

**COAG Reporting Study
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601**

Dear Sir/Madam

Thank you for the opportunity to provide a submission for inclusion in the Commission's draft discussion paper for the report on the 'impacts and benefits' of the COAG reform agenda.

Safe Work Australia is a statutory agency with responsibility for developing national policy on work health and safety and workers' compensation. Safe Work Australia consists of representatives from the Commonwealth, state and territory governments, employer and employee organisations and is jointly funded by the Commonwealth, state and territory governments.

Safe Work Australia has a lead role in implementing the COAG reform agenda in the area of harmonised occupational health and safety legislation under the National Partnership Agreement to Deliver a Seamless National Economy.

Under the COAG agreed timeframes for this reform as set out in the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, the harmonised work health and safety (WHS) legislation is due to be implemented on 1 January 2012. An update on our progress with this reform is provided at [Attachment A](#) and includes links to relevant documents where available. The expected impact and benefits of the reform are discussed in the Decision Regulation Impact Statements (RIS) for the model WHS Act and Regulations and will be measured in part by the proposed evaluation plan for the harmonisation of work health and safety in Australia which is provided at [Attachment B](#).

We would welcome the opportunity to discuss the draft discussion paper and our submission in more detail with you and will contact the Commission in the near future to organise a suitable meeting time.

Yours sincerely

Rex Hoy
Chief Executive Officer
Safe Work Australia

13 October 2011

| Reform element | Timeframe | Progress |
|---|---|--|
| Model WHS Act and related documents (including Explanatory Memorandum, Transitional Principles, Interpretive Guidelines and Decision RIS) | 1 January 2012 | <p>On 11 December 2009, the Workplace Relations Ministers' Council (WRMC) endorsed the Model Work Health and Safety (WHS) Act.</p> <p>As of 13 October 2011 NSW, QLD and the ACT have all passed their respective WHS Acts. Other jurisdictions are in various stages of progress with enacting their legislation.</p> <p><u>Model WHS Act and related documents</u></p> |
| Model WHS Regulations and first stage model Codes of Practice | 1 January 2012 | <p>The model WHS Regulations and first stage model Codes of Practice were approved in principle by WRMC on 10 August 2011 and are currently with Ministers for their final approval following clearance of the Decision RIS by the Office of Best Practice Regulation (OBPR)</p> <p><u>Model WHS Regulations and first stage model Codes of Practice</u></p> |
| Decision RIS for the model WHS Regulations and first stage Codes of Practice | | <p>The Decision RIS for the model WHS Regulations and first stage model Codes of Practice has been cleared by OBPR and will be published on the Safe Work Australia website on approval of the Regulations and Codes of Practice by Ministers.</p> |
| Model WHS Regulations and Codes of Practice for Mining | 1 January 2012 | <p>The draft model WHS Regulations and Codes of Practice for Mining were released for public comment on 15 July 2011. Public comment closes on 14 October 2011.</p> <p><u>Model WHS Regulations and Codes of Practice for Mining</u></p> |
| Consultation RIS for Mining | | <p>The Consultation RIS for the core provisions for Mining was cleared by the OBPR on 7 October 2011 and released for public comment on 10 October 2011.</p> |
| National Compliance and Enforcement Policy (NCEP) | 1 January 2012 | <p>The NCEP was approved by WRMC on 10 August 2011.</p> <p><u>National Compliance and Enforcement Policy</u></p> |
| Remaining Codes of Practice | From 1 January 2012 to 31 December 2012 | <p>Fifteen additional Codes of Practice were released for public comment on 26 September 2011.</p> <p>It is anticipated that these codes will be approved by WRMC for implementation in early 2012.</p> <p><u>Additional Codes of Practice for public comment</u></p> |

PROPOSED EVALUATION PLAN FOR HARMONISATION OF WHS IN AUSTRALIA

Introduction

The evaluation plan on pages 4-19 of this attachment was approved by Safe Work Australia Members at their meeting on 29 July 2011 and is designed to provide information to:

- a) meet reporting requirements on progress towards achieving the objectives set out in the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA) and the *Model Work Health and Safety Act* (Model WHS Act)
- b) assist in completing required annual reports to the Council of Australian Governments (COAG) on IGA requirements
- c) assist the 2015 review of Safe Work Australia Act and functions and the IGA by COAG,
- d) assist in the review of the Model WHS Act in 2017, and
- e) assist jurisdictions in their implementation of the legislative framework and inform them of the impact of changes.

The evaluation plan aims to answer four over-arching questions that align largely with the objectives of the IGA and the Model WHS Act:

- f) Has model legislation resulted in greater uniformity and consistency in regulatory and operational approaches to work health and safety across Australia?
- g) In what ways has model legislation impacted on regulatory burden for businesses of different sizes and operating in one, or more than one, jurisdiction?
- h) In what areas has model legislation created efficiencies for Commonwealth, state and territory governments in provision of regulatory and support services, and how?
- i) What changes have occurred in the health and safety performance of Australian workplaces since the introduction of the model legislation, and to what can these changes be attributed?

The evaluation plan will cover the first four years following implementation of the legislative framework up to the review of the IGA in 2015.

The evaluation plan includes detail on indicators, data sources, methods and timing for data collection, analysis and reporting. Where possible it will use existing data sources to measure the impact of any changes against the objectives of the IGA. These data include workers' compensation statistics, fatalities data, the Australian Bureau of Statistics Work-related Injuries Survey, and the 2008 National Hazard Exposure Worker Surveillance Survey. Some surveys will be developed and administered in 2011-12 to establish baselines. These surveys/data collections will be repeated at various intervals over the planned timeframe to ascertain what changes have occurred.

The evaluation plan also covers areas for which data gaps currently exist or for which data may exist within jurisdictions but has not been made available previously to Safe Work Australia. To address gaps in existing data quality and availability, the plan also includes alternative data sources /research strategies.

Purpose

The evaluation plan has been designed to report on the progress made and changes which have occurred in achieving a harmonised approach to work health and safety in Australia. In particular, the plan is designed to evaluate the implementation of the harmonisation of the work health and safety legislative framework against the objectives outlined in the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA).

Background

In 2008 the IGA was signed by the Council of Australian Governments (COAG). The objective of this reform was to “produce the optimal model for a national approach to OHS regulation and operation which will:

1. enable the development of uniform, equitable and effective safety standards and protections for all Australian workers
2. address the compliance and regulatory burdens for employers with operations in more than one jurisdiction
3. create efficiencies for governments in the provision of OHS regulatory and support services, and
4. achieve significant and continual reductions in the death, injury and disease in the workplace.”

The Research Evaluation and Data (RED) Advisory Group was asked to advise on the design of an evaluation plan which would enable reporting to COAG on progress against reform objectives. The RED Advisory Group has tripartite membership which has enabled the development of an evaluation plan that reflects the different perspectives of governments and social partners. This is the first time that an evaluation plan has been developed in Australia to capture data and report on regulatory and operational approaches to work health and safety and their outcomes from a national perspective.

Reporting

The IGA requires:

- reporting to COAG at least annually against progress made in relation to the IGA objectives
- the Chief Executive Officer, Safe Work Australia to provide an annual report to Parliament, to Safe Work Australia Members and to the ministerial council which ‘will include progress of the jurisdictions in implementing OHS reform’, and
- a review of the operation of Safe Work Australia and the IGA. The *Safe Work Australia Act* requires a review of Safe Work Australia’s ongoing role and functions to be commenced in November 2015 (that is, six years after the commencement of the Act). This review is to be completed within six months, that is, by May 2016.

Work undertaken as part of this evaluation plan will enable Safe Work Australia to meet the annual reporting requirements and will provide information which can be used in the review of Safe Work Australia and the operation of the IGA in 2015-2016.

In addition, Safe Work Australia will receive regular updates and reports as specific projects, data analysis or measurements are developed or completed and at least annually.

Evaluation Design

This evaluation is designed to:

- determine whether the key objectives of the harmonisation of the work health and safety legislative framework have been met, to what extent, where and how

- address the problem of attribution of observed outcomes to the harmonisation process (that is, to identify whether there is evidence that the harmonisation process contributed to the observed outcomes or whether those outcomes result from other factors)
- provide policy-useful lessons about harmonisation in general (that is, to capitalise on the evaluation by treating the Model Legislation and associated processes as a case study from which to derive lessons for other instances where a similar harmonisation strategy may be used to achieve policy outcomes)
- monitor and evaluate outcomes as they emerge over time, while at the same time preserving flexibility to respond to unexpected contingencies
- monitor for significant risks to the harmonisation process in order to contribute to planning and implementation over time
- minimise additional burdens for jurisdictions in their contributions to the evaluation while managing the costs and burden of the evaluation for Safe Work Australia as an agency, and
- reflect that pragmatism must dictate the extent of the evaluation, particularly in the short term due to non existence or inadequacy of current data and/or resource constraints. This does not rule out that attempts will be made over time to improve and expand on the information collected.

There are four over-arching questions for the evaluation which largely mirror the four IGA objectives for harmonisation of work health and safety. The question for Objective 1 has been narrowed to only deal with the uniformity and consistency in regulatory and operational approaches. The aspect of effectiveness of safety standards and protections is dealt with under the question for Objective 4 which has been broadened to encompass improvements in health and safety performance more generally. These overarching questions are:

- Objective 1: Has model legislation resulted in greater uniformity and consistency in regulatory and operational approaches to work health and safety across Australia?
- Objective 2: In what ways has model legislation impacted on regulatory burden for businesses of different sizes and operating in one, or more than one, jurisdiction?
- Objective 3: In what areas has model legislation created efficiencies for Commonwealth, State and Territory governments in provision of regulatory and support services, and how?
- Objective 4: What changes have occurred in the health and safety performance of Australian work places since the introduction of the model legislation, and to what can these changes be attributed?

There are two or three areas of focus underlying each key question.

For question one (uniform and consistent regulatory and operational approaches), these are:

- *Uniform and consistent documents*: this will examine the extent to which the jurisdictions adopt Acts, Regulations and Codes of Practice consistent with the model WHS legislation and codes of practice, and
- *Uniform and consistent application*: this will examine the extent to which legislation and policy are consistently applied across each jurisdiction.

For question two (impacts on regulatory burden), these are:

- *Impacts for businesses*: analysis of the impacts for businesses operating in multiple jurisdictions, for which positive impacts are anticipated, as compared to those operating in only one. There may be increased regulatory burden for some businesses operating in only one jurisdiction, and

- *Aggregate cost-benefit*: an analysis of whether the benefits for some businesses outweigh the costs to others.

For question three (efficiencies for governments), these are:

- *Nature of efficiencies, for whom*: examining the specific areas in which efficiencies are and are not created, the nature of those efficiencies (decreased costs or increased outputs) and to whom the benefits accrue, and
- *How efficiencies are generated*: examining the processes by which efficiencies are generated and/or the processes which prevent anticipated efficiencies from being generated.

For question four (health and safety performance), these are:

- *Incidence of death & injury*: analysis of changes in rates of work-related serious injury¹ and death. These are the final outcome measures for effectiveness of the harmonisation process
- *Exposure to and control of hazards*: analysis of changes to levels of self-reported exposure to hazards and changes to the level and adequacy of controls of hazards in the workplace
- *Compliance with duties*: examining perceptions of different stakeholder groups in relation to duties, due diligence, consultation and other matters included in the Model WHS Act. Compliance with duties is expected to contribute to improved health and safety outcomes, and
- *Contribution analysis*: this is a summary analysis that examines the extent to which it is reasonable to believe that harmonisation has contributed to observed outcomes.

The relationships between the IGA objectives, research questions and their areas of focus are demonstrated in Figure 1 below. It provides the goal and objectives of the harmonisation process quoted from the IGA, the lead question for the evaluation for each objective and the key focus areas for evaluation in each area.

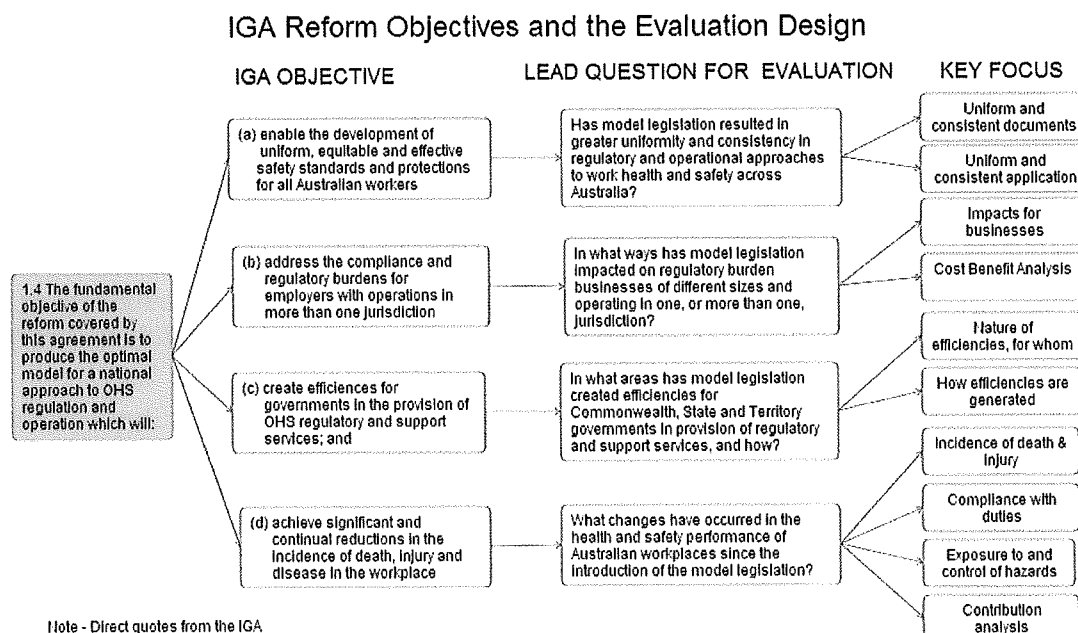


Figure 1: IGA Reform Objectives and the Evaluation Design

¹ Serious injury has been selected as the key indicator because national data for serious injury are more reliable than that for minor injury (that is, injury where there is less than one week of absence from work). There are no reliable data for work-related disease, however work continues on gathering data on hazard exposure and health outcomes. These data will contribute to this evaluation.

The evaluation will draw on four main data sets. These are:

- Documents: Acts, Regulations, Codes of Practice, policies and procedures, guidance materials and so on;
- Administrative data: information generated through the normal operations of the jurisdictions as they administer the legislation and court records where applicable;
- Existing surveys and data sets: These include the Workers' Compensation National Data Set, Notified Fatalities, and coroner's data; National Hazard Exposure Worker Surveillance data, ABS Work Related Injuries Survey and so on;
- New surveys: three new surveys are proposed: one related to regulatory burden for employers (with additional questions for those operating in multiple jurisdictions in order to identify their perspectives on remaining inconsistencies across jurisdictions); a broad stakeholder survey related to perceptions of compliance with duties under the WHS Act and regulations; and a smaller annual activity survey for jurisdictions to gather data on efficiencies.

In most cases the evaluation will use existing information, minimising costs for the evaluation and additional demand on jurisdictions. The new surveys proposed will impose additional demand and cost on Safe Work Australia.

The next section of the paper provides a summary of the evaluation design for each of the four key questions. A diagram representing the 'program logic' for each objective (that is, how actions might generate particular outcomes) is provided first. These models should be read from left to right and top to bottom (following the arrows). The key outcomes for each model are highlighted in cream. Yellow 'ruler' symbols on the diagram demonstrate the aspects about which data will be collected for that Objective: the numbers in these indicator symbols relate to the numbering system used in the tables which follow.

Two things should be noted here. First, it is not possible to collect data about every item in a logic diagram. The indicator symbols demonstrate the key aspects about which data will be collected. Second, there is some necessary overlap in the logic models, with aspects that are shown in more detail in one diagram summarised in briefer form on other diagrams. For example, the logic model for Objective 3 'teases out' the processes by which efficiencies for Governments may be generated; but these processes are summarised in two boxes in the diagram for Objective 4. In the interests of clarity, the indicator symbols used in the diagram for Objective 3 are not repeated in the diagram for Objective 4.

Each program logic diagram is followed by a table. These tables outline the indicators, main data collection methods and/or items, and timelines for collection of each data set, with brief comments about particular items or analyses where required.

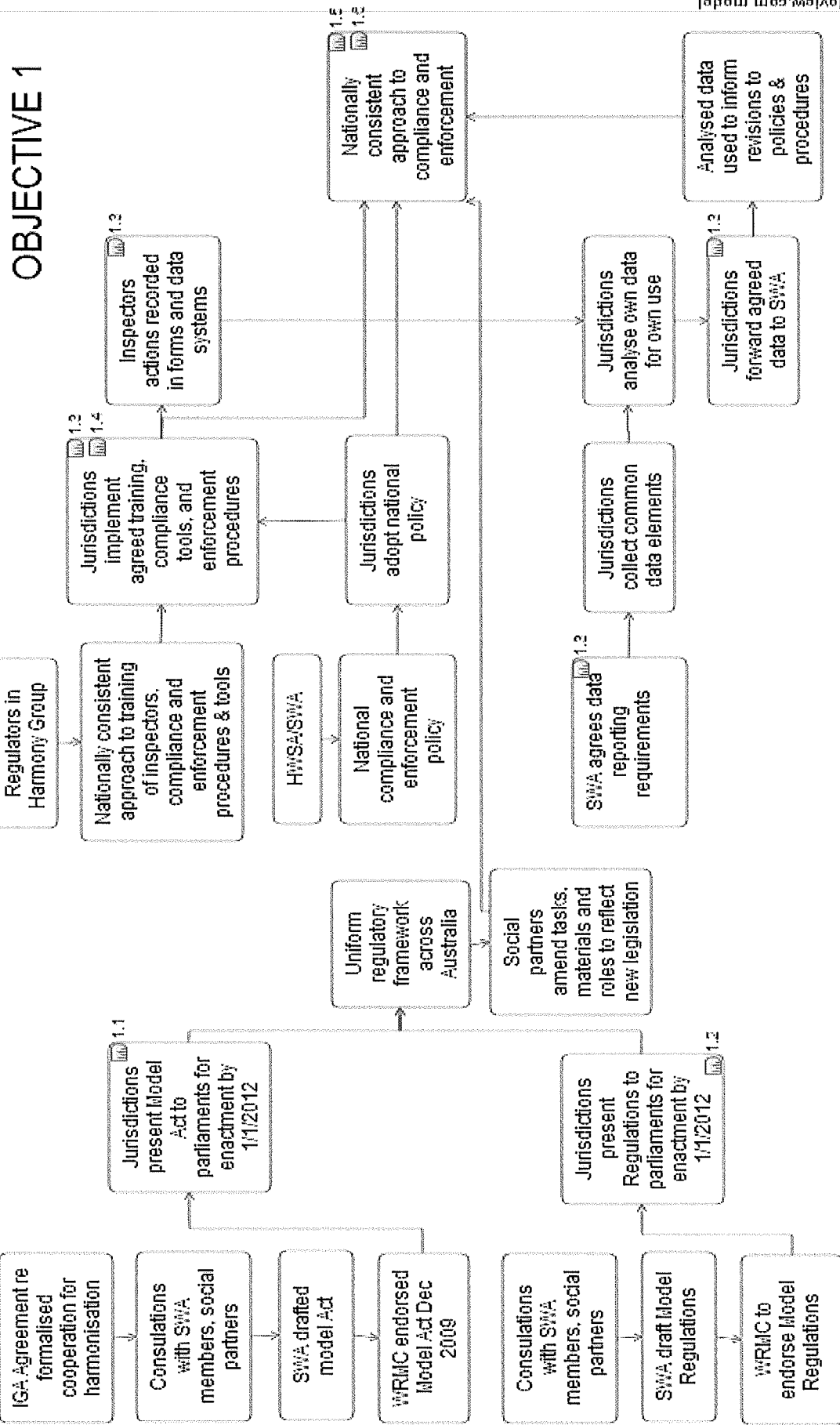
Implementation of the full evaluation is subject to availability of resources. Some evaluation resources are available within Safe Work Australia. Some data will be required from jurisdictions and this is subject to resource capacity in jurisdictions. Some data collection strategies identified above are subject to external funding submissions.

Next steps

The program logic diagrams and tables detailed below will be used to design evaluation instruments, questions and analyses. Safe Work Australia will continue to seek the advice and expertise of RED Advisory Group members in undertaking these tasks.

It is important to note that data will be collected over a five year period. Resources do not allow all data to be collected and analysed annually and time is needed for some of the anticipated changes to become apparent.

A timeline on page 17 details what data collection will be undertaken and in which year from the present until 2016. Interim reports will be produced on an annual basis. At the end of the five year period a final report will be produced on the evaluation of work health and safety reform and the impact of harmonisation on work health and safety practices and outcomes in Australia.

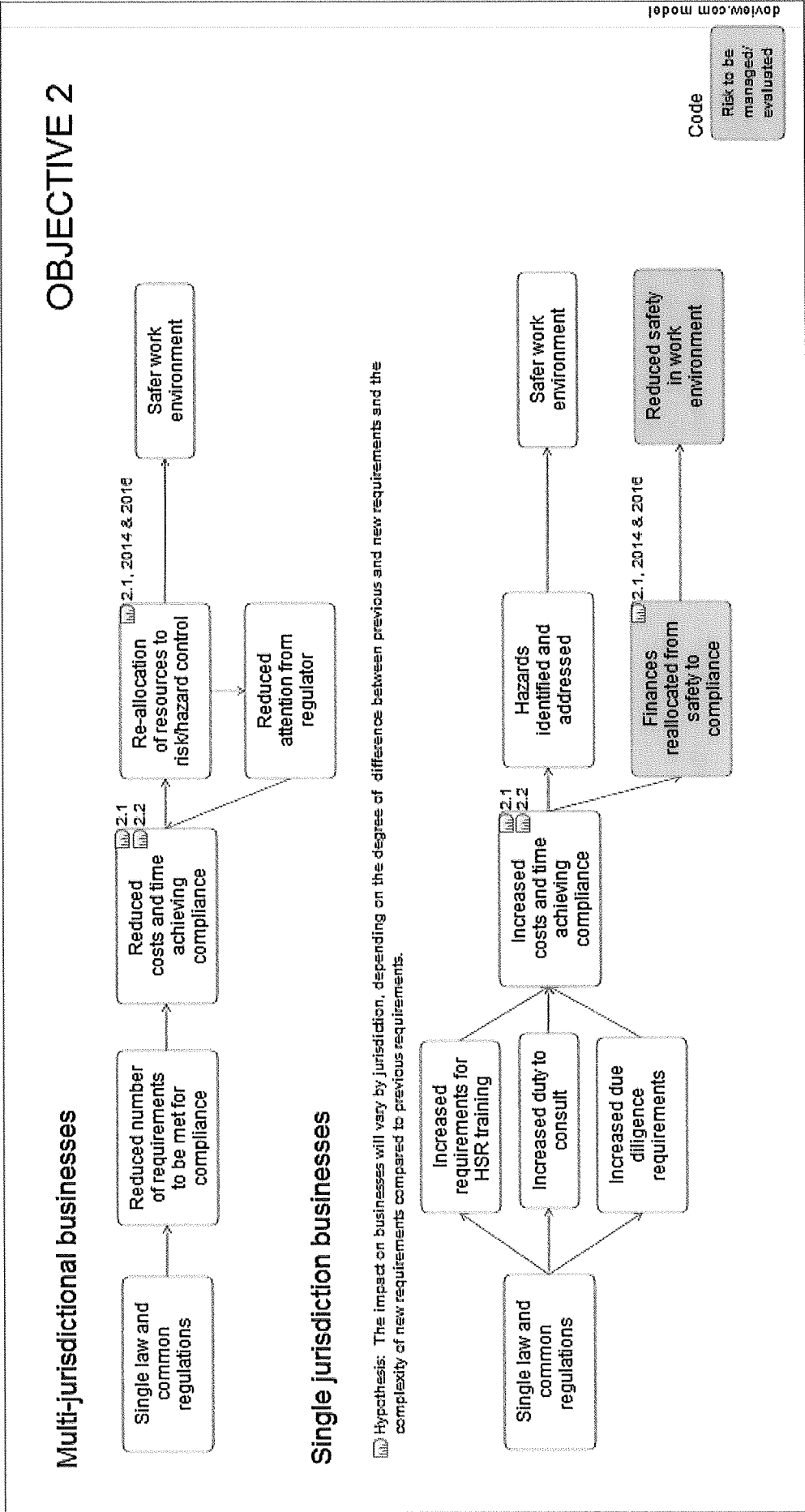




| Objective 1: Has model legislation resulted in greater uniformity and consistency in regulatory and operational approaches to work health and safety across Australia? | | | | |
|--|---|------------------|---|--|
| Focus area 1(a): uniform and consistent documents | | | | |
| Indicator | Data Source | Year | Comment / Description | |
| 1.1. Jurisdictional Acts, Regulations & Codes of Practice <ul style="list-style-type: none">consistent with model legislation at 1/1/12remain consistent with model legislation over time | Documentary analysis: Jurisdictional Acts, Regulations and Codes of Practice as adopted by jurisdictions Annual review of any amendments to Model Legislation. Should amendments be made, documentary review of jurisdictional legislation to be conducted in following year. | 2012 2015 | Safe Work Australia. Legal analysis of: policy departures, if any, technical changes and use of jurisdictional notes. Review of amendments to Acts, regulations and codes of practice. | |
| 1.2. Other necessary documents <ul style="list-style-type: none">consistent with model legislation at 1/1/12remain consistent with model legislation over time | Documentary analysis: <ul style="list-style-type: none">Guidance materialsCompliance and Enforcement PolicyInspector training materials | 2012 2015 | Safe Work Australia / Contracted analysis | |
| Focus area 1(b): uniform and consistent application | | | | |
| 1.3. National Compliance and Enforcement Policy consistently applied across each jurisdiction | Administrative data, such as data on: <ul style="list-style-type: none">Infringement noticesNotifiable incidentsEnforceable Undertakings and prosecutionImprovement and prohibition noticesProsecutionsComplaints RegisterInformation/education/training activities | 2013 2015 | Safe Work Australia or contracted analysis. This aspect will be developed further following agreement by Safe Work Australia to the National Compliance and Enforcement Policy. Exploring the overlap with evaluation of subprojects under the Regulators Harmonisation Project and common data requirements. Content analysis of reported and appealed cases to determine error made, defences, understanding of law. | |

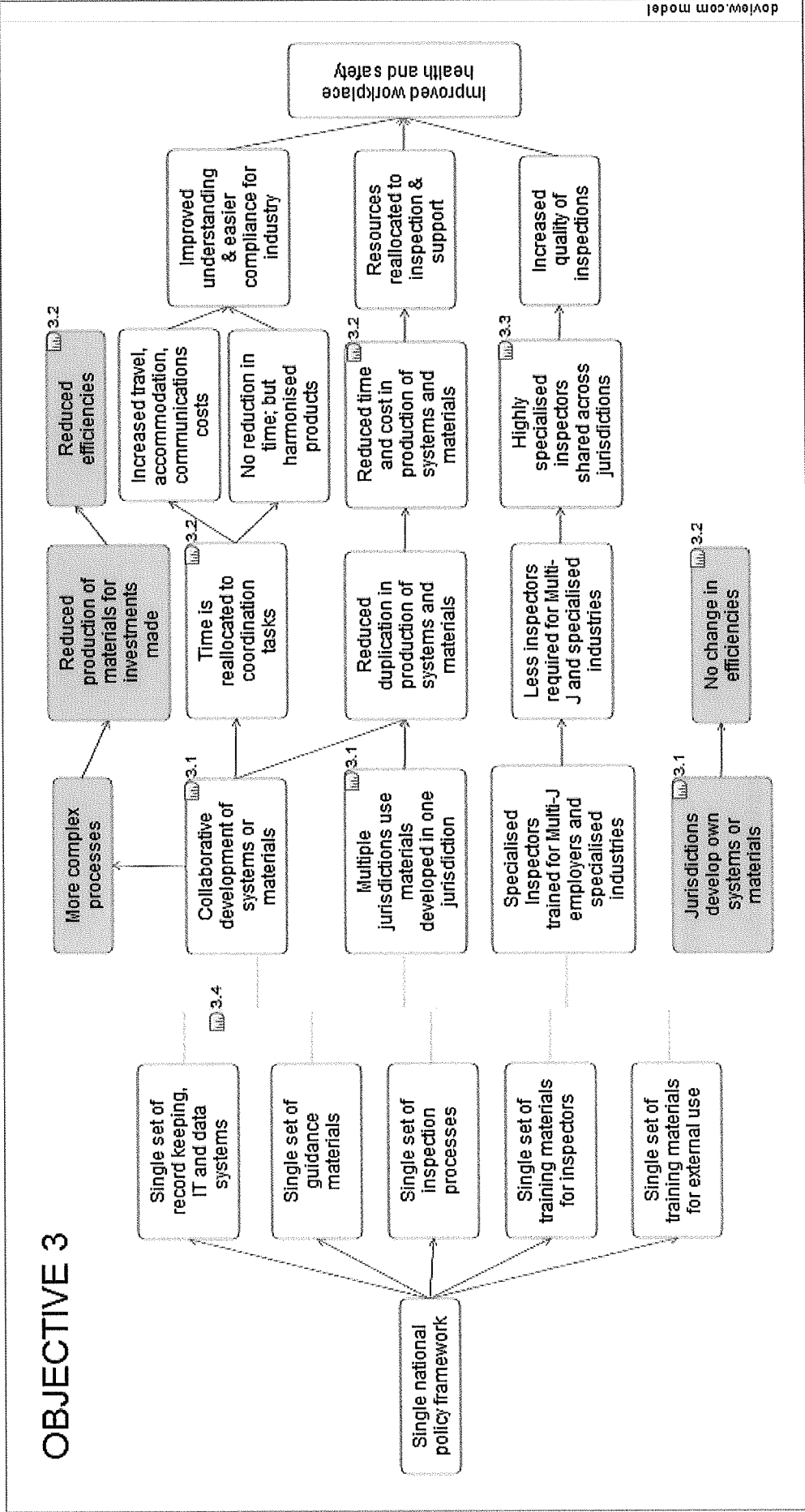


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|--|--|----------------------|--|
| 1.4. Consistent knowledge and application of legislative framework and Compliance and Enforcement policy by inspectors | Regulators Harmonisation Project National Workplace Inspector Training (NWIT) Development Reference Group. Evaluation of training and consistent application | 2012 2014 2016 | Subject to availability of NWIT data. 'Scenario testing' of inspector knowledge as alternative. Exploring the overlap with Regulators Harmonisation Project and common data requirements. |
| 1.5. Perceptions of multi-state employers/PCBUs regarding differences they experience between jurisdictions | Survey of PCBU's operating in multiple jurisdictions | 2012 2014 | Differences between jurisdictions represent lesser consistency. Look for increasing or decreasing differences over time. Safe Work Australia / Contracted analysis See also 2.1 – data collected together. |
| 1.6. Court decisions in relation to similar matters by industry sector and jurisdiction | Court records | 2015 | Requires specialist legal analysis of reasons for decisions. Contracted to specialist. One off study. |





| Objective 2: In what ways has model legislation impacted on the regulatory burden for businesses of different sizes and operating in one, or more than one, jurisdiction? | | | | |
|--|--|------------------------------|--|--|
| Indicator | Data Source | Year | Comment / Description | |
| 2.1 Costs of compliance to business | Survey of employers addressing Office of Best Practice Regulation criteria including Notification; Education; Permission; Purchasing; Record Keeping; Enforcement; Publication and Documentation; Procedural; and Other. Perceptions of compliance costs and safety benefits in specific reforms (e.g. re manual tasks, diving, electrical) | 2011 2012 2014 2016 | Pilot data through Deloitte Access Economics Survey in 2011. Revised survey including establishment costs for new system in 2012. Repeat, without establishment costs, but including new questions regarding reallocation of any resource savings to risk/hazard control in 2014 and 2016. Analysis compares impacts for multi-jurisdiction and single jurisdiction employers and large and small employers. Safe Work Australia analysis. See also 1.5 – data collected together | |
| 2.2 Cost benefit analysis | Survey of employers (as above) | 2014 | Do benefits to multi-jurisdictional employers outweigh any costs to single jurisdiction employers? Safe Work Australia analysis. | |

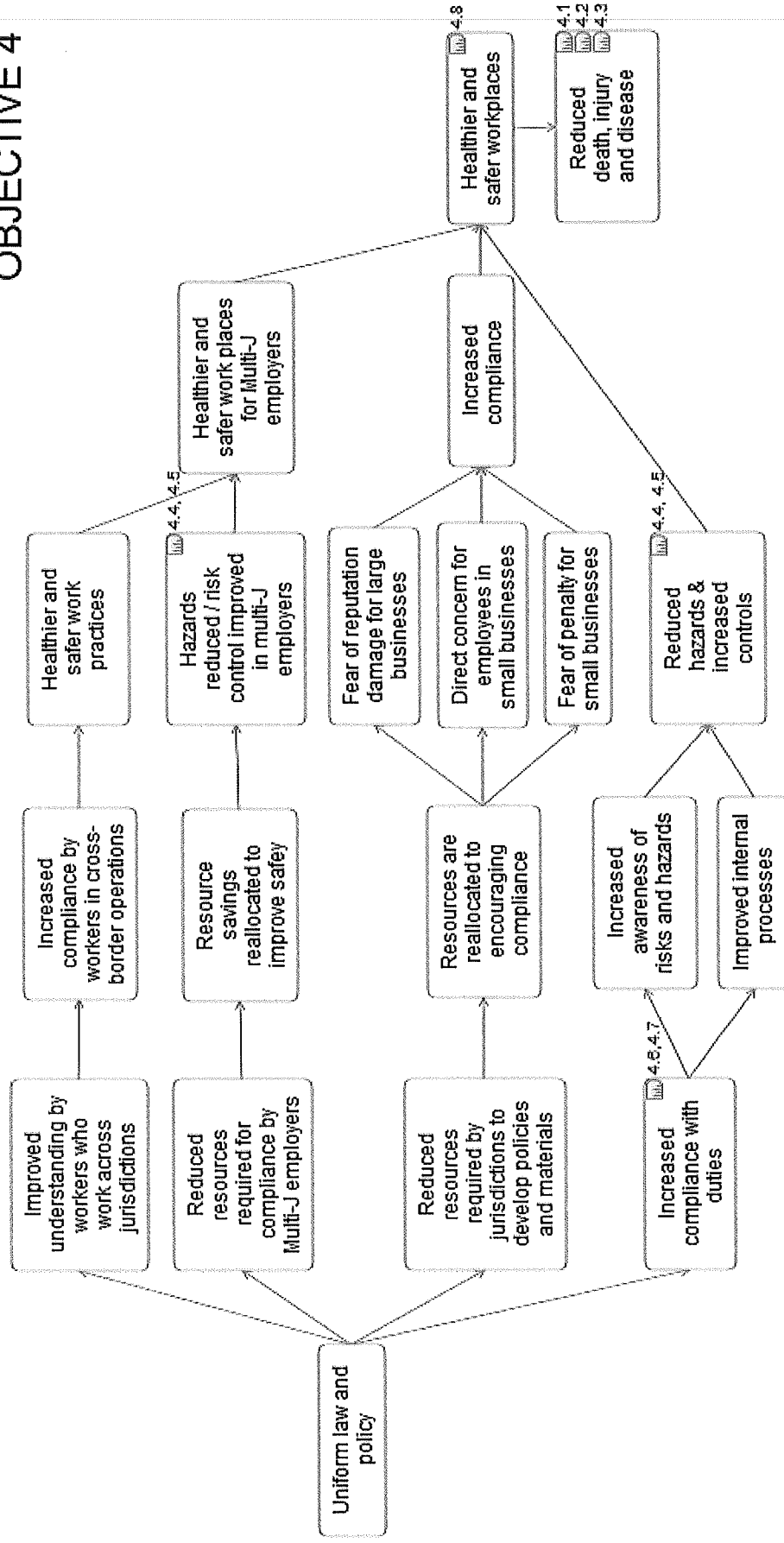




| Objective 3: In what areas has model legislation created efficiencies for Commonwealth, State and Territory governments in provision of regulatory and support services, and how? | | | | |
|--|---|--------------------|--|--|
| Indicator | Data Source | Year | Comment / Description | |
| 3.1 Number and type of new products developed, by process used | Products include policies, guidance materials, information/data systems, etc. Annual survey &/or forum of jurisdictions | Annually from 2012 | Analysis considers products developed collaboratively; within single jurisdictions; or developed in one jurisdiction and shared. Analysis of which materials are used by which jurisdictions. Exploring the overlap with Regulators Harmonisation Project. | |
| 3.2 Number of FTEs (hours / cost) in each jurisdiction by role | Roles include policy development, development of guidance materials, development and management of information and data systems, etc Annual survey &/or forum of jurisdictions | Annually from 2012 | Analysis considers change in allocation of resources over time. As harmonisation progresses, are jurisdictions able to reallocate resources to other tasks? Exploring the overlap with Regulators Harmonisation Project. | |
| 3.3 Shared use of Inspectors/Shared training of inspectors | Analyse development and shared use, across jurisdictions, of specialised inspectors for multi-jurisdictional and/or highly specialised employers Annual survey &/or forum of jurisdictions | Annually from 2012 | Exploring the overlap with Regulators Harmonisation Project. | |
| 3.4 Processes contributing to or preventing efficiencies | Qualitative case studies, investigating outcome patterns of interest | 2014 2016 | Outsourced: independent consultant | |



OBJECTIVE 4





| Objective 4: : What changes have occurred in the health and safety performance of Australian work places since the introduction of the model legislation, and to what can these changes be attributed? | | | |
|---|---|--|---|
| Indicator | Data Source | Year | Comment / Description |
| 4.1 Changes to incidence of work related fatalities by industry sector at a national and jurisdictional level | Traumatic Injury Fatalities comprising: NDS (Workers Compensation National Data Set), NF (Notified Fatalities), NCIS (coroner's data) | Annual | Safe Work Australia analysis |
| 4.2 Changes to incidence of accepted serious injury claims by industry sector at a national and jurisdictional level | Workers' Compensation data | Annual | Safe Work Australia analysis |
| 4.3 Changes to incidence of self reported serious injuries by industry sector at a national and jurisdictional level | ABS Work Related Injuries Survey (WRIS) Work Ability survey | Every 4 years: 2011, 2015 2011, 2012 | Safe Work Australia analysis The WRIS is run by the ABS but funded in part by Safe Work Australia. The survey takes place across a financial year (2005-06, 2009-10 and 2013-14) and the Agency receives the data for analysis early the following year (2007, 2011 & 2015). Track trends over time. |
| 4.4 Occupational diseases: (a) Changes to incidence of short latency diseases such as asthma and dermatitis | TBD: Explore options for collecting information on these diseases. National Hazard Exposure Workers Surveillance (NHEWS) survey data | TBD 2012 2015 | The NHEWS survey may ask some health questions which could provide indicator information for these diseases. Safe Work Australia is contributing funding to a national database for contact dermatitis run by the Occupational Dermatology Research & Education Centre which should provide additional information on occupational dermatitis. |



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| 4.5 Occupational diseases: (b) Changes to levels of self-reported exposure to hazards associated with occupational diseases. | NHEWS survey data | NHEWS survey 2012 and 2015 Analysis, reports or targeted studies from 2013. | Safe Work Australia analysis Hazard surveillance baseline data available for 2008 The NHEWS survey will be re-run in 2012. Follow up studies on identified topics will be run following analyses of the NHEWS survey data. Hazard surveillance baseline data for 2008 is available. Track trends over time. |
| 4.6 Changes to adequacy and levels of control of workplace hazards associated with occupational diseases and injuries. | NHEWS Survey | 2012 2015 | An analysis of the adequacy and appropriateness of control measures. Follow up studies on identified topics will be run following analyses of the NHEWS survey data. Track trends over time. Jurisdictional inspectorate data. Use of TBD. Some data is available from the 2008 NHEWS survey. |
| 4.7 Attitudes and perceptions in relation to the reporting of “notifiable incidents” in the workplace by industry | Motivations, Attitudes, Perceptions, Skills (MAPS) – to include: interviews with management, workers, health and safety representatives and regulators | 2011-2014 | Safe Work Australia analysis Some MAPS data and reports will be available during the course of the project; final reporting in 2014. Funded partially under an Australian Research Council linkage grant. |



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|-------------------------------------|---|---|--|
| 4.7 Perceptions of workplace safety | Surveys of: Employers/ duty holder/ PCBUs; Employees; HSRs; Industry associations; Trade and labour councils; Unions | 2012 2014 | <p>This study will explore opportunities to have input into workplace health and safety issues, roles and requirements under model legislation, availability of training, new licensing requirements and costs</p> |
| 4.8 Contribution analysis | All data collected for the evaluation as relevant. | Ongoing; annual review of data collected in that year | <p>Analysis of the contribution of harmonisation and other contextual factors to health and safety outcomes.</p> <p>Draws on emerging issues scanning by jurisdictions and social partners; and on all other data collected for the evaluation. It will include the impact of technological, environmental, economic, industrial changes, etc.</p> <p>Final analysis and report in 2016.</p> |