
2 Regulatory framework and objectives

Key points

- Each state and territory and the Commonwealth has responsibility for developing and administering occupational health and safety (OHS) regulations in their jurisdiction. The overarching common objective of the primary OHS Acts is to secure the health, safety and welfare of employees and others in the workplace. This objective is achieved by placing a duty of care on employers, employees and others to manage, minimise or eliminate risks or hazards in the workplace.
- Only in New South Wales and Queensland does the OHS Act include a reverse onus of proof where, in cases of a breach of OHS laws, the onus is on the employer to prove they have complied with OHS requirements.
- Employers as duty holders under all OHS Acts have the flexibility to determine, in consultation with their employees, how they will comply with general duties to provide a safe and healthy workplace.
 - This system provides choices to businesses to meet or exceed the basic standards laid out in OHS regulations.
 - Some firms (usually smaller firms) tend to favour a more prescriptive approach which provides greater certainty of basic OHS requirements under the legislation.
- All state, territory and Commonwealth OHS Acts include provisions and regulations requiring consultation with employees on OHS matters. This may involve direct consultations with employees or consultations with elected representatives or with OHS committees.
- The Commonwealth, South Australia and Tasmania were the only jurisdictions not to confer rights of entry to unions to investigate possible breaches of OHS regulations as at June 2009. These powers are available in all other jurisdictions under OHS or industrial relations Acts. New South Wales was the only jurisdiction to confer authorised union representatives with the power to prosecute for breaches of OHS regulations in 2008-09. Tasmania introduced union right of entry powers in February 2010 and it is under review in South Australia.
- Non-mandatory codes of practice and guidance notes are provided by jurisdictions to inform employers and employees as to how regulatory objectives can be met. Variations exist between jurisdictions in terms of the numbers of codes of practice and volume of OHS regulation which can add to complexity faced by businesses.
 - Victoria is in the process of replacing their codes of practice with a small number of compliance codes.

This chapter outlines the structure and function of the occupational health and safety (OHS) regulatory framework in Australia. The framework is focused on identifying, preventing and minimising hazards which may impact on the physical, mental and social well-being of employees in the workplace.

The system adopted in Australia to ensure health and safety in the workplace is outcome based, and uses a combination of risk assessment and prescription through regulations, guidelines and codes of practice to facilitate the development of safe work practices that best suit the individual circumstances of organisations.

Where workers are injured, a number of workers' compensation schemes provide income support to injured workers and facilitate their return to work. While preventing injuries and providing compensation to injured employees are closely connected, this report focuses on injury and disease prevention as addressed by the OHS regulatory regimes, and does not include any analysis of workers' compensation.

2.1 How is OHS regulated in Australia?

OHS matters are the responsibility of the individual state, territory, and Commonwealth governments. The Commonwealth regulates OHS in those areas where it has constitutional responsibility, principally in activities involving employees of the Commonwealth, as well as the maritime and offshore petroleum industries and, more recently, for companies covered by its workers' compensation scheme (Comcare). The states and territories have responsibility for regulating OHS in all remaining sectors.

The influence of the Robens Report on the OHS regulatory system

The regulatory approach adopted by all Australian jurisdictions continues to be very much influenced by the recommendations of a committee headed by Lord Robens in the United Kingdom. The Robens Report was released in 1972 (Robens 1972) and recommended that the United Kingdom introduce a single enabling Act to replace the mass of existing legislation which regulated specific hazards or types of workplaces in that country.

The Robens report recommended that this overarching Act should:

- lay down the duties of employers, workers and suppliers of materials
- establish basic rights for workers and their representatives

-
- create new structures through which standards may be developed
 - reform the administration and enforcement of the law by a single national authority
 - be supported by regulations and voluntary industry codes of practice and standards.

In line with Robens' proposed approach for the UK, during the 1980s and 1990s each jurisdiction in Australia adopted a three-tiered OHS regulatory system consisting of Acts, regulations, and codes of practice or guidance material. The Acts set out the key principles, duties and rights of employers and employees. Legally enforceable regulations made under those Acts are more detailed and specify procedures and administrative matters. Codes of practice and guidance materials are not legal requirements as such, but provide interpretation of legal requirements imposed by the Acts and regulations, as well as practical guidance on how to comply with them.

Without being comprehensive, the OHS legislation in all jurisdictions contains common themes and addresses the same core aspects of OHS. These include:

- duties of care that are conferred on a number of economic agents to ensure the health and safety of people at the workplace
- responsibilities for employers to consult with workers on issues and work practices which may affect their health and safety and that of others. This responsibility includes the formation of health and safety committees (HSCs) and the election of health and safety representatives (HSRs) to facilitate the consultation process. The legislation also outlines the roles and powers of HSCs and HSRs
- the requirement for employers to provide relevant OHS training and information to workers to make them aware of safe work procedures
- incident notification and record keeping
- requirements for licensing, registration or use of permits
- the role and powers of inspectors
- the requirement to undertake OHS risk management which involves the identification and management of general or specific risks or hazards.

OHS legislation in all jurisdictions apart from the Commonwealth, South Australia and Tasmania outlines the entry powers available to authorised union representatives to investigate suspected breaches of OHS regulations and to discuss OHS matters.

2.2 The OHS acts and their objectives

OHS Acts

There are nine principal OHS Acts — one for the Commonwealth and one for each state and territory (table 2.1).

Table 2.1 **OHS Acts**
2008-09

	<i>Name of the Act</i>
Cwth	Occupational Health and Safety Act 1991
NSW	Occupational Health and Safety Act 2000
Vic	Occupational Health and Safety Act 2004
Qld	Workplace Health and Safety Act 1995
SA	Occupational Health, Safety and Welfare Act 1986
WA	Occupational Safety and Health Act 1984
Tas	Workplace Health and Safety Act 1995
NT	Workplace Health and Safety Act 2007
ACT ^a	Occupational Health and Safety Act 1989

^a The *Work Safety Act 2008* superseded the *Occupational Health and Safety Act 1989* in the ACT on 1 October 2009. All benchmarking exercises conducted in the report unless specified otherwise were conducted using the provisions from the *Occupational Health and Safety Act 1989*.

Objectives of the OHS Acts

The overarching common objective of the principal OHS Acts is to secure the health, safety and welfare of employees in the workplace, and the public and others who visit the workplace. This objective is achieved by placing responsibilities on employers to eliminate risks or hazards in the workplace, promoting OHS, and fostering a consultative and cooperative approach between employers and employees to improving OHS.

The wording in the Queensland Act deviates slightly from this objective. The main object of the Queensland OHS Act is to ‘prevent a person’s death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a relevant place’ (*Workplace Health and Safety Act 1995*, s.7) without specifically referring to the responsibilities to employees or the public or other persons.

The Northern Territory OHS Act is more recent and the wording of its objectives differs substantially from other jurisdictions. The main objectives are: ‘to achieve for the Territory the highest possible standards of occupational health and safety’,

and ‘to achieve as far as possible elimination of avoidable risks and control and mitigation of unavoidable risks to the health or safety of workers’ (*Workplace Health and Safety Act 2007*, s.3(a) and (b)). The Tasmanian OHS Act is the only one not to provide a separate section which specifies the objectives of the Act.

Some other differences in the objectives of the OHS Acts include:

- the Commonwealth OHS legislation includes an objective to ‘ensure that expert advice is available on OHS matters affecting employers, employees and contractors’ (*Occupational Health and Safety Act 1991*, s.3(c))
- the Commonwealth also includes an objective of effective remedies if obligations are not met — these include both civil and criminal sanctions
- the New South Wales Act includes the objective to ‘develop and promote community awareness of occupational health and safety issues’
- the Western Australia Act includes a provision for the ‘formulation of policies and for the coordination of the administration of laws relating to occupational safety and health’ and another provision ‘to promote education and community awareness on matters relating to occupational safety and health’ (*Occupational Safety and Health Act 1984*, s.5(f) and (g)).

Other Acts covering OHS issues

In addition to the primary OHS Acts, there are a number of specific Acts and regulations that relate to certain hazards, industries or occupations. They have similar objectives to the general OHS Acts but may pursue them differently. Section 2.6 of the chapter includes a table which lists the other Acts and their associated regulator while chapter 13 discusses the interaction between general OHS and mining specific OHS Acts.

2.3 Key provisions under the OHS Acts

Jurisdictions currently differ in how they define and allocate responsibilities and powers with regard to four key elements of the OHS Acts — duty of care, onus of proof, requirement for consultations and union rights of entry. This section provides *existing* definitions of the four provisions and shows the nature of *current* differences. Information is also included on how each area will be covered in the model work, health and safety provisions including the recommendations laid out in the Workplace Relations Ministers' Council (WRMC) communiqué of May 2009 (WRMC 2009a) and the Exposure Draft Model Occupational Health and Safety Provisions released in December 2009 (WRMC 2009e).

Duty of care

The principle of duty of care is central to all the core OHS Acts of all jurisdictions. Duty of care is used to confer responsibilities for OHS to those who can influence OHS outcomes. For example, as duty holders, employers are empowered to determine, in consultation with their employees, how they will comply with general duties to ensure health and safety in the workplace. This creates a flexible system which provides incentives for organisations to move beyond prescription and either meet or exceed the basic standards laid out in OHS regulations. In particular, this provides opportunities for enterprises (usually medium or large) to develop their own cost effective and efficient OHS practices which best suit their individual circumstances. Greater levels of prescription may give more certainty to small businesses as to their obligations under OHS legislation but it can reduce flexibility and stifle opportunities for more cost effective OHS practices for other organisations.

The expression ‘duty of care’ refers to the responsibility or the legal obligation of a person or organization to avoid acts or omissions (which can be reasonably foreseen) to be likely to cause harm to others. The duty of care of employers can extend beyond their employees to include customers, visitors, contractors, and ‘others’. This duty involves ensuring the health and safety of persons from any work activities conducted at a workplace, and the use of any plant or equipment at the workplace.

Depending on the jurisdiction, duty holders include:

- employers (including those self-employed, in some jurisdictions), principal contractors and employees
- owners, occupiers and designers of premises
- designers, manufacturers and suppliers of plant, substances and structures to be used in the workplace
- persons in control of workplaces.

The nature of the duty can vary depending upon the level of responsibility that people in the workplace hold. For example the duty of care of employees is limited to taking care of their own health and safety and of other persons who may be affected by their actions or omissions. In contrast the duty of an employer, manager or controller (or in some cases a designated ‘responsible officer’) is much broader.

In jurisdictions other than New South Wales and Queensland, the statutory duty of care of employers requires them to ensure as far as is ‘reasonably practicable’ the health and safety of their employees and others at the workplace. This embodies the

principle that employers (or any duty-holders) are not obliged to eliminate risk, but they need to act reasonably in attempting to do so. Further it is clear that ‘reasonably practicable’ is not a strict liability standard but relates to the standard of behaviour expected of a reasonable person in the position of duty holder. The use of ‘reasonably practicable’ also reflects the principle that measures need not be taken simply because they are available or possible but takes into account other factors into the decision making process such as cost considerations (Douglas 2008).

Criteria which duty holders need to consider as part of what is deemed as ‘reasonably practicable’ in ensuring health and safety include: the likelihood of a risk or hazard occurring; the degree of harm likely to result from the hazard or risk; what persons should be expected to know about the hazard or risk and ways of eliminating them; the availability and suitability of means to eliminate or minimise the hazard or risk; and the cost of eliminating or minimising the hazard or risk.

The relative weighting of these factors can be problematic. For example, employers may need to weigh up the likelihood of a risk of an event occurring which may not lead to significant harm against the lesser likelihood of another event occurring but which could lead to serious or even fatal consequences.

In New South Wales, under the *Occupational Health and Safety Act 2000*, the duty of employers extends, without limitation, to: ensuring premises are safe and without risk to employees; ensuring any plant or substance provided for use is safe; ensuring systems of work and the working environment of the employees are safe and without risks to health; providing information, instruction, training and supervision as may be necessary to ensure the employees’ health and safety at work; and providing adequate facilities for the welfare of the employees at work.

While the duty of employers in New South Wales is without limitation, section 28 of the Act provides a defence to any proceeding against a person for an offence against a provision of the Act or regulations if the person can prove that ‘it was not reasonably practicable for the person to comply with the provision’ or ‘the commission of the offence was due to causes over which the person had no control’.

Duty of care in Queensland is called an obligation in the *Workplace Health and Safety Act 1995*. The obligation on persons conducting a business or undertaking is to ensure the safety and health of themselves, their workers and any other person affected by their business activities. This is achieved by: providing and maintaining a safe and healthy work environment; providing and maintaining safe plant; ensuring the safe use, handling, storage, and transport of substances; ensuring safe systems of work; and providing information, instruction, training and supervision to ensure health and safety. The Act provides duty holders with three defences against

a prima facie breach: two involve demonstrated adherence to either a regulation or a code of practice, and the third requires the duty holder to show he/she took ‘reasonable precautions and exercised due diligence’.

Major differences in coverage of primary duty of care of employers to their employees

Table 2.2 shows the differences and similarities in coverage of duty of care provisions of employers or persons conducting a business or undertaking to their employees under the OHS acts.

The table shows similarities between jurisdictions in employer duties to provide a safe workplace or working environment for their employees and the safe use of plant, substances and systems. In terms of differences, the Northern Territory is the only jurisdiction not to require employers to provide OHS information, instruction, training and supervision to their employees to ensure safety as part of their duty of care. The Commonwealth is alone in requiring information, instruction, training and supervision to be provided in ‘appropriate languages’, while another three jurisdictions require OHS information to be provided in ‘appropriate languages’.

As table 2.2 is limited to employers’ duties to employees under the definitions of the respective OHS Acts, it does not represent the extent of regulatory responsibilities and obligations (as distinct from duties of care) of a business with employees, and the duties of care such a business may have to its employees in capacities other than as an employer. For example, the Commonwealth is the only regime to include a duty for employers to provide safe entry and egress to and from the workplace. A comparable responsibility duty resides with ‘occupiers’ in South Australia (those with management or control of a place) and persons who have control of a workplace in Western Australia (to list just two jurisdictions). Similarly, while Victorian employers have a duty to ‘employ suitably qualified persons to provide OHS advice’, other jurisdictions place comparable obligations on employers/businesses. For example, Queensland employers with over 30 employees who operate in particular industries are obligated to employ a qualified Workplace Health and Safety Officer.

Further, while the table shows that South Australia is the only jurisdiction which requires employers to keep records of OHS training under their duty of care, all jurisdictions apart from Tasmania have this requirement, albeit separate to the employer’s duty of care which is contained in their OHS regulations (see chapter 8).

Table 2.2 Coverage of primary duty of care provisions of employers to their employees under OHS Acts

2008-09

	<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>
Provide a safe workplace and/or work environment	✓	✓	✓	✓	✓	✓ ^a	✓	✓	✓
Provide safe plant, substances and systems	✓	✓	✓	✓	✓	✓ ^a	✓	✓ ^b	✓
Provide information, instruction, training and supervision to ensure safety	✓ ^{c,d}	✓	✓ ^c	✓	✓ ^{c,e}	✓ ^a	✓ ^{c,e}		✓
Provide information, instruction and training for managers and supervisors to ensure safety					✓ ^c		✓ ^c		
Provide adequate facilities for welfare	✓	✓	✓		✓		✓		✓
Consult on decisions/matters affecting OHS		✓	✓					✓	✓
Monitor the health of employees and workplace conditions (and keep records)	✓		✓		✓ ^f		✓	✓	✓
Keep records of safety training					✓				
Ensure the accommodation, eating, recreational and other facilities provided for work are safe					✓		✓		
Prepare and maintain OHS policies/arrangements in consultation with employees and/or their representatives	✓				✓				
Use risk management processes to ensure workplace safety								✓	✓
Employ suitably qualified persons to provide OHS advice			✓						
Where it is not practicable to avoid exposure to hazards, provide adequate protective clothing and equipment						✓			
Provide safe access and egress to the workplace	✓								
Provide appropriate medical and first aid services	✓								

^a Duties are framed in terms of not exposing employees to hazards, rather than in terms of 'safety'. ^b Duty relates to 'workplace infrastructure, equipment and materials'. ^c Information to be provided in 'appropriate languages'. ^d Instruction, training and supervision to be provided in 'appropriate languages'. ^e Including for hazardous work, new or changed work and for inexperienced employees. ^f No requirement to keep records in relation to this monitoring.

Sources: Stewart-Crompton, Mayman and Sherriff (2008); *Occupational Health and Safety Act 1984* (WA).

Primary duty of care of employers to persons other than employees

Differences also exist in the range of duties that employers have to groups other than employees. Employers (or persons conducting a business or undertaking) in New South Wales, Victoria, Queensland, South Australia and Western Australia

have a duty to persons other than employees. Employers in South Australia also have a duty to protect their own safety and health at work.

In Tasmania, employers and ‘principals’ have a duty to persons other than employees, contractors, a contractor’s employees and visitors. ‘Principals’ are defined as persons who engage any person (other than as an employee) to perform work for gain or reward.

In the Northern Territory, the duty of employers extends to include volunteers, contractors, apprentices and any others. In the ACT, persons conducting a business or undertaking have a duty to people in relation to work which includes volunteers, contractors, themselves and others. Under Commonwealth OHS legislation, employers have a duty to deemed contractors and third parties other than employees or contractors.

Contractors have a duty of care to their own employees as an employer while a host employer has a duty to ensure the health and safety of contractors they may employ as well as their employees. Some differences exist in how contractors are covered in OHS legislation. The primary duty of employers to contractors or deemed employees is specified in the OHS legislation of all jurisdictions apart from New South Wales. However contractors in New South Wales would be covered by the employer duty to others at the workplace.

Primary duty of care of self-employed persons

Primary duty of care also extends to self-employed persons in New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania and the ACT. This requirement is not evident in the legislation of the Northern Territory and the Commonwealth. The Commonwealth OHS laws apply predominantly to larger businesses so including a duty for self-employed persons may be considered unnecessary.

Duties of persons other than employers and persons conducting a business or undertaking

There is a range of other duty holders apart from employers and persons conducting a business or undertaking as shown in table 2.3.

Table 2.3 Other duty of care holders

2008-09

	<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>
Persons erecting or installing plant in a workplace	✓		✓	✓			✓		✓
Controllers of plant or substances		✓							
Persons who manage or control workplaces or premises		✓	✓	✓		✓	✓		✓
Designers of plant		✓	✓	✓			✓		
Manufacturers of plant or substances	✓	✓	✓	✓		✓	✓		✓
Suppliers of plant or substances	✓	✓	✓	✓			✓		✓
Clients				✓					
Importers							✓		
Designers of buildings or structures			✓	✓	✓				
Owners of buildings					✓				
Principal contractors				✓					
Project managers				✓					
Persons in control of fixtures, fittings or plant in relevant workplace areas				✓					
Owners of plant				✓					
Employees	✓	✓	✓			✓	✓		✓
Workers				✓	✓			✓	
Other persons at a workplace (who are not employers, employees or occupiers)				✓	✓				
Occupiers of workplaces					✓				
Owners of plant					✓				
Body corporate					✓	✓			
'Responsible officers' that are appointed by employers							✓		
Service providers							✓		

Source: Major OHS Acts.

There is a level of consistency between jurisdictions in terms of categories of duty holders other than primary duty holders. For example a duty exists for:

- manufacturers of plant in the Commonwealth, New South Wales; Victoria, Queensland, South Australia, Western Australia and the ACT
- designers of plant in New South Wales, Victoria, Queensland, South Australia and Tasmania
- employees in the Commonwealth, New South Wales, Victoria, Western Australia, Tasmania and the ACT and workers in Queensland, South Australia and the Northern Territory
- installers or erectors of plant and equipment in six jurisdictions and designers of plant and equipment in five jurisdictions.

Duty holders are unique to some jurisdictions including:

- importers, ‘responsible officers’ appointed by employers and service providers in Tasmania
- project managers, principal contractors and clients in Queensland
- owners of plant in South Australia and Queensland
- the ‘body corporate’ in Western Australia.

Not only do the duties owed by employers to employees vary by jurisdiction, but so does the definition of an employee or worker (see chapters 7 and 13). As a consequence, employers who have employees in more than one jurisdiction are confronted with not only interpreting differences in how duties are owed to their employees, but also different definitions of workers to whom those duties apply.

The Northern Territory is the only jurisdiction to include contractors in their definition of workers. This convention will be followed in the model work, health and safety provisions. Issues surrounding contractors are explored in more detail in chapter 7.

How will duty of care be covered in the model work, health and safety provisions?

Many of the recommendations agreed to in the communiqué from the 18 May 2009 meeting of the WRMC related to duty of care provisions. The recommendations include an agreed definition of duty holders under the new model work, health and safety provisions, the nature of hazards and risks they must seek to eliminate or minimise, and how breaches of duty of care will be penalised. For example, the primary duty of care on persons conducting a business or undertaking in the model laws will include employers, self-employed persons and principal contractors.

The model work, health and safety provisions released as part of the WRMC Communiqué of 11 December 2009, confirm ‘reasonably practicable’ as the form used to achieve compliance. The definition of ‘reasonably practicable’ in the model OHS Act is similar to the one currently used by jurisdictions as outlined earlier in the chapter.

The WRMC has also recommended specific duties for persons who, in conducting their business or undertaking, influence the way work is carried out, as well as for those persons responsible for the integrity of products used for work. Under the model OHS provisions the primary duty holders include: persons with management or control of workplaces; persons with management or control of fixtures, fittings or plant at a workplace; persons who design plant, substances or structures; persons

who manufacture plant, substances or structures; persons who import plant, substances or structures; persons who supply plant, substances and structures; persons installing, constructing or commissioning plant or structure. Duties are also extended to ‘officers’, ‘workers’, and ‘other persons at the workplace’. These persons do not owe the primary duty of care (WRMC 2009e).

Under the model work, health and safety provisions, persons conducting a business or undertaking will have a duty that goes beyond the traditional concept of employer/employee to include any person who works in any capacity in, or as part of, the business or undertaking (recommendation 16, WRMC 2009a).

Under the new model Act ‘officers’ who have responsibility for making decisions that affect businesses will also have a duty to be proactive and exercise ‘due diligence’ in ensuring compliance with duties of care (recommendation 40, WRMC 2009a).

Onus of proof

The onus of proof in cases of liability for causing significant injury to employees is applied differently across jurisdictions. Of the nine principal OHS Acts which operate in jurisdictions in Australia, only the New South Wales and Queensland Acts provide for a ‘reverse onus of proof’ for offences relating to duty of care, whereby defendants have to prove they have complied with OHS requirements. In all other jurisdictions the OHS Act confers the onus of proof on the prosecution in cases where there is a breach of OHS regulations.

How will onus of proof be covered in the model work health and safety provisions?

Agreement was reached by the WRMC at their May meeting in 2009 that under the model work health and safety provisions the prosecution should bear the onus of proving beyond reasonable doubt all elements of an offence relating to noncompliance with a duty of care (recommendation 62).

Requirements for worker consultation and participation

All state, territory and Commonwealth OHS Acts include provisions requiring employers to consult with employees on OHS matters. These provisions may involve direct consultations with employees or consultation with employee representatives such as HSCs or elected HSRs.

Health and safety committees (HSCs)

All jurisdictions provide for the formation of HSCs as part of their OHS framework — although HSCs are not automatically mandatory in any jurisdiction. For example, the Western Australian OHS Act only requires employers to establish an HSC under certain circumstances: after the coming into operation of a regulation requiring the employer to do so; as a result of a notice being served on them by the Commissioner to do so; or as a result of an employee who works at a workplace requesting the employer to establish a committee.

The primary role of HSCs is to consult with employers on OHS initiatives and to facilitate the agreed initiatives. This role is defined in a broadly similar way across jurisdictions though there are some differences. In New South Wales, for example, HSCs have the power to investigate matters that may be a risk to health and safety in a workplace and to request an investigation if the matter is not resolved. Chapter 9 contains a more detailed description and discussion of HSC requirements and powers.

Health and safety representatives (HSRs)

HSRs also feature in all OHS frameworks. HSRs are employees elected by their peers to represent them in OHS matters. Once elected, HSRs continue to fulfil their regular employment duties and are not paid for taking on the HSR role.

In all jurisdictions, the election of an HSR is initiated at the request of employees. However, in 2008-09, businesses in Tasmania, the Northern Territory and the ACT with less than 10 employees were exempt from the HSR requirements.¹ The powers and functions of an HSR also vary under the OHS Acts in each jurisdiction. HSRs have the ability to issue Provisional Improvement Notices (PINs) in all jurisdictions apart from New South Wales. HSRs in jurisdictions aside from New South Wales, Queensland and the Northern Territory also have the capacity to issue stop work directions (where work is unsafe).

There is a relationship between HSRs and HSCs. The New South Wales OHS Act stipulates that HSRs may also be appointed to an HSC. The OHS Acts in Victoria, Queensland, South Australia, Western Australia and the Northern Territory either require or encourage HSRs to be on an HSC. The Tasmanian OHS Act specifies that membership of HSC should comprise employees working at the workplace who are chosen by employees and persons chosen by the employer. The ACT OHS Act

¹ This exemption ceased in the ACT from 1 October 2009 with the commencement of the *Work Safety Act 2008* (ACT) which was passed into law on 28 August 2008.

includes clauses on functions of OHS committees but not how membership of the committee should be selected.

More detailed analysis of HSCs and HSRs is included in chapter 9 including how they are covered by the model work, health and safety provisions.

Union right of entry and prosecution

The OHS Acts which operate in New South Wales, Victoria, Queensland, the Northern Territory and the ACT all provide authorised representatives of unions the right to enter workplaces. In Western Australia, the right of entry is provided to unions under the Industrial Relations Act 1979 (WA). The Commonwealth, Tasmania and South Australia were the only jurisdictions not to provide union right of entry for OHS purposes in their OHS Act as at June 2009. Tasmania passed legislation providing for union right of entry in November 2009 and the legislation was proclaimed on 24 February 2010. South Australia has released a Bill on right of entry which was released for public comment until 13 March 2009. The Commonwealth Fair Work Act 2009 sets out requirements for exercising rights of entry which exist under state or territory OHS laws. These requirements are discussed in more detail in chapter 9.

The powers conferred to authorised union representatives vary. While in all cases representatives may investigate breaches and observe or inspect systems of work, plant and equipment, and materials and substances, there are variations in relation to gaining access to discuss OHS issues, interview members, and take measurements. Of the six jurisdictions that provide entry powers, three provide the right to enter worksites to discuss OHS issues and three do not. Queensland is the only jurisdiction not to restrict entry for authorised union representatives to investigate suspected breaches at workplaces of working hours. Only in Victoria is access denied to examine, copy or take extracts of documents.

South Australia has released a Bill on right of entry for public comment. The relevant clause of the *Occupational Health, Safety and Welfare (Miscellaneous) Amendment Bill 2009* in South Australia provides that an authorised representative may only enter a workplace for the purposes of viewing the workplace and engaging in consultation.

New South Wales and the ACT are the only jurisdictions to confer the power to prosecute to unions in relation to breaches of their respective OHS Acts. The ACT provides powers to prosecute to third parties including secretaries of unions and chief executives of employer organisations under the *Work Safety Act 2008* which became operational from 1 October 2009. Third parties will not have the right to

prosecute under the model work health and safety provisions. However the model Act allows for certain third parties to request that the regulator bring a prosecution for alleged Category 1 or 2 offences.²

Issues surrounding union rights of entry are analysed in more detail in chapter 9 including jurisdictional differences in entry provisions, rights and conditions upon entry, safeguards against misuse of entry powers, and how such powers are covered by the model work health and safety provisions.

2.4 OHS Regulations

Subordinate legislation (or regulations) made under OHS Acts is used to prescribe particular requirements or standards to be observed in the workplace. These requirements may take the following forms:

- *technical requirements* that specify the safety features of plant, substances and structures used in workplaces. They specify the design, selection and use of the physical protection to be provided against certain hazards or their consequences. Examples are first aid kits, certain plant and machinery (for example, power presses, pressure vessels and boilers) and personal protective equipment
- *exposure limits* that specify the maximum acceptable level of exposure to certain measurable hazards. Such hazards include noise, radiation and atmospheric contamination of certain hazardous substances (for example, asbestos, synthetic mineral fibres and vinyl chloride)
- *process requirements* that specify the processes to be followed in managing nominated hazards. They are used for hazards where the risks do not admit to ready measurement — such as manual handling, industrial plant or safe work practices (for example, working in confined spaces and at heights)
- *documentation requirements* that specify what needs to be recorded and reported to the government authority. Examples include the requirements to document the maintenance of hazardous plant and equipment, or to report serious accidents and potentially serious incidents to the relevant OHS agency.

Provisions in regulations are mandatory, whereas codes of practice (discussed in the next section) contain non-mandatory guidance material but which nevertheless can be used as evidence in a prosecution for an alleged contravention of an applicable regulation or general duty provision.

² A category 1 offence is the most serious, involving recklessness, and death or serious illness or injury, or a high risk of the same. A category 2 offence is essentially the same as a category 1 offence, but without any recklessness.

As at 30 June 2009 all jurisdictions apart from the Commonwealth and the ACT had consolidated OHS regulations made under their OHS Acts and other Acts into a single document. The ACT has subsequently consolidated their regulations into the *Work Safety Regulation 2009* which commenced from 1 October 2009. The Commonwealth has recently completed a process to consolidate its regulations resulting in two documents — one addresses administrative requirements while the other addresses safety requirements.

The coverage of OHS regulations differs significantly across jurisdictions. Table 2.4 shows under which Acts OHS regulations have been sourced. The table shows significant differences in the structure of OHS regulations. While there is some consistency in how jurisdictions may cover particular hazards in the workplace, there is less consistency in how the parts and/or chapters are organised. In addition, the titles of parts and chapters sometimes use different terminology that may not be compatible or comparable with the terminology used by another jurisdiction. At one extreme, Queensland (27) and the Commonwealth (22) have the most parts or chapters in their OHS regulations, the Northern Territory and the ACT have 14 chapters, New South Wales has 12 chapters respectively, while the remaining five jurisdictions have streamlined their regulations to between 6 and 8 chapters.

The volume of pages associated with regulations also varies significantly between jurisdictions. At the upper end one jurisdiction has 518 pages of regulations while at the lower end another jurisdiction has only 79 pages. However, using a simple number count of pages of OHS legislation as a proxy for complexity faced by employers in different jurisdictions is problematic. For example some jurisdictions may have simply referenced the adoption of national standards in their legislation, while others may have included lengthy description of the national standards. Furthermore, the inclusion of more detailed regulations may provide greater certainty to employers of their obligations in complying with OHS. Also, some jurisdictions may not include some aspects of OHS in their regulations but cover them either in their OHS Act, codes of practice or guidance material.

The table highlights the diversity which currently exists in how OHS is covered in Acts and regulations in different jurisdictions, and the potential difficulties faced by a business operator who may be familiar with specific OHS regulations in one jurisdiction in trying to find information on comparable OHS regulations in other jurisdictions.

Table 2.4 Comparison of coverage and size of OHS regulations
2008-09

	<i>Title and primary Acts</i>	<i>Parts or chapters</i>
Cwth	Occupational Health and Safety (Safety Arrangements) Regulations 1991 Made under Occupational Health and Safety Act 1991	8
	Occupational Health and Safety (Safety Standards) Regulations 1994 Made under Occupational Health and Safety Act 1991	14
NSW	Occupational Health and Safety Regulation 2001 Made under Occupational Health and Safety Act 2000	12
Vic	Occupational Health and Safety Regulations 2007 Made under Occupational Health and Safety Act 2004 and Dangerous Goods Act 1985	8
Qld	Workplace Health and Safety Regulation 2008 Made under: Building Act 1975; Child Employment Act 2006; Dangerous Goods Safety Management Act 2001; Environmental Protection Act 1994; Explosives Act 1999; Fire and Rescue Service Act 1990; Queensland Building Services Authority Act 1991; State Penalties Enforcement Act 1999; Transport Operations (Road Use Management) Act 1995; and, Workplace Health and Safety Act 1995	27
SA	Occupational Health, Safety and Welfare Regulations 1995 Made under Occupational Health, Safety and Welfare Act 1986	7
WA	Occupational Health, Safety and Welfare Regulations 1996 Made under Occupational Safety and Health Act 1984	7
Tas	Workplace Health and Safety Regulations 1998 Made under Workplace Health and Safety Act 1995	6
NT	Workplace Health and Safety Regulations 2008 Made under Workplace Health and Safety Act 2007	14
ACT ^a	Occupational Health and Safety (General) Regulation 2007 Made under Occupational Health and Safety Act 1989	7
	Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000 Made under Occupational Health and Safety Act 1989	6
	Occupational Health and Safety (Manual Handling) Regulation 1997 Made under Occupational Health and Safety Act 1989	1

^a The *Occupational Health and Safety (General) Regulation 2007* in the ACT was replaced by the *Work Safety Regulation 2009* on 1 October 2009.

Source: OHS regulations.

As at 30 June 2009 there were 109 different categories or topics of OHS regulation operating in Australia. Among the categories or topics of regulations are:

- the application, interpretation and coverage of regulations

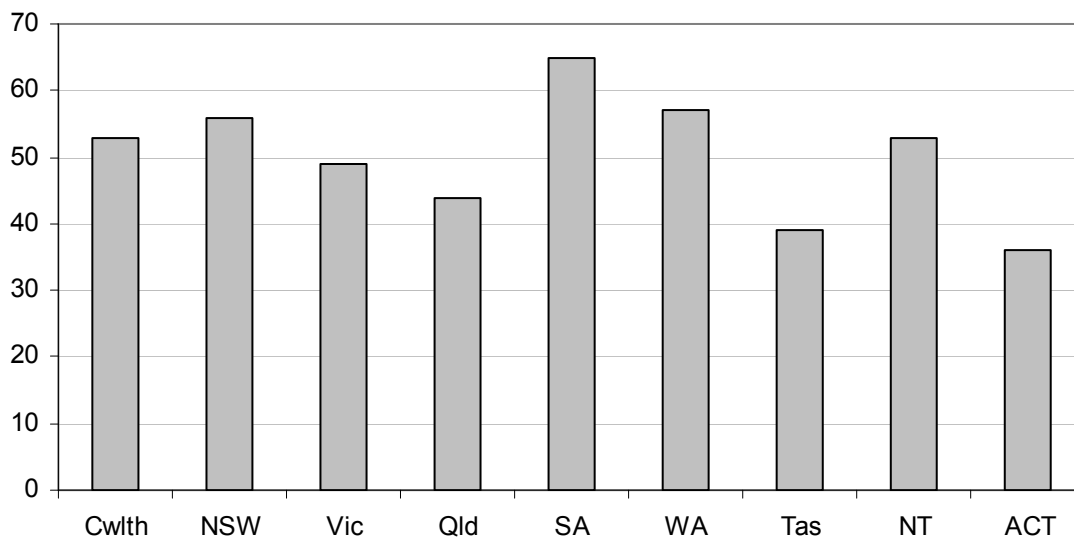
-
- risk management and consultation
 - general and specific requirements for employers to provide information, instruction and training to employees
 - specific hazards relating to plant (including design, manufacture, import, supply, installation and use)
 - treatment of hazardous substances (including carcinogens, asbestos and lead)
 - handling of dangerous goods (including those goods that pose an immediate threat to people and property through causing fires or explosions or poisoning)
 - treatment of physical hazards such as manual handling, noise, working at heights, and working in confined spaces
 - hazardous industries including construction (excavation and demolition), mining and logging
 - hazardous processes of work (including spray painting, abrasive blasting, welding, electroplating, foundry, electrical, diving and driver fatigue)
 - high risk work
 - amusement structures
 - control measures
 - first aid and emergency procedures
 - lighting and ventilation
 - personal protective equipment
 - notification of injuries, illnesses and dangerous events
 - access to and egress from work
 - amenities at work
 - health and safety committees and health and safety representatives
 - licensing, registration and record keeping.

There is considerable jurisdictional diversity in coverage of categories of OHS regulation. For example South Australia covers the most categories (at 65) while the ACT and Tasmania cover the least (36 and 39 respectively) (figure 2.1). No jurisdiction has complete coverage of the 109 different categories of OHS regulations which currently exist nationally.

The OHS regulations of all jurisdictions contain a preliminary part which addresses general issues such as interpretation of regulations or responsibilities under the regulations. Some regulations are peculiar to only one jurisdiction while others are

common to many jurisdictions. For example, Queensland is the only jurisdiction to cover recreational diving but all jurisdictions have regulations for use of personal protective equipment. All jurisdictions, except the ACT, have regulations which cover specific hazards associated with plant design and item registration. All jurisdictions include regulations relating to noise and confined spaces.

Figure 2.1 Number of categories of OHS regulation by jurisdiction
2008-09



Data source: OHS regulations.

All jurisdictions, apart from Tasmania, cover working at heights, although Tasmania does address this hazard with codes of practice and a guidance note. All jurisdictions apart from Queensland have regulations which cover manual handling. Instead, Queensland has a *Manual Tasks Advisory Code of Practice*. In line with the national standards, all jurisdictions have regulations relating to the application for, and suspension of, licences to conduct high-risk work.

The ACT is notable in that it is the only jurisdiction which does not have regulations targeted at hazardous substances such as asbestos and lead under general OHS regulations. The treatment and handling of asbestos in the ACT is covered by building regulations and separate regulations which deal with dangerous substances. In the ACT, laws that manage and regulate asbestos include the *Building Act 2004*, *Construction Operations (Licensing) Act 2004*, *Dangerous Substances Act 2004*, *Dangerous Substances General Regulations Act 2004*, *Environment Protection Act 1997*, *Occupational Health and Safety Act 1989*, *Building Regulation 2004*,

Construction Occupations (Licensing) Regulation 2004 and Part 3.4 of the *Dangerous Substances (General) Regulations 2004*.

It is not clear that having a higher or lower coverage of OHS regulation contributes significantly to better or poorer OHS outcomes but it highlights the extent of differences which exist. A lower count of OHS categories in one jurisdiction could be indicative of less regulation being required to achieve similar results, while a higher count could be indicative of comparatively more high risk industries being present in some jurisdictions. For example, a higher concentration of employees in Manufacturing, Agriculture and Mining in some jurisdictions could require a greater diversity of regulations than jurisdictions which have a greater proportion of employees in industries which face lower risks of injury or disease. For example, in the case of the ACT, the absence of large heavy manufacturing industries and mining precludes the need for particular hazard management associated with these heavy industries. As a result their count of OHS regulation categories is much lower than other jurisdictions.

The diversity of OHS regulation coverage further highlights the difficulties faced by employers located in multiple jurisdictions in understanding their OHS regulatory responsibilities.

2.5 National standards, codes of practice and guidance notes

What are standards?

National standards capture agreed principles, approaches and requirements and provide the mechanisms for jurisdictions to readily set and update various technical requirements of the National OHS Framework. A current list of national OHS standards is included in table 2.5.

As required by COAG, national standards should contain the minimum required to achieve agreed outcomes and be written in plain English. Quasi-legalistic styles are used only where the standard is designed to be taken up directly or given effect by reference in jurisdictional legislation, such as exposure limits. Unless a national standard is adopted into a jurisdiction's legislation it is not mandatory. National standards are public and accessible via electronic media.

Table 2.5 Index of national standards, codes of practice and guidance notes^a

<i>Topic</i>	<i>National Standard</i>	<i>Code of Practice</i>	<i>Guidance Note</i>
Asbestos		✓	✓
Atmospheric Contaminants	✓		✓
Carcinogenic substances	✓	✓	
Competencies in industry ^b			✓
Confined spaces	✓		
Construction	✓	✓	
Dangerous goods	✓	✓	✓
Education ^c			✓
Environmental tobacco smoke			✓
Ethylene oxide		✓	✓
Explosives — transported by road and rail		✓	
Hazardous substances	✓	✓	✓
Health surveillance			✓
Hepatitis and HIV		✓	
Injury and disease recording	✓		
Inorganic lead	✓	✓	
Ionizing radiation	✓		✓
Labelling workplace substances		✓	
Licensing ^d	✓		✓
Major hazard facilities	✓	✓	
Manual tasks	✓	✓	
Material safety data sheets		✓	
Noise	✓	✓	✓
Occupational disease			✓
Occupational overuse syndrome		✓	✓
Plant	✓		
Printing (chemical controls)			✓
Safe design			✓
Stevedoring			✓
Synthetic mineral fibres	✓	✓	✓
Treated timber		✓	✓
Ultraviolet radiation			✓
Vinyl chloride		✓	

^a Relates to areas covered and not the number of national standards, codes of practice or guidance notes.

^b Relates to integrating OHS into national industry training packages. ^c Relates to the development of tertiary courses for professional education in OHS. ^d The national standard relates to the licensing of high risk work activities and the guidance note to the operation of loadshifting equipment.

Source: SWAC (2009c).

The Australian Safety and Compensation Council determined and ‘declared’ OHS standards for hazards common to many industries and workplaces across Australia, and for priority, high-risk industries. Once declared, standards and codes were

endorsed by the WRMC. National standards are in the process of being phased out and replaced by model regulations which will be developed by Safe Work Australia.

OHS codes of practice and guidance notes

National codes of practice are intended to provide more thorough guidance on the principles and options for action under a standard, thus allowing standards to be more simply and clearly stated than might otherwise be the case. Declared national codes must be endorsed by the WRMC. Codes of practice provide focused and practical guidance to help employers and employees meet obligations under the requirements of a national standard. However, as the codes are not mandatory, they provide those who have a duty of care under the Act with the flexibility to choose the method best suited to the conditions prevailing in the workplace.

It should be noted that the failure to observe a provision of an approved code of practice does not, in itself, constitute a breach of the Act. However, an approved code of practice is admissible as evidence in legal proceedings. A court may determine that a failure to comply with an approved code of practice constitutes proof of a breach of the duty of care responsibility, unless it can be shown that the actions taken achieved compliance in another way.

Guidance notes provide practical advice to employers, employees and others on how to prevent risks to health and safety from hazards identified in the workplace. These guides provide information on how to identify, manage and control these risks. The guides are not meant to be comprehensive and citing adherence to examples provided in them does not ensure compliance with legal obligations as set out in individual Acts and regulations. A current list of codes of practice and guidance notes is provided in table 2.5.

Comcare introduced the Commonwealth Occupational Health and Safety Code of Practice in June 2008 which replaced 27 individual codes of practice. The new Code is a single document of 261 pages which replaces 50 documents totalling 2800 pages of material. The new code covers 25 separate areas including twenty different hazards, as well as risk management, first aid, construction induction training, cash in transit and falls in constructions. The changes were a response to concerns raised about the previous codes of practice including: excessive prescription; a perceived lack of clarity on safety requirements and responsibilities; a number of outdated references; and instances of duplication of requirements with other legislative frameworks.

Victoria recently replaced some of their codes of practice with ‘compliance codes’. The important legal distinction between compliance codes and codes of practice is

that compliance with the former satisfies requirements of the Victorian OHS Act. There are currently eight compliance codes in Victoria which were developed in consultation with key industry bodies, employers, employees, government agencies and the community. Compliance codes which cover workplace amenities and work environment; communicating OHS across languages; and first aid in the workplace, are relevant to every workplace in Victoria. Guidance for managing specific hazards in compliance codes is limited to asbestos, prevention of falls, foundries and confined spaces. Advice on other hazards such as bullying and dangerous goods are provided in guidance notes. In addition to the eight compliance codes, Victoria has six codes of practice that relate to: hazardous substances; lead; dangerous goods handling and storage; manual handling; plant; and safety precautions in trenching operations. These codes have not as yet been superseded by compliance codes.

Adoption of national standards and codes of practice

It is difficult to measure the true extent of take up of national standards and codes of practice. For those jurisdictions which have not adopted a national standard into their legislation, it does not necessarily imply they do not follow the requirements of the standard. Indeed, they may have adopted the requirements but have done so using different wording.

This may be further complicated if a jurisdiction has referred to a national standard in a code of practice, which, while not providing full legal effect, suggests to an employer that if they follow the national standard they will comply with that jurisdiction's OHS regulatory requirements. A similar complication exists for codes of practice. As such, it is difficult to gauge the true extent of differences from comparing the uptake of national standards and codes of practice.

Based on a criteria which identified the key elements of each standard, and then examined whether these elements were adopted in legislation or regulation, the numbers of adopted standards by each jurisdiction are presented in table 2.6. Tasmania have adopted the most (16) while Northern Territory has adopted the least (10).

For national guidance material, as it is not intended to be legally enforceable, or act as a code of practice, it is not possible to compare the uptake across jurisdictions as it is intended as an additional source of information. This information is available to all businesses, irrespective of the actions of individual jurisdictions, due to it being posted on the Safe Work Australia website. Thus, it is not possible to link the uptake or otherwise of guidance material to business compliance costs associated with jurisdictional regulatory differences.

Table 2.6 Take up of national standards in legislation
2008-09

NOHSC Number	Standard Name	Cwth	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Total
	Workplace Injury and Disease Recording Standard			✓		✓		✓			3
	National Standard for Licensing Persons Performing High Risk Work	✓	a	✓	✓		✓	✓	a	a	5
	National Standard for Manual Tasks	✓						✓		b	2
1003 (1995) 2	Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1004 (1990)	National Standard for Synthetic Mineral Fibres	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1005 1	National Model Regulation for the Control of Workplace Hazardous Substances	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1006 (2001) 1	National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment		✓	✓		✓		✓		✓	5
1007 (2000) 1	National Standard for Occupational Noise	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1008 (2004)	Approved Criteria for Classifying Hazardous Substances	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1009 (1994)	Safe Working in a Confined Space	✓	c		✓	c	✓	✓	c	c	4
1010 (1994) 1	National Standard for Plant	✓	✓	✓	d	✓	✓	✓	✓	d	7
1011 (1995)	National model regulation for the control of scheduled carcinogenic substances	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1012 (1994) 2	National Standard for the Control of Inorganic Lead at Work	✓	✓	✓	✓		✓	✓		✓	7
1013 (1995)	National Standard for Limiting Occupational Exposure to Ionizing Radiation									✓	1
1014 (2002)	National Standard for the Control of Major Hazard Facilities	✓	✓	✓	a	✓	✓	✓	✓	a,e	7
1015 (2001)	National Standard for the Storage and Handling of Workplace Dangerous Goods	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
1016 (2005) 1	National Standard for Construction Work	✓	✓	✓	✓	✓	✓	✓	✓	✓	9
Total		14	12	14	11	12	13	16	10	11	

^a Planned adoption through adoption of model regulations. ^b ACT has adopted the National Standard as a code of practice. ^c Referenced in code of practice. ^d Adopted as an Advisory Standard in Queensland and as an Approved Code of Practice in the ACT. ^e No major hazard facilities currently.

Source: Safe Work Australia (2009 unpublished).

Across the standards, the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment has been adopted by all jurisdictions, whereas the National Standard for Limiting Occupational Exposure to Ionizing Radiation has only been adopted by the ACT.

The reasons for non-adoption of national standards across the jurisdictions vary. In some instances, the standards lie outside the scope of the core OHS regulations. In others, non-adoption is driven by the provisions being updated in more recent regulations, or the jurisdiction has decided to reference the standard within its code of practice.

A number of national codes have also been modified by jurisdictions while other codes have been developed independently. Jurisdictions have also developed their own codes of practice in response to particular OHS incidents. For example, in Tasmania a code of practice titled *Applicable Standards for Underground Mining and Associated Operations* came into operation in November 2008 in response to the coroner's findings following the deaths of three mining employees at Renison Mine. The code provides practical guidance for mine operators with regard to safety management systems, risk management, safety requirements for conveyors and the application of exposure standards for atmospheric contaminants.

OHS Codes of practice by jurisdiction

Table 2.7 shows that South Australia has 89 codes of practice but Victoria has streamlined its codes to just 8 compliance codes and 6 codes of practice. Victoria's compliance codes include: communicating occupational health and safety across languages; workplace amenities and work environment; confined spaces; first aid in the workplace; prevention of falls in general construction; foundries; managing asbestos in workplaces; and removing asbestos in workplaces.

The quantity of codes, on its own, may not be a sufficient benchmarking indicator of the support provided to businesses. However a smaller number of well directed codes may be more helpful to employers and employees than a large number of codes. It is possible that similar outcomes may be achieved in jurisdictions with a lower number of codes of practice, combined with a well developed program of proactive inspections providing OHS advice in the workplace.

Figure 2.2 shows the distribution of codes of practice currently operating in each jurisdiction in terms of whether they are focused on specific industries, hazards, processes or a mixture of these categories.

Table 2.7 Number of codes of practice by jurisdiction

2008-09

<i>Areas covered</i>	<i>Cwlth^a</i>	<i>NSW^b</i>	<i>Vic^c</i>	<i>Qld^d</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
	no.	no.	no.	no.	no.	no.	no.	no.	no.
Industries	3	20	–	7	36	12	4	1	4
Hazards	20	17	6	18	44	20	3	15	15
Processes	2	6	–	2	2	1	2	1	1
Mixed ^e	–	1	–	3	7	4	9	2	5
Compliance codes	na	na	8	na	na	na	na	na	na
Total	25	44	14	30	89	37	18	19	25

na not applicable. ^a In June 2008 the Commonwealth consolidated its code of practice into 25 different areas — 20 are focussed on hazards in the workplace while the remainder include risk management, first aid, construction induction training, cash in transit and falls in constructions. Risk management and first aid are classified as processes while construction induction training, cash in transit and falls in construction are specific to particular industries. ^b Apart from codes targeted at hazards and industries New South Wales includes a number of codes related to the working environment such as workplace amenities, noise management and managing hot and cold environments. ^c Victoria has a set of 8 compliance codes which have superseded many of the previous codes of practice that existed, and 6 codes of practice which remain in operation relating to hazardous substances; lead; storage and handling of dangerous goods; manual handling; plant; and safety precautions in trench operations. ^d Queensland repealed the Code of practice for storage and use of rural chemicals at a rural workplace on 1 September 2009. ^e The category titled 'mixed' includes codes that cover a combination of areas such as a specific hazard *and* an industry.

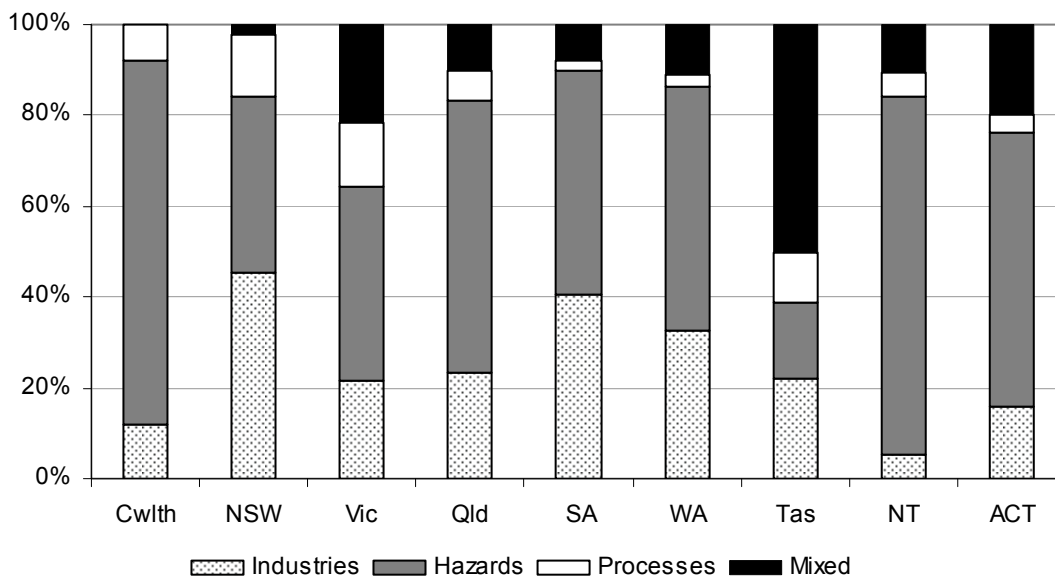
Sources: Safe Work Australia (2009 unpublished); WorkSafe Victoria (pers. comm. 2009); Occupational Health and Safety Code of Practice 2008 (Cwlth), NSW Better Regulation Office, Department of Premier and Cabinet.

The purpose of this exercise is not to highlight an optimal or best practice mix of codes for jurisdictions to adopt in order to manage risks to health and safety at work but to indicate the extent of variation that currently exists as to how jurisdictions approach the provision of guidance on dealing with hazards in the workplace.

Figure 2.2 shows that the Northern Territory, the Commonwealth, Queensland, Western Australia and the ACT have a relatively high proportion of their codes dedicated to specific hazards, while New South Wales and South Australia have a relatively high proportion of codes related to specific industries compared with other jurisdictions.

In some jurisdictions, codes can be classified as addressing a mix of hazards and processes or a mix of hazards and industries. For example, in Victoria there are separate codes of practice that are targeted at the use of hazardous substances and the storage and handling of dangerous substances, but both codes also include a requirement to prepare material safety data sheets which is a process.

Figure 2.2 Codes of practice and compliance codes covering OHS
2008-09



Data sources: Safe Work Australia (2009 unpublished); WorkSafe Victoria (pers. comm. 2009); Occupational Health and Safety Code of Practice 2008 (Cwth); NSW Better Regulation Office, Department of Premier and Cabinet.

There are also codes which could be classified as both hazard and industry codes. Examples include the prevention of falls in the Northern Territory (mainly in the construction industry), electrical work in Queensland, and the safe use of lasers in the construction industry in South Australia. There are cases where similar activities are given separate codes such as recreational and professional diving in Queensland. This may create compliance confusion, particularly where the two activities are combined, for example, in circumstances where recreational divers dive with professional diving instructors to recover objects from the seabed.

Some jurisdictions provide codes to deal with particular hazards which have not been adopted elsewhere. For example, Queensland and Western Australia are the only jurisdictions to have codes of practice specifically directed at violence, aggression, bullying and harassment in the workplace. The Queensland code is titled *Prevention of Workplace Harassment Code of Practice 2004* which is directed at preventing abuse, ridicule and other forms of what would be construed as bullying. The Western Australian code is titled *Violence, aggression and bullying at work 2006*. The Commonwealth has a clause in its *Occupational Health and Safety Code of Practice 2008* which relates to psychosocial hazards in the workplace. The remaining jurisdictions provide guidance notes to employers and employees on this topic. The differences in how jurisdictions approach hazards such as bullying and mental stress is covered in more detail in chapter 11.

2.6 OHS Regulators

Each jurisdiction has a specific regulator with primary responsibility for implementing OHS rules and regulations. The way these primary regulators operate, provide information, issue licences or permits, organise reporting, conduct inspections, and cooperate with businesses can have a significant impact on the levels of compliance costs and any associated burdens. A list of the primary regulators operating in each jurisdiction is provided in table 1.1 in chapter 1.

Some primary regulators and a number of other regulators have responsibility for OHS matters contained in industry specific Acts and Acts relating to specific hazards which are shown in table 2.8. These Acts relate to a range of industries and activities including the mining industry, railways, electricity generation and delivery, transportation of hazardous material, handling of explosives, handling of radioactive material, marine safety, and electrical and plumbing work.

Table 2.8 Regulators dealing with OHS matters in other Acts^a

<i>Regulator</i>	<i>Act</i>
Cwth Comcare	<i>Australian Workplace Safety Standards Act 2005</i> <i>Occupational Health and Safety (Maritime Industry) Act 1993</i> <i>Road Transport Reform (Dangerous Goods) Act 1995</i> <i>Safety, Rehabilitation and Compensation Act 1988</i>
Seafarers Safety, Rehabilitation and Compensation Authority	<i>Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992</i> <i>Seafarers Rehabilitation and Compensation Act 1992</i>
Australian Building and Construction Commissioner	<i>Building and Construction Improvement Act 2005</i>
Australian Maritime Safety Authority	<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>
National Offshore Petroleum Safety Authority	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>

(Continued next page)

Table 2.8 (continued)

	<i>Regulator</i>	<i>Act</i>
NSW	Department of Industry and Investment	<i>Coal Mine Health and Safety Act 2002</i> <i>Mine Health and Safety Act 2004</i> <i>Mine Safety (Cost Recovery) Act 2005</i> <i>Petroleum (Onshore) Act 1991</i> <i>Rural Workers' Accommodation Act 1969</i>
	WorkCover NSW	<i>Dangerous Goods (Road and Rail Transport) Act 2008</i>
	Dangerous goods — Department of Environment and Climate Change (licensing of drivers) and WorkCover NSW	
	Rail safety — Independent Transport Safety and Reliability Regulator	<i>Rail Safety Act 2008</i>
	WorkCover NSW	<i>Explosives Act 2003</i>
Vic ^b	Public Transport Safety Victoria	<i>Rail Safety Act 2006</i>
	WorkSafe Victoria	<i>Equipment (Public Safety) Act 1994</i> <i>Dangerous Goods Act 1985</i> <i>Electricity Safety Act 1998</i> <i>Energy Safe Victoria Act 2005</i>
	Energy Safe Victoria	
	Department of Primary Industries	<i>Mines Act 1958</i>
Qld	Queensland Transport	<i>Transport Operations (Road Use management) Act 1995</i>
	Maritime Safety Queensland	<i>Transport Operations (Marine Safety) Act 1994</i>
	Queensland Mines Inspectorate (QMI) through the Mines and Energy Division of the Dept of Employment, Economic Development and Innovation	<i>Coal Mining Safety and Health Act 1999</i> <i>Mining and Quarrying Safety and Health Act 1999</i> <i>Petroleum and Gas (Production and Safety) Act 2004</i> <i>Explosives Act 1999</i>
	Workplace Health and Safety Queensland	<i>Dangerous Goods Safety Management Act 2001</i>
	Department of Employment and Industrial Relations ^c	<i>Electrical Safety Act 2002</i>
	Department of Health	<i>Radiation Safety Act 1999</i>
SA	Safework SA	<i>Dangerous Substances Act 1979</i> <i>Explosives Act 1936</i> <i>Petroleum Products Regulation Act 1995</i> <i>Mines and Works Inspection Act 1920</i> <i>Radiation Protection and Control Act 1982</i>
	Environment Protection Authority	<i>Mines and Works Inspection Act 1920</i>
	SafeWork SA	
	Department for Transport, Energy and Infrastructure	<i>Rail Safety Act 2007</i>

(Continued next page)

Table 2.8 (continued)

	<i>Regulator</i>	<i>Act</i>
WA	Department for Planning and Infrastructure	<i>Rail Safety Act 1998</i>
	Department for Mines and Petroleum	<i>Dangerous Goods Safety Act 2004</i> <i>Mines Safety and Inspection Act 1994</i>
Tas	Department of Infrastructure, Energy and Resources	<i>Rail Safety Act 1997</i>
	Workplace Standards Tasmania	<i>Dangerous Goods Act 1998</i> <i>Dangerous Substances (Safe Handling) Act 2005</i> <i>Electricity Industry Safety and Administration Act 1997</i> <i>Security-sensitive Dangerous Substances Act 2005</i> <i>Occupational Licensing Act 2005</i> <i>Electricity Industry Safety and Administration Act 1997</i>
		Department of Infrastructure, Energy and Resources
NT	Department of Planning and Infrastructure	<i>Northern Territory Rail Safety Act 1998</i> <i>Marine Act 1981</i> <i>Dangerous Goods Act 2008</i> <i>Dangerous Goods (Road and Rail Transport) Act 2005</i> <i>Radioactive Ores and Concentrates (Packaging and Transport) Act 2002</i> <i>Electricity Reform Act 2005</i> <i>Electrical Workers and Contractors Amendment Act 2008</i> <i>Workers' Rehabilitation and Compensation Act 2007</i>
	NT WorkSafe	<i>Petroleum Act 1984</i> <i>Radioactive Ores and Concentrates (Packaging and Transport) Act 1980</i>
ACT	ACT WorkCover (Office of Regulatory Services)	<i>Dangerous Substances Act 2004</i> <i>Radiation Protection Act 2006</i> <i>Machinery Act 1949</i> <i>Scaffolding and Lifts Act 1912</i> <i>Road Transport Reform (Dangerous Goods) Act 1995</i> <i>Clinical Waste Act 1990</i> <i>Workers' Compensation Act 1951</i> <i>Magistrates Court Act 1930</i> <i>Public Sector Management Act 1994</i>
	ACT Gambling and Racing Commission	<i>Racing Act 1999</i>

^a Other than the principal OHS Acts listed in table 2.1. ^b The Road Transport (Dangerous Goods) Act 1995 in Victoria was subsumed by the Dangerous Goods Act 1985 in January 2009. ^c The Department of Justice and Attorney-General in Queensland now has responsibility for administering the *Electrical Safety Act 2002*.

Sources: WRMC (2008a); regulator websites.

There are around 70 such Acts relating to OHS responsibilities in Australia which highlights the complexity of the task facing businesses in complying with OHS obligations, particularly those that operate in a number of jurisdictions.

In some jurisdictions, regulators have combined the administration and enforcement of OHS and workers' compensation regulations. Regulators for the Commonwealth, New South Wales, Victoria, Tasmania, the Northern Territory and the ACT have responsibility for both OHS and workers' compensation. In contrast, Queensland, South Australia, and Western Australia have separate regulators for OHS and workers' compensation, but in some instances these regulators also have other responsibilities.