are intended to improve the effectiveness of penalties in promoting compliance with the OHS Act.

Table 29: Areas for further exploration: penalties

For the Final Report, I will consider:	
Penalties – threshold levels	• the effectiveness of the penalty framework, including the appropriateness of existing penalties and thresholds • whether additional penalties should be introduced.

PART F:
Appendices

Appendix A: Terms of Reference

Background

The Independent Review of Employee Representatives (the Review) will consider whether the powers, functions and support provided to Authorised Representatives of Registered Employee Organisations (ARREOs) and Health and Safety Representatives (HSRs) under the *Occupational Health and Safety Act 2004* (OHS Act) remain effective and fit-for-purpose to deliver improved health and safety outcomes for all workers, and recommend any legislative, regulatory or operational changes to improve their effectiveness.

The Review will have regard to contemporary issues and challenges relevant to employee representation in occupational health and safety, in the context of changes in working relationships and workplaces over the past 20 years since the OHS Act was legislated. These include insecure working arrangements, recent and ongoing Government reforms around safety protections for labour hire workers and vulnerable workers, the increase in remote working and the ongoing health and safety challenges prevalent in high-risk industries.

Scope

The Review will assess whether the powers, functions and support provided to ARREOs and HSRs under the OHS Act remain effective and fit-for-purpose to deliver on health and safety outcomes for all workers and recommend any legislative, regulatory, or operational changes to improve their effectiveness.

In particular, the Review will consider:

- the effectiveness of current ARREO and HSR frameworks in supporting employees to advocate for measures to ensure a healthy and safe workplace, including vulnerable and insecure workers, workers working remotely or in hybrid environments, and workers in high-risk workplaces
- ARREO powers, functions, and support in comparison with those provided for equivalent roles under the Model Workplace Health and Safety laws
- opportunities to improve the effectiveness of existing ARREO and HSR powers, including but not limited to:
    - notice of entry requirements
    - powers to hold discussions with employees, and
    - inspection of documents
- effectiveness of penalties in promoting compliance with the OHS Act
- eligibility criteria for ARREOs, including whether there is a need to expand the range of people who can become an ARREO
- potential additional measures to improve knowledge and awareness of the role and functions of ARREOs and HSRs across workplaces, including tailored measures for industries that are high-risk and/or dominated by insecure or vulnerable workers
- the adequacy and effectiveness of ARREO and HSR training, including consideration of whether existing employer obligations, such as facilitating attendance, providing paid time off, and covering associated costs for HSR induction and refresher courses

- appropriate oversight, checks and balances to ensure ARREO and HSR powers and functions are exercised proportionately
- potential regulatory and cost impacts on employers of any proposed changes to ARREO and HSR frameworks, with consideration of how these can be balanced with ensuring ARREO and HSRs are equipped to play an effective role in upholding the occupational health and safety of employees.

Where the Reviewer finds legislative, regulatory, or operational changes could be made to improve the effectiveness of ARREOs and HSRs, the Reviewer must provide recommendations to give effect to such improvements.

The Reviewer will have consideration to relevant work that is being or has already been undertaken in this area including the *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions* (Final Report, November 2024) and Government's response.

Principles

The Review will be guided by the following principles:

- the Review will be evidence based
- the Reviewer will engage with key stakeholders, including unions, as appropriate to inform the Review, including but not limited to relevant employee and employer representative groups and government entities
- the Review should balance consideration of improvements to employee representative roles with any potential regulatory or cost impacts on employers or the state
- the Review may direct recommendations to WorkSafe Victoria as the relevant regulator, the Department of Treasury and Finance, or the Victorian Government. It must not make recommendations to other Victorian Government departments or agencies.

Governance

The Review will be undertaken by an Independent Reviewer with support from a Secretariat comprised of Victorian Public Service staff. The Independent Reviewer will be appointed by the Premier, Minister for WorkSafe and the TAC and Minister for Industrial Relations, as agreed by Government. This appointment falls outside the scope of the Appointment and Remuneration Guidelines.

The Review will be undertaken according to these Terms of Reference endorsed by the Premier, Minister for WorkSafe and the TAC and Minister for Industrial Relations, as agreed by Government.

The Independent Reviewer will report directly to the Minister for WorkSafe and the TAC.

Deliverables

The Independent Reviewer will oversee the delivery of the Review, including the release of an Interim Report, final report and undertake extensive stakeholder consultation throughout the Review. The Independent Reviewer will provide a final written report, including recommendations, to the Minister for WorkSafe and the TAC which will be made available publicly when the Government's response is released.

Appendix B: Summary of consultation

Table 30: List of meetings

Stakeholder	
AIG	MBV
Alliance of state and federal law enforcement and regulators and other relevant entities	MEU
Anonymous one	TPAV
AMWU	UFU
ANMF	UWU
AWU	VACC
CFMEU – CGD, Administrator	VCEA
FWC	VTHC
Government departments and agencies	WICC
HACSU	WorkSafe
IEU	

Table 31: List of submissions

Stakeholder	
ACA	Individual one
AEU	Individual two
AIG	MBV
AV	MWC
AMCA	PPTEU
AMIC	RTBU
AMWU	SDA
ANMF	TFTU
Anonymous one	TPAV
Anonymous two	TWU
ASIAL	UFU
ASU	UWU
AWU	VACC
BeSafe	VAU
BTHC	VCCI
CFMEU - CGD	VCEA**
FAAA	Victoria Police
GTLC	VMA
HIA*	VTHC***
IEU	WICC

*Letter of Support for VCEA submission

** represents VCEA's member organisations

*** represents VTHC's affiliates