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## 6 Accountability of regulators

### Key points

- All jurisdictions allow for reviews and appeals of core OHS inspectorate and regulator decisions internally and/or externally. However, there are some differences:
  - South Australia has no internal review mechanism for notices, only external — all other jurisdictions provide an ‘arm’s length’ internal review process
  - New South Wales does not provide for appeals to a higher court against prosecutions undertaken in its Industrial Court
  - the Northern Territory has an external appeals process only for its licensing decisions — the Local Court.
- There are differences in the transparency of core OHS regulators:
  - the Commonwealth, New South Wales and Tasmanian regulators do not provide information on appeal mechanisms, such as how to initiate an appeal, on dedicated web pages on their websites
  - only regulators in the Commonwealth, New South Wales and Victoria publish stand alone annual reports.
- Most jurisdictions conduct feedback surveys and publish this information in some form, the exceptions being Tasmania which does not do either and the Northern Territory which does not publish the results.
- Written notices are used by all jurisdictions to inform businesses of OHS breaches and/or remedies. Despite this, the information contained on these forms differs:
  - the Commonwealth provides the least amount of information — no information on the reason for the breach or appeal/review provisions are contained on the notices
  - in Queensland, the prohibition and infringement notice provides no instruction or guidance on how to improve the observed practice that resulted in the notice.
- The mining regulators in New South Wales, Queensland and Western Australia have similar levels of transparency and accountability with some exceptions, for example, the mining regulator in New South Wales provides more information on its written notices than the mining regulators in Queensland and Western Australia.

The transparency and accountability of regulators is important not only to provide clarity around the way particular laws are enforced and how effective this is, but

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also to ensure businesses do not feel that enforcement decisions are arbitrary and without recourse. Where administrators have incorrectly penalised a business, appeal mechanisms increase the likelihood that businesses can avoid costs that should not be imposed on them.

In this chapter, indicators of the transparency and accountability of core and mining-specific occupational health and safety (OHS) regulators are presented. In section 6.1, the appeal provisions available to dispute core OHS inspectorate decisions and prosecutions are presented. Section 6.2 examines measures of transparency and accountability of core OHS regulators through what information they publish on their website, while section 6.3 examines core OHS regulators' approaches to providing and seeking feedback. Data used to construct indicators for core OHS regulators was collected from the Commission's survey of OHS regulators (see appendix B) and from that collected during desk-based research. Transparency and accountability indicators for mining-specific regulators are presented in section 6.4 making use of the Commission's survey of OHS regulators.

## 6.1 Appeal provisions — core OHS regulators

### Appeals against inspectorate decisions

When regulators take enforcement actions against businesses they deem to be in breach of OHS legislation, they are making a judgement based on the evidence that they have. However, these judgements are not infallible and may be based on the inadequate information they have access to at this stage. Because of this, there must be adequate review processes to help ensure fair decisions are made. The Regulation Taskforce (2006) considered appeal processes as an important indicator of good regulator performance, particularly given the nature of the decisions they have to make:

Errors are inevitable. Indeed this should be *anticipated* in regulatory design, so that regulators are not obliged to over-reach their capabilities. The likelihood that errors will be made means there needs to be adequate appeal and review mechanisms, both to avoid or rectify adverse consequences for regulated entities and provide discipline on regulators to make sound decisions. (Regulation Taskforce, 2006. p.162)

If a business receives a notice of improvement, notice of prohibition or other breach notices from inspectors because of an apparent contravention of OHS legislation, processes should be available for them to appeal against these decisions. This includes an internal review with the regulator and, if unsatisfied with the verdict, a business can pursue further appeals through external processes.

The appeals processes available to businesses in regard to inspectorate decisions are detailed in table 6.1. All jurisdictions, except South Australia, have internal appeal processes available for businesses. The timeframe to appeal against decisions ranges between 7 days in New South Wales to 14 days in Victoria, Queensland, Tasmania and the Northern Territory. As a business may need time to prepare their case, a more limited timeframe could impact on their decision to pursue an appeal. In South Australia, only external appeals are available.

**Table 6.1 Appeals processes for inspectorate decisions — core OHS regulators**  
2008-09

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Internal	✓	✓	✓	✓	x	✓	✓	✓	✓
Arms length	✓	✓	✓	✓		✓	✓	✓	✓
Timeframe (days to lodge)	ns	7 <sup>a</sup>	14	14		ns	14	14	ns
Fee	\$0	\$0	\$0	\$0		\$0	\$0	\$0	\$0
External	✓	✓	✓	✓	✓	✓	✓	✓	✓
Timeframe (days to lodge)	ns	ns	ns	30	14	ns	ns	21	ns
Number (total)	1	49	1 125 <sup>b</sup>	109	nr	918 <sup>b</sup>	2	8	ns
Success rate	0%	39%	87% <sup>c</sup>	42%	nr	2.2%	0%	100% <sup>d</sup>	nr

**nr** non response. **ns** not specified in the survey response. **a** 28 days is allowed for forfeiture notices.

**b** Figure includes requests for a review of notices of which the majority are for an extension of time.

**c** 90 per cent of the successful appeals were related to time extensions. **d** All appeals were for an extension of time.

Source: OHS Acts; Productivity Commission survey of OHS regulators (2009 unpublished).

Despite common elements in the appeals processes, some differences exist across the jurisdictions.

- For the Commonwealth, an internal appeal can be made to a senior manager, with an external appeal possible to the Australian Industrial Relations Commission.
- In New South Wales, internal appeals of inspector notices can be made in writing to WorkCover NSW's Audit Management and Operational Governance Team, and then on to the Local Court for selected notices (improvement, prohibition, investigation, penalty and forfeiture notices) for external appeal.

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- In Victoria, for certain notices a business can apply for an internal review and, if unsatisfied, an external review is possible through the Victorian Civil and Administrative Tribunal for a fee of \$300.
  - In Queensland, a client can appeal an inspector's decision to Workplace Health and Safety Queensland for review. An external appeal is also possible to the Queensland Industrial Commission.
  - In South Australia, an application can be made to the President of the Industrial Court to have prohibition and improvement notices reviewed by a review committee.
  - In Western Australia, an application for internal review can be made to the WorkSafe Commissioner. External reviews can then be sought from the Occupational Health and Safety Tribunal.
  - In Tasmania, internal appeals can be made on improvement and prohibition notices in the first instance to the Secretary of the Department of Justice, and then for external appeal to the administrative appeals division of the Magistrates Court. No appeals are possible against infringement notices; instead, a business can choose not to accept the notice and try to resolve the matter when it is taken to formal prosecution.
  - In the Northern Territory, an application for internal review can be made in writing to NT WorkSafe, with an external appeal possible to the Work Health Court.
  - In the ACT, an internal appeal can be made to the Executive Director of ACT WorkCover. If unsatisfied, a business can appeal a decision to the ACT Civil and Administrative Decisions Tribunal, for a fee of \$255, prior to any court action being undertaken.

Overall, appealing against inspectorate decisions is likely to be most burdensome in South Australia as no internal review is possible. As the external provisions in Victoria and Western Australia avoid the court system, these jurisdictions are likely to impose the lowest burdens on businesses in terms of appealing against inspectorate decisions.

## **Appeals against court decisions**

For some breaches of the OHS Acts, regulators will seek to punish the offending business through legal action. Prosecutions are used for the more serious breaches, and is a component of the enforcement pyramid (see chapter 5).

Overall, New South Wales had the largest number of prosecutions in 2008-09. Despite this, the number of cases, and those appealed, was only small relative to the total number of businesses regulated (well below 1 per cent). On a percentage of worksites basis, while rates were low for all jurisdictions, the Commonwealth had the highest rate of prosecutions, followed by Victoria, Queensland and South Australia.

The process to appeal against prosecutions differs across the jurisdictions (table 6.2). While all jurisdictions have provisions for appeals, and generally make use of the court system and its appeal provisions, in some states these differ. In New South Wales, while appeals are possible, they are not made to a higher court — matters are initially heard by a judge sitting alone in the Industrial Court of New South Wales and appeals are made to its full bench (matters of law, however, can be appealed to the High Court). The limitation on appeals to higher courts than the Industrial Court occurs via the *Industrial Relations Act* 1996 (NSW) which prohibits an appeal against a review, the quashing or calling into question of a ‘decision’ of the Industrial Court.

**Table 6.2 Appeals against court decisions — core OHS regulators**  
2008-09

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Available	✓	✓	✓	✓	✓	✓	✓	✓	✓
Higher court	✓	x	✓	✓	✓	✓	✓	✓	✓
Number of prosecutions	3	209	119	146	63	37	30	5	2
Number of prosecutions per worksite (%)	0.08	0.03	0.05	0.04	0.04	0.02	nr	na	nr
Number appealed	0	5	3	5	2	1	2	0	1
Number appeals successful	0	1	2	1	1	1	0	0	0
Number appeals ongoing	0	3	1	0	1	0	0	0	1

na not available. nr non response.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

A recent decision by the High Court (*Kirk v WorkCover NSW (and Ors)*) has brought into question the limiting of appeals in New South Wales to the Industrial Court. The High Court held in this case:

... that “decision” does not include a purported decision made outside the limits of the powers of the Industrial Court. Furthermore, Chapter III of the Constitution requires there to be a body in each state fitting the description “the Supreme Court of a State”. A

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necessary feature of a Supreme Court, which it is beyond the power of a State legislature to take away, is the ability to grant relief on account of jurisdictional errors made by courts and tribunals of limited jurisdiction. Thus s 179 could not prevent the Court of Appeal, nor the High Court on appeal, from quashing the convictions and sentences ... (High Court Of Australia 2010, p. 2)

Further, the High Court held that any statement of an offence arising from a breach of an employer's duty had to identify both the risk and what measure the employer could have taken to address the risk irrespective of the reverse onus of proof arrangements that exist in New South Wales (High Court of Australia 2010). Previously, WorkCover NSW pursued prosecutions after an incident had occurred where the statement of offence was only that an employer had not ensured the health, safety and welfare at work of all the employer's employees. The High Court held that such an approach made it impossible for a defendant to establish whether or not they had done all that was reasonably practicable to prevent the incident and therefore whether or not they had breached their OHS obligations. As a result of this decision, the cost to employers defending future alleged breaches of the New South Wales OHS Act is likely to be lower as they will now know what measure they should have done to prevent the incident from occurring and thus mount a defence more easily.

### **Appeals against licensing decisions**

All jurisdictions provide the opportunity to appeal against licensing decisions made by OHS regulators (table 6.3). (The Commonwealth does not have licences of its own and instead recognises those issued by the states and territories.)

In jurisdictions, the availability of both internal and external appeal provisions varies:

- in New South Wales, Victoria, Queensland and Tasmania, both internal and external provisions are available
- in South Australia, the appeal process is either internal (for certificates of competency) or external (Dangerous Substance Driver, Explosives, Fireworks and Ammonium Nitrate licensing decisions)
- in Western Australia, only internal appeal provisions are available
- in the Northern Territory, only external appeal provisions are available.

**Table 6.3 Appeal processes for licensing decisions — core OHS regulators**

2008-09

	<i>Appeal available</i>	<i>Details</i>
Cwth	<b>a</b>	na
NSW	✓	An internal review can be requested, and if the appellant remains unsatisfied, they can request a review by the NSW Administrative Decisions Tribunal.
Vic	✓	A two-step internal review is available whereby initially WorkSafe considers submissions and makes its decision. If applicants remain unsatisfied, they may then appeal to the Authority's Internal Review Unit for process review of the decision. External review to the Victorian Civil and Administrative Tribunal (after exhausting the internal processes) is then possible.
Qld	✓	An application for review of a decision can be made to the Director of Licensing Services as delegate of Chief Executive. Appeal to Industrial Court of Queensland is also available.
SA	✓	Dangerous Substance Driver, Explosives, Fireworks and Ammonium Nitrate licensing decisions can be appealed to District Court. Certificate of Competency decisions can be reviewed internally.
WA	✓	An internal review conducted by the WorkSafe Western Australia Commissioner can be requested.
Tas	✓	An internal appeal can be made within 14 days to the Secretary. An external appeal to the Administrative Appeals Division of the Magistrates Court is also possible if an appellant is unsatisfied with the outcome of the internal appeal.
NT	✓	An appeal can be made to the Local Court within 28 days of the decision.
ACT	✓	Same provisions as to which apply for inspectorate decisions — internal review followed by appeals to the ACT Civil and Administrative Decisions Tribunal.

na not applicable. <sup>a</sup> As discussed further in chapter 12, the Commonwealth does not issue its own licences and instead recognises those issued in the states and territories.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

In terms of licensing decisions, the Northern Territory has the least flexible approach as it only allows for external appeals through the court system.

## 6.2 Transparency

The transparency of a regulatory system encompasses many facets (Argy and Johnson 2003). This section focuses on how regulators perform in terms of communicating, applying and enforcing their regulations. As noted by the Organisation for Economic Cooperation and Development (OECD), transparency can improve the administrative decisions made by regulators:

Transparency ... helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. (OECD 2002, p. 66)

Given the importance of transparency in achieving good administrative outcomes, it is useful to benchmark some of the characteristics of OHS regulators that enhance their transparency. Useful characteristics include:

- publication of enforcement activities
- publication of enforcement outcomes (such as case details of ongoing and past prosecutions)
- publication of budgets
- publication of the appeals process and how applications for review can be lodged.

The transparency of OHS regulators was examined by assessing what information is available on their websites in relation to the characteristics above. The transparency of OHS regulators varies. While most report their enforcement activities by type of enforcement measure (the ACT only reports the number of investigations in the Office of Regulatory Services annual report of which ACT WorkCover is a part), the approach to publication of enforcement outcomes and the appeals process is less consistent (table 6.4).

**Table 6.4 Information available from core OHS regulators**

As at May 2009 based on information published online

	<i>Cwth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Enforcement activities <sup>a</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✗
Enforcement outcomes	✓	✗	✓	✓	✓	✓	✗	✗	✓
Budgets	✓	✓	✓	✗	✗	✗	✓	✗	✗
Appeals processes	✗	✗	✓	✓	✓	✓	✗	✓	✓
Details provided about method to submit an appeal/enquiry:									
Online	✗	✗	✗	✓	✗	✗	✗	✗	✗
Phone	✗	✗	✗	✓	✗	✗	✗	✗	✗
In writing	✗	✗	✓	✓	✗	✗	✗	✓	✓
In person	✗	✗	✗	✓	✗	✗	✗	✗	✗

<sup>a</sup> Enforcement activities are typically published with annual reports.

Source: Regulator websites.

In relation to the publication online of the appeals process for inspector decisions/notices:

- the Commonwealth and New South Wales provide no information on appeal/review provisions outside what is contained within the regulations themselves, such as how to initiate an appeal

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- Victoria and Queensland provide the most comprehensive guidance on what to do to appeal an inspector's decision on dedicated pages on their website. The Northern Territory also provides clear guidance in the form of an information bulletin
  - South Australia states that an appeal can be lodged with the President of the Industrial Court but provides no guidance on how to do this or further contact information
  - Western Australia states that work safety notices can be appealed to the WorkSafe Commissioner or WorkSafe itself but provides no further details/guidance on how this is to be done
  - Tasmania does not mention any information about appealing an inspector's decision or having it reviewed. Their website does state that complaints can be made in writing which may in turn lead to an internal review of procedures
  - the ACT mentions an appeals process only in relation to infringement notices.

Overall, Tasmania provides the least amount of information on their website, with Victoria and Queensland providing the most.

### **Published information**

Interlinked with transparency is the amount of information published by a regulator about their activities. The Regulation Taskforce (2006) identified this as a significant issue for business. The Taskforce suggested that in addition to legislation providing clear guidance to regulators about policy objectives, regulators should develop indicators which would allow stakeholders to evaluate their performance against these policy objectives.

By having regulators publish relevant information about their activities, greater pressure would be placed on regulators to ensure they followed best practice, thus increasing the likelihood that compliance burdens placed on business for a given set of policy objectives were minimised.

In examining the OHS regulators, the following indicators can be used to test whether best practice approaches to transparency are being followed:

- publication of enforcement policies (that is, the 'statement of intent')
- publication of annual reports which contain information on:
  - the regulator's contribution to relevant policy objectives

- indicators of performance against policy objectives (such as reporting workplace injury and disease rates)
- efforts to lessen the compliance burden on business
- indicators of their compliance with their enforcement policies
- consultation policies and consultations.

### *Enforcement policies*

The regulators in all jurisdictions have developed and published on their websites enforcement policies (table 6.5). Of these, Victoria's is the most detailed and spans 44 pages, with Western Australia's being the shortest at only 1 page. Victoria has also produced a summary document which is 4 pages in length and Western Australia has a separate prosecution policy which is 16 pages in length.

**Table 6.5 Enforcement policy statements — core OHS regulators**

As at May 2009

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Enforcement policy published in stand alone document	✓	✓	✓	✓	✓	x	✓	✓ <sup>a</sup>	✓
Available on website	✓	✓	✓	✓	✓	✓	✓	✓	✓
Number of pages	26	31	44	8	11	1(16) <sup>b</sup>	16	13	6
Year of publication	2005	2004	2005	2005 <sup>c</sup>	2007	2006	2009	2008	2004

<sup>a</sup> The Northern Territory has adopted the *National Occupational Health & Safety (OHS) Compliance and Enforcement Policy*. <sup>b</sup> While Western Australia does not have a stand alone enforcement strategy published, it does have a separate stand alone prosecution policy of 16 pages in length. <sup>c</sup> In July 2009, Queensland released a new compliance and enforcement policy which is 16 pages in length and published as a stand alone document. It is also available on Workplace Health and Safety Queensland's website.

Source: Regulator websites.

### *Information contained in annual reports*

Only regulators in the Commonwealth, New South Wales and Victoria published stand alone annual reports. Despite this, the information contained within the annual reports of the regulators, or their administering department, was reasonably consistent (table 6.6). The greatest area of difference was in the published details of efforts to reduce the compliance burdens on businesses. Only the Commonwealth and Victoria have developed indicators on business compliance costs and reported details on efforts to reduce these costs (it should be noted that most jurisdictions

reported that the move towards national harmonisation would reduce business compliance burdens).

**Table 6.6 Information in annual reports — core OHS regulators**  
For the financial year 2007-08

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Annual report published	✓	✓	✓	✓	✓	✓	✓	✓	✓
Stand alone	✓	✓	✓	✗	✗	✗	✗	✗	✗
Available on own website	✓	✓	✓	✓	✗	✓	✓	✗	✗
Includes:									
Details on contribution to policy objectives	✓	✓	✓	✓	✓	✓	✓	✓	✓
Indicators on contributions to policy objectives	✓	✓	✓	✓	✓	✓	✗	✓	✓
Details on efforts to reduce burdens on business	✓	✗	✓	✗	✗	✗	✗	✗	✗
Indicators of compliance with enforcement policies	✓	✓	✓	✓	✓	✓	✗	✓	✓
Details on consultations and/or consultations policies	✓	✓	✓	✓	✗	✗	✓	✗	✓

Source: Regulator websites.

Overall, the Commonwealth and Victoria have the most transparent reporting approach within their annual reports based on these measures, with Tasmania being the least transparent.

### 6.3 Providing and seeking feedback

Providing and seeking feedback is another method of improving the transparency and accountability of regulators. Feedback from OHS regulators to businesses can help clarify the reason businesses are in breach of their OHS responsibilities and, as a result, make it easier for them to rectify the problem and become compliant. Similarly, obtaining feedback from regulated businesses can help the regulator identify potential problems in its enforcement approach. For example, dissatisfaction with the way inspectors go about their task can create an adversarial relationship with negative impacts on OHS outcomes.

The following indicators can be used to benchmark how regulators are providing and seeking feedback:

- whether written notices are provided to clients providing information on reasons for breaches/improvement notices along with avenues for appeal/review

- whether client feedback surveys are conducted and published.

## Written notices

All jurisdictions make use of written notices to inform clients of breaches of their OHS responsibilities or to request improvements to current practices or equipment. The information contained on these notices can help improve the transparency of regulator decisions by including information on why a business may be in breach of their requirements and what review or appeals mechanism exist. Further, by including the reason for a notice, and a suggested remedy, notices can be an effective tool to aid compliance. The more information provided, the lower the likely compliance burden associated with the inspectorate decision in the notice.

To assess the written notices used by each jurisdiction, OHS regulators were asked to provide, where available, copies of their inspection, improvement and breach/prohibition notices (table 6.7).

**Table 6.7 Written notices from core OHS regulators**  
2008-09

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Provided for									
Inspections	x	x	x	x	x	x	x	✓	nr
Improvements	✓	✓	✓	✓	✓	✓	✓	✓	nr
Breaches/Prohibition	✓	✓	✓	✓	✓	✓	✓	✓	nr
Contain contact information	✓	✓	✓	✓	✓	✓	✓	✓	nr
Contain details on what needs to be done to comply with notice	✓	✓	✓	<b>a</b>	✓	✓	✓	✓	nr
Contain reason	x	✓	✓	✓	✓	✓	✓	✓	nr
Contain information on appeal/review	x	✓	✓	✓	✓	✓	✓	✓	nr

nr non response. <sup>a</sup> Only the improvement notice details what needs to be done to rectify the workplace/practice that was observed to be in breach of the Act. The other notices provide information on how to pay the incurred fine.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

While most jurisdictions' notices contain basic information such as contact points, what needs to be done to comply, the reason for breach and the opportunity for review, there are some differences:

- the Commonwealth provides the least amount of information — no information on the reason for the breach or appeal/review provisions are contained on the notices

- 
- in Queensland, the prohibition and infringement (breach) notice provides no instruction/guidance on how to improve the observed practice that resulted in the notice, whereas the improvement notice does
  - the Northern Territory is the only jurisdiction to have an inspection report, although it contains no contact information.

Overall, most jurisdictions have adopted a broadly similar approach to the information provided on their notices, and thus the burdens imposed on businesses in complying with the notice are likely to be broadly similar. That said, with the Commonwealth not providing information on the reason for the breach, or what review/appeal provisions are available, it is likely to impose the greatest burden on business. Also, as Queensland provides less guidance on possible solutions to overcome the breach identified, it is possible that the compliance burden for businesses receiving these notices is greater than those in other jurisdictions (aside from the Commonwealth).

### **Published feedback surveys**

In order to assess the effectiveness of advice, awareness campaigns and enforcement activities, feedback should be sought from regulated businesses. To assess OHS regulators on whether or not they conduct and publish feedback surveys, regulator websites and annual reports were examined. In a number of jurisdictions, feedback is sought from regulated businesses by OHS regulators in terms of their satisfaction with the inspectorate and the level of support they receive (table 6.8).

However, despite most OHS regulators publishing information from such surveys, the level of detail varies:

- Victoria, Queensland and the ACT appear to conduct the most comprehensive surveys of regulated businesses
- WorkCover NSW mentions a customer satisfaction survey in its annual report, with some summary results provided. However, it is unclear whether the focus was on OHS or workers' compensation activities or both
- Comcare and WorkSafe WA have conducted surveys of particular programs but do not appear to have surveyed regulated businesses more broadly
- SafeWork SA, Workplace Standards Tasmania and NT WorkSafe do not appear to have conducted surveys, with no mention found on their websites or in their annual reports. This, however, does not mean they are not conducted, but if they are conducted and the results are not made public, it limits the transparency of these regulators.

**Table 6.8 Publicly available client feedback surveys — core OHS regulators**

As at May 2009

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Conducted	✓	✓	✓	✓	x	✓	x	a	✓
Published	✓	✓	✓	✓	x	✓	x	x	✓
Online	✓	x	x	x		✓			✓
Summary form in annual report	x	✓	✓	✓		x			x
Other complete source	x	x	x	x		✓			x

<sup>a</sup> The Northern Territory conducts surveys but did not publish information about either the survey itself, or results, on their website as at May 2009.

Source: Regulator websites.

### Other attempts to seek feedback

Apart from those attempts to seek feedback from regulated businesses that are publicly available, regulators use a number of other methods to gather information about their compliance activities with the aim of achieving more effective outcomes. As reported in the Commission's survey of OHS regulators, regulators were found to make use of feedback from online contact points, surveys, comments received from complaints handling, views of focus groups and from information obtained during inspections or other contacts. The use of these mechanisms by OHS regulators is detailed in table 6.9.

**Table 6.9 Seeking feedback — core OHS regulators**

2008-09

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Online	✓	✓	✓	x	x	✓	x	x	✓
Surveys	✓	✓	✓	✓	✓	✓	x	✓	x
Complaints handling	✓	✓	✓	✓	✓	✓	x	✓	✓
Focus groups	✓	✓	✓	✓	✓	✓	x	x	x
Point of contact consultation	✓	x	✓	✓	✓	✓	x	✓	x
Other	✓	x	x	✓	✓	x	x	✓	x

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

While most regulators seek feedback from regulated businesses, Tasmania has no formal processes to do so and the ACT has the least number of processes of those that do. For the remaining jurisdictions, most use all available means to elicit feedback regarding their regulatory approach, with the Commonwealth making use

of the most number of processes. The Northern Territory also makes use of a Workplace Health and Safety Advisory Council to engage stakeholders.

## 6.4 Transparency and accountability of mining-specific OHS regulators

### Appeals under mining-specific OHS regulation

The mining-specific OHS legislation that exists in New South Wales, Queensland and Western Australia is enforced by a separate group of regulators (see chapter 5). Decisions made by these regulators are also subject to review, with the processes detailed in table 6.10.

Table 6.10 **Appeal processes for mining-specific OHS decisions**  
2008-09

Process	NSW <sup>a</sup>	Qld <sup>b</sup>	WA
Internal	✓	✓	✓
Timeframe to appeal	7 days	7 days	ns
Fee	\$0	\$0	\$0
External	✓	✓	✓
Timeframe to appeal	ns	28-30 days	ns
Licensing decisions	na	*	na

**na** not applicable. **ns** not specified. <sup>a</sup> In New South Wales, the 7 day timeframe for internal appeals relates to improvement and prohibition notices, for other decisions a timeframe is not stated. Fees are those to lodge an application for appeal to the Administrative Decisions Tribunal. Other fees may also be incurred during this process. <sup>b</sup> While no formal fee is set by the regulator for external appeals, appellants are required to pay the costs associated with bringing a case before the Industrial Magistrates Court and therefore cost comparisons to New South Wales are not valid.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

In New South Wales, both low-cost internal and external review mechanisms are available. Regulations provide for appeal to an inspector and/or Chief Inspector, with no cost involved. If the business is unsatisfied with the internal review outcome, an application for external review can be made to the New South Wales Administrative Decisions Tribunal (General Division) — at a cost of \$142.

In terms of court decisions, in New South Wales the process is the same as that under the general OHS legislation (it should also be noted that in New South Wales, the general OHS Act also applies to mining sites unlike in Queensland and Western Australia). That is, a prosecution is first heard before a judge sitting alone in the Industrial Court of New South Wales, with an appeal possible to the full bench of

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the Court. Appeals based on matters of law can also be made to the High Court of Australia. In 2008-09, only four prosecutions took place, with one the subject of an ongoing appeal (as at December 2009).

In Queensland, inspectorate decisions can be appealed to the Industrial Court if a business is unhappy with the internal review procedures. In 2008-09 only one appeal (internal and external) against an inspectorate decision was made. For prosecutions, appeals may be made to the Industrial Court. In 2008-09, 10 prosecutions took place with none appealed.

In Western Australia, the provisions are similar to those of the core OHS regulator. Businesses can appeal a decision to the State Mining Engineer (improvement and prohibition notices) and then on to the Occupational Health and Safety Tribunal.

Overall, all mining regulators provide similar internal and external appeals processes so there are unlikely to be any significant differences in burdens placed on businesses. However, mining business in New South Wales have limited opportunity to appeal against prosecutions which may impose greater burdens compared to mining businesses in other jurisdictions.

### **Written notices from mining-specific OHS regulators**

Mining-specific OHS regulators also make use of written notices when conducting their compliance activities. Details of the information provided in the notices are in table 6.11.

In New South Wales, the notices provided to businesses contain a significant amount of information making compliance easier, and reducing any search cost associated with attempts to ask questions, find out how to comply, or how to have the decision reviewed. In comparison, Queensland and Western Australia provide similar information on their notices (albeit a limited number of notices) but in less detail.

**Table 6.11 Written notices from mining-specific OHS regulators**  
2008-09

	NSW	Qld <sup>a</sup>	WA
Provided for			
Advice	✓	x	x
Inspections	x	✓	x
Improvements	✓	x	✓
Prohibition	✓	✓	x
Investigation	✓	x	x
Closure	✓	x	x
Contain contact information	✓	x	<b>b</b>
Contain details on what needs to be done to comply with notice	✓	✓	✓
Contain reason	✓	✓	✓
Contain information on appeal/review	✓	✓	✓

**nr** non response. <sup>a</sup> Queensland does not have stand alone notices similar to those used in New South Wales and Western Australia but does create similar notices based on its Mine Record Entry System. These are used as the basis for comparison. <sup>b</sup> Only contains address information.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).

## Seeking feedback

Mining-specific regulators also report the use of various methods to gain feedback from clients (table 6.12). Western Australia uses the most methods to gain feedback from regulated businesses, followed by New South Wales. New South Wales has also established the Mine Safety Advisory Council to provide a forum for seeking feedback from business:

The NSW Mine Safety Advisory Council (MSAC) is a multilateral partnership that provides a forum for direct feedback from businesses. MSAC facilitated a CEO Summit for CEOs in the NSW mining and extractives industry on 28 November 2008. This summit provided a direct forum for input from the highest levels of business in NSW (and Australia). In addition MSAC has a Health Working Party, a Fatigue Working Party, World-leading OHS Culture Working Party and a Musculoskeletal Disorders Project Steering Group, all of which actively seek input from business in the form of stakeholder representation and participation. These working parties and project steering group hold workshops, with businesses also having active representation in the workshops. Under the auspices of MSAC are also three sector specific Safety Advisory Committees for coal, metalliferous and extractives sectors. (Productivity Commission survey of OHS regulators 2009 unpublished)

A similar body — the Mining Industry Advisory Council — exists in Western Australia, while in Queensland, a Mining Health and Safety Advisory Council has been created for both coal, and quarrying and metalliferous mining.

**Table 6.12 Seeking feedback — mining OHS regulators**

2008-09

	<i>NSW<sup>a</sup></i>	<i>Qld</i>	<i>WA</i>
Online	✓	✓	✓
Surveys	✓	x	✓
Complaints handling	✓	✓	✓
Focus groups	x	✓	✓
Point of contact consultation	✓	✓	✓
Other	✓	✓	✓

<sup>a</sup> Other relates to the activities of the MSAC.

Source: Productivity Commission survey of OHS regulators (2009 unpublished).