

Impact of the proposed national Model Work Health and Safety Laws in Victoria

Victorian Government

*Summary Report of
Supplementary Impact
Assessment*

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Accordingly, whilst the statements made in this report are given in good faith, PwC accepts no responsibility for any errors in the information provided by WSV or other parties nor the effect of any such error on our analysis, suggestions or report.

The information used in this report has been: provided by WSV; obtained from business interviews; and sourced from publicly available documents. Within this context PwC has made a number of assumptions regarding this material to establish a model which has been used to frame the economic costs and benefits of the Model Work Health and Safety (WHS) Act and Regulations (together the Model WHS laws).

It is impossible to predict with complete accuracy the cost and benefits associated with the Model WHS laws, but every effort has been made to use the most reasonable assumptions and methods for valuing the costs and benefits.

This document has relied on a number of data sets, none of which have been verified or assured by PwC and is based on the information available at the time of preparation of this report. Results should be seen in context of the terms of engagement. Changes to the underlying assumptions in this model will have material impacts on this analysis.

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Summary

- Taking into account the 20 major differences between the current Victorian laws and the proposed nationally harmonised occupational health and safety (OHS) laws — the Work Health Safety (WHS) Model laws — the total cost to Victoria of adopting the Model WHS laws will be approximately \$3.44 billion over five years (net present value). This includes:
 - transition costs of \$812 million, as businesses understand the changes and modify their policies, practices and workplaces to comply with the Model WHS laws, and
 - annualised ongoing costs to businesses in Victoria in the order of \$587 million a year over the first five years.
- These Victorian costs are borne primarily by:
 - small enterprises (1-19 employees), which represent 90% of Victorian businesses, would incur 78% of transition costs and 74% of ongoing costs
 - organisations operating only in Victoria, which represent 99% of Victorian businesses, would incur 99% of transition and ongoing costs, and
 - metropolitan organisations, which represent 72% of Victorian businesses, would incur 65% of transition costs and 69% of ongoing costs.
- Small and medium sized businesses (SMEs) in particular lack the flexibility and capacity to easily adjust to some of the changes required by the Model WHS laws. For example:
 - As SMEs are unlikely to have a dedicated OHS officer, they may need to seek external advice in order to be able to understand their obligations, which will add to costs in the short term, and
 - SMEs tend to operate only within one jurisdiction and so will be less likely to be able to benefit from any cost savings from cross-jurisdictional harmonisation.
- 68% of the total costs are attributable to six of the 20 changes modelled. In cost order, these are: the extended definition of confined spaces, changes associated with officer liability, the removal of the 2 metre threshold for falls, a broader definition of plant captured by the regulations, the absolute duty for the development and testing of emergency plans and the extended definition of a worker. The extended definition of a worker is a new concept for Victoria, and therefore represents the most significant change from current Victorian laws; its cost is \$276 million over five years (NPV).
- Non-employing businesses incur costs in addition to the \$3.44 billion. It is estimated that changes associated with the absolute duties related to first aid and emergency plans are likely to result in total costs over five years of \$175 million (NPV).
- The analysis finds that if businesses are already complying with a more general duty in the current Victorian laws, the greater specificity in the Model WHS laws is unlikely to translate to significant safety benefits.
- The analysis of the safety benefits associated with the 20 changes finds that in order to break-even, or be neutral in overall terms, from the cost of implementing the Model WHS laws, Victoria would need to avoid 8.7% of workplace illnesses, injuries and deaths when benefits to the business, employee and society are taken into account.
- Our analysis suggests that, should this package of reforms be introduced, the overall impact would, in net terms, likely have a negative effect on the Victorian economy (subject to any other considerations made outside this report). This is based on our analysis that the annual number of claims would need to be reduced by 0.91 claims per 1,000 workers for these changes to 'break-even'. Over the past ten years, claims per 1,000 workers have decreased on average by 0.39 claims per 1,000 per year. It therefore appears unlikely that the necessary reduction would be achieved.
- An overall assessment of the Model WHS laws finds that only three of the 20 changes analysed are likely to have a positive impact on Victorian businesses. These changes are the duty to consult, co-operate and co-ordinate with other Person Conducting a Business or Undertaking (PCBUs), training required for health and safety representatives (HSRs) to issue provisional improvement notices (PINs) and cease work notices (CWNs) and electrical safety in hostile operating environments – testing and tagging.

1 Context

Commonwealth, State and Territory Governments agreed to reform OHS ...

In March 2008, the Council of Australian Governments (COAG) endorsed a reform agenda to reduce the costs of regulation and enhance productivity and workforce mobility in areas that the Commonwealth, State and Territory governments have shared responsibility.¹ One of the reform areas agreed to was national Occupational Health and Safety (OHS)² laws.

Following on from the general agreement, in July 2008 COAG signed the Inter-Governmental Agreement for Regulatory Reform and Operational Reform in OHS (IGA). The IGA sought the implementation of uniform legislation and consistent compliance and enforcement.

It was considered that harmonising OHS laws would cut red tape, improve business efficiency and provide greater certainty and protection for all parties in relation to workplace health and safety.³

It was agreed a set of model Workplace Health and Safety (WHS) laws would be developed, that once finalised, would be enacted through mirror legislation in each jurisdiction. It was further agreed that the Model Act and Regulations would be in place by January 2012.

The final form Model WHS Act was released in June 2011, endorsed by the Workplace Relations Ministerial Council (WRMC). The Model WHS Regulations were released in August 2011.

State and Territory governments are now able to implement the Model WHS Act and Regulations within their respective legislative frameworks.

... with the expectation of certain benefits ...

In the development of the Model WHS laws, it was expected that the following types of potential benefits could accrue to businesses:

- *Safety benefits* — safety benefits are expected to generally accrue as a result of new obligations representing a higher level of safety and care, for example through specific requirements to consult with other businesses in relation to health and safety or proactive duties on officers of companies in relation to OHS risks and their management in the workplace. It is expected that health and safety benefits, in theory, would be available to all business types.
- *Administrative benefits* — administrative benefits are primarily expected to be realised by multi-state businesses that would no longer have to understand and comply with multiple OHS legislative frameworks across Australia (that is, businesses that operate in more than one jurisdiction). Less than 1% of businesses operate in multiple states.

¹ COAG (2008), *National Partnership Agreement to Deliver a Seamless National Economy*, page 3.

² For the purposes of this report OHS is used to refer to existing terminology whereas WHS refers to terminology used in relation to the national laws.

³ Department of Education, Employment and Workplace Relations (2008), *National Review into Model Occupational Health and Safety Laws*.

- *Productivity benefits* — productivity benefits could expect to flow from a reduction in business costs (for those businesses operating across multiple jurisdictions) where they can reduce the resources dedicated to regulatory requirements and redirect them towards more productive activities. It is expected that productivity benefits would primarily accrue to multi-state businesses. The National Regulation Impact Statements (RISs) undertaken for the Model WHS Act and the Regulations (and codes of practice)⁴ sought to quantify the productivity benefits associated with the Model WHS Regulations, estimating national productivity improvements in the order of \$1.5-2 billion per annum over the next ten years.⁵

... but a Victorian specific impact assessment is required.

The Victorian Government has publicly expressed the view that it is supportive of the principle of national OHS harmonisation, but has also stated that there must be net benefits to Victorian businesses from any national OHS framework.⁶

Due to insufficient information provided in the National RISs to assess the impacts of the proposed laws on Victoria, the Victorian Government announced that Victoria will not be in a position to proceed until a Victorian-specific impact assessment has been undertaken.⁷ PwC was engaged to prepare a Supplementary Impact Statement (SIA) to assess the impact of adopting the Model WHS laws in Victoria. This report summarises the SIA. Detail of the methodology used in the preparation of the SIA is outlined in Appendix A.

This report and the SIA should be considered alongside the National RISs. The National RISs found significant efficiency and productivity benefits across Australia, particularly in respect of multi-state businesses (a key driver of the reform process). While administrative and productivity benefits are legitimate impacts, PwC have been asked to focus on the safety benefits in identifying the impact on Victorian businesses and society. The SIA analysis concentrates on safety benefits related to each change modelled, although it should be noted that it is often difficult to directly attribute or identify a causal link between the change and the expected safety benefit. This is why a break-even approach has been adopted.

The SIA follows a different methodology to the National RISs and specifically targets areas considered by the Victorian Government to significantly impact Victorian businesses.

In Victoria OHS is regulated by ...

OHS in Victoria is currently regulated by the *Occupational Health and Safety Act 2004* (OHS Act) and the *Occupational Health and Safety Regulations 2007* (OHS Regulations), with guidance on compliance provided by other subordinate instruments made under the Act (Compliance Codes).

The Model WHS Act is intended to replace the OHS Act, and will also permit the repeal of the *Equipment (Public Safety) Act 1994*.

⁴ Safe Work Australia (2009), *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, Canberra; Safe Work Australia (2011), *Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice*, Canberra.

⁵ It is difficult to quantify productivity benefits. We understand that this estimate was developed based on qualitative survey responses from Australian businesses.

⁶ The Hon Gordon Rich-Phillips MLC (2011), *Important information missing in Commonwealth Regulation Impact Statement for National Occupational Health and Safety harmonisation*, 14 September.

⁷ The Hon Gordon Rich-Phillips MLC (2011), *Victoria calls for delay to national Occupational Health and Safety harmonisation*, 28 September.

... much of which form the basis for the Model WHS laws ...

While much of the agreed Model WHS Act and Regulations have been broadly based on the OHS Act and its regulations, there are some material departures from current Victorian provisions, in particular, the introduction of the concepts of a Person Conducting a Business or Undertaking (PCBU) and a worker in place of the traditional concepts of an employer and an employee, as well as the new, specific regulatory requirements for managing additional risks in the workplace such as electrical safety. The 20 major departures from the current OHS laws are described in Appendix A.

... but the departures from the current Victorian laws will affect Victorian businesses.

The purpose of the SIA is to:

- identify, establish and determine the nature and extent of the impact on Victorian businesses if the Model WHS laws are introduced
- determine the most significant components related to compliance with the Model WHS laws
- conduct a break-even analysis in respect of the safety benefits required against each of the key changes modelled.

2 Key observations and findings

The principle of national harmonisation is widely supported ...

Across consultations with Victorian businesses, not-for-profits and industry representatives, there is widespread support for the principle of harmonisation for WHS laws, regardless of the views of the specific legislative changes proposed. In addition, many Victorian businesses expressed more general views about national harmonisation, with many wanting clarity on the Victorian situation so they could ‘get on with it’.

... but there is considerable unease about the specifics of harmonisation.

While the principle of harmonisation appears well supported, support for the practical implementation of the proposed laws had a number of caveats. Some industry organisations consulted expressed views that suggest the principle of harmonisation is supported up to the point: at which the impost of the change becomes an overall negative cost burden on businesses; where a specific change appears to be a ‘change for change sake’; or where it imposes an unreasonable level of prescription about the way in which a business can manage specific OHS risks. Generally, harmonised OHS laws were recognised as a significant benefit for businesses that operated across more than one jurisdiction.

Many of the changes in the Model WHS laws relate to greater specificity of obligations ...

From a Victorian perspective, many of the key changes reflect a general approach of the Model WHS laws to prescribe in greater detail the types of risks to be controlled and the nature of controls to be used. Accordingly, some of the changes proposed in the Model WHS laws are best described as prescriptive change rather than reflecting the imposition of new obligations on businesses. The current Victorian OHS laws generally take a performance based (or risk based) approach to management of OHS risks in the workplace. As a result, many obligations for employers are found in the general duty to provide employees (and other persons) with a safe working environment. Comparatively, the Model WHS laws prescribes a specific hierarchy of controls for employers to follow in relation to specific risks, such as falls below 2 metres and falling objects.

... which may undermine the emphasis on the broader duty ...

During consultations, concerns were raised about the effect of identifying and prescribing certain risks and controls in the legislative framework. Feedback suggested that the effect of this type of specificity could serve to highlight those risks within a workplace at the expense of a range of other risks that may be more hazardous or likely to cause harm or may suggest to a business that the risks specified are the only risks they need to assess.

... with limited workplace safety benefit.

The analysis finds that if businesses are already complying with a more general duty in the current Victorian laws, the greater specificity in the Model WHS laws is unlikely to translate to significant safety benefits.

Stakeholders estimated the costs for a number of the most significant legislative changes ...

During the course of consultations, stakeholders were asked to describe how adoption of the Model WHS laws would affect their organisation in terms of transitional impacts and ongoing impacts. In

general, stakeholders were able to provide estimates for impacts that involved clear prescribed compliance costs (ie days of training, costs of paperwork, etc).

The research conducted for this SIA clearly shows that Victorian businesses will face significantly greater compliance costs if the Model WHS laws are introduced. These costs reflect either the:

- introduction of new obligations (eg obligations associated with a PCBU, the extended definition of a worker and an expanded definition of a confined space), or
- increased compliance costs due to changed and/or greater specificity of obligations in relation to certain risks (eg controlling the risk of falling objects).

... with our modelling revealing that the total cost to Victoria will be \$3.44 billion over five years ...

Based on the responses provided during the interviews with businesses, we modelled the costs associated with the adoption of 20 specific changes associated with the introduction of the proposed Model WHS laws in Victoria.⁸

As shown in Table 1 (next page), we estimate that if the Model WHS laws are adopted by Victoria then the total cost would be approximately \$3.44 billion over five years (net present value (NPV)):

- This includes transition costs, \$812 million, as businesses understand the changes and modify their policies, practices and workplaces to comply with the Model WHS laws.⁹
- It also includes annualised ongoing costs to businesses in Victorian in the order of \$587 million a year over the first five years.

... with two-thirds of costs associated with six proposed reforms ...

While these are significant costs, it is worth noting that 68% of the total costs are attributable to six of the 20 changes modelled. In cost order, these are: the extended definition of confined spaces, changes associated with officer liability, the removal of the 2 metre threshold for falls, a broader definition of plant captured by the regulations, the absolute duty for the development and testing of emergency plans and the extended definition of a worker.

⁸ For detail on each of the changes modelled see Appendix A.

⁹ It is important to note that due to the long timeframe over which these reforms have been developed and consulted upon, some businesses have already incurred transition costs. In particular many businesses noted that they had already sent some of their officers on training courses or sought external advice to better understand the impact of the changes on their businesses. Where this has occurred, it reflects a sunk cost to the business that is not recoverable regardless of whether the Victorian Government implements the Model WHS laws.

Table 1: Overall impact on Victorian businesses by change (\$ million)

Title of change	Transition costs	Annualised ongoing cost	5 year NPV of costs
Extended definition of confined spaces	4	163	738
Officers duty extended to due diligence	30	82	402
Removing the 2 metre height threshold for falls	129	45	328
Plant – broader scope	18	63	304
Absolute duty to have and test emergency plans	55	50	280
Extended definition of a worker	41	52	276
Absolute duty to provide an adequate level of first aid	89	34	238
Duty to consult, co-operate and co-ordinate with other PCBUs	2	40	182
Manual handling – <i>Change in hierarchy of controls</i>	20	16	92
Prescribed requirement to control the risk of falling objects	15	14	76
Effective communication for remote or isolated workers	29	8	63
Asbestos management plans	23	9	63
Electrical safety in hostile operating environments – <i>Residual current devices (RCDs)</i>	23	5	44
Manual handling – <i>Extended definition</i>	37	-	36
Training required for health and safety representatives (HSRs) to issue provisional improvement notices (PINs) and cease work notices (CWNs)	15	1	19
Electrical safety in hostile operating environments – <i>Testing and tagging</i>	-	4	17
Information provision for hazardous waste	6	2	13
Plant – rolls bars on earth moving machinery	11	-	11
Extended definition of construction work requiring a Construction Induction Training Card (CITC)	5	-	5
Minimum standards for agreed issue resolution procedures	5	-	5
Overarching costs of understanding the new laws ¹⁰	255	N/A	246
Total	812	587	3,439¹¹

Notes:

- The figures in this table may not sum due to rounding.
- A dash (-) in this table means that no costs were identified by businesses during consultation.
- Sensitivity analysis was also undertaken in which the compliance rate was increased from the base case to 100% across all 20 modelled changes. This shows that under full compliance the total cost would be \$4.568 billion, made up of \$999 million in transition costs and \$796 million in annualised ongoing costs.

¹⁰ Due to difficulties separating out costs associated with understanding the new laws in the cases where some multi-state businesses would only need to incur that cost if Victoria adopted the new laws (that is, they would not comply anyway), a simplifying assumption has been adopted. The assumption is that the overarching cost of understanding the new laws is the same for all single-state and multi-state businesses. It is acknowledged that this may overstate this cost, as some multi-state businesses will incur this cost regardless of Victoria adopting the Model WHS. However, this impact is likely to be marginal given multi-state businesses make up only 0.9% of all Victorian businesses.

¹¹ Note that the costs do not add to transition costs plus five years of ongoing costs due to discounting. All costs have been discounted at the end of the financial year.

... and costs varying by type of organisation ...

Segmenting costs according to the specific characteristics of the businesses affected reveals that the costs of adopting the Model WHS laws are not uniformly distributed across Victorian businesses. As shown in Table 2 and Table 3:

- small businesses have lower average costs per business compared to medium/large businesses
- regional businesses incur higher average costs per business compared to metropolitan businesses, and
- multi-state businesses incur a higher average transition cost than single-state businesses, however for ongoing costs the average cost per business is higher for single-state businesses.

Table 2: Transition costs by type of business

	Total transition cost (\$ million)	%	Average cost per business (\$)
Small enterprises (1-19 employees)	634	78%	3,420
Medium and large enterprises (20+ employees)	178	22%	8,370
Businesses just operating in Victoria	803	99%	3,920
Multi-state businesses	9	1%	4,750
Regional businesses	287	35%	5,030
Metropolitan businesses	525	65%	3,500

Note that the figures in this table may not sum due to rounding.

Table 3: Ongoing compliance costs by type of business

	Total annualised ongoing cost (\$ million)	%	Average cost per business (\$)
Small enterprises (1-19 employees)	432	74%	2,330
Medium and large enterprises (20+ employees)	154	26%	7,270
Businesses just operating in Victoria	583	99%	2,850
Multi-state businesses	3	1%	1,770
Regional businesses	180	31%	3,140
Metropolitan businesses	407	69%	2,720

Note that the figures in this table may not sum due to rounding.

... and the industry in which the organisation operates.

There is not a uniform pattern of concern across all Victorian businesses. Rather, consultations

revealed considerable commonality of concerns across industry sectors, with the major issues being, by sector:

- construction — union right of entry, removal of the 2 metre threshold for falls
- not-for-profit and organisations with large volunteer workforces – impacts associated with PCBU and the extended definition of a worker
- power generators — concern about the inclusion of power industry in the construction chapter, specifically potential flow on impacts in relation to industrial relations matters (such as wage rates and working conditions), and
- government — PCBU (particularly duty to consult, co-ordinate and co-operate) and extended definition of a worker (in specific portfolio areas).

Table 4 sets out the total cost and the average cost per business separated by the cohorts analysed in the SIA.

Table 4: Total costs by the primary activity/industry of businesses

	Total cost (\$ million)		Average cost per business (\$)	
	Transition	Annualised ongoing	Transition	Annualised ongoing
Volunteers organisations	2	1	5,620	4,140
Labour hire organisations	11	8	5,900	4,350
Businesses engaged in upstream activities	45	33	5,900	4,350
Construction	212	154	6,430	4,670
Government	14	10	6,130	4,520
Power generators	<0.5	<0.5	7,490	5,210
Manufacturing	89	61	5,830	3,990
Other businesses	438	318	2,990	2,170

Note that the figures in this table may not sum due to rounding.

The most significant proposed change relates to the extended definition of a worker...

The introduction of the concept of a PCBU extends responsibilities from employers to a broader group of people. This will mean that businesses who do not engage workers (ie organisations relying on volunteers, landlords, taxi licence owners and assignees, franchisors and owner builders) will hold new and/or expanded duties under the Model WHS laws.

In particular, during interviews and focus groups, many businesses struggled with how they would implement the requirements around greater consultation with other PCBUs and extending worker consultation mechanisms such as HSR elections to those captured under the broader definition of a worker (ie volunteers, contractors etc).

However, many organisations commented that while there were considerable costs associated with specific changes, a major impact of the Model WHS laws was the broadening of many duties and the

impact of overlapping duties.¹² During one consultation it was noted that this made it very difficult for a business to understand ‘where an obligation begins and ends’. It was further suggested that the practical impact of this is either the cost of uncertainty, or the cost of non-compliance due to that uncertainty.

... which will increase the compliance burden for a range of organisations.

A key concern with the nature of the PCBU change and worker expansion is that it imposes potentially significant costs on organisations which, because of their very nature (ie not-for-profit), may be less able to fund the additional costs of compliance. Specific examples raised during the consultation process included, for example:

- the Country Fire Authority (CFA), which has estimates that suggest the inclusion of volunteers as ‘workers’ would result in significant cost impacts in relation to first aid training for their volunteer workforce of between \$4-6 million depending on take up rates, as well as costs in training volunteers as HSRs, \$549,360 (costs over five years),¹³ and
- Anglicare Victoria, which estimated that the cost of including their foster care volunteers’ homes as workplaces would initially cost an additional \$382,704 assuming that 35% of their 680 foster care homes would need provision of specific works.¹⁴

Organisations operating across jurisdictions generally see benefits in harmonising ...

As expected, multi-state businesses are expected to be the biggest beneficiaries of national OHS harmonisation as this would significantly reduce the number of different regulatory schemes they need to understand and comply with. However, in the case where all other jurisdictions implement the Model WHS laws and Victoria does not, many multi-state businesses indicated through interviews that they are likely to harmonise anyway.

... and will generally move to adopt the model WHS laws ...

Of the 101 Victorian businesses consulted, 72 operated in at least one other state or territory other than Victoria. For these businesses, if the Victorian Government does not adopt the Model WHS laws (and all other jurisdictions do harmonise) they will need to make an operational decision about whether to adopt the national WHS practices across their businesses anyway (while ensuring they harmonise ‘up’ to ensure they meet all the requirements of both the model laws and the Victorian OHS Act).

Accordingly, for each key change assessed during consultations, multi-state businesses were asked whether they would introduce the change if Victoria did not adopt the Model WHS laws.

... except possibly where capital specific outlays are required.

While multi-jurisdiction organisations generally embraced the idea of voluntarily adopting the Model WHS laws in preference to maintaining a distinct compliance regime designed around the Victorian OHS laws, this support was not carried through to circumstances whereby the Model WHS laws were seen to impose a new capital requirement on the organisation.

¹² One example of an overlapping duty is that under the extended definition of a worker. Under this requirement multiple PCBUs may be responsible for the health and safety for the same worker. eg. a business who hires a labour hire worker will have responsibility for health and safety of the worker, and the labour hire business will also have responsibility for the worker.

¹³ Country Fire Authority (2011), *Impact Assessment Model Work Health and Safety Framework*, Prepared for the CFA by KPMG, August.

¹⁴ Anglicare (2011), *Memo to PwC Anglicare Victoria Concern of Application to WHS Act ‘Volunteer’ Provisions to Foster Carers*, 9 November.

The most obvious example of such deviation from the principle of national harmonisation was with respect to the requirement to provide means of effective communication at all times, and hence to possibly require the purchase/lease of satellite phones for some regional businesses.

Comparatively, most single-state businesses generally advised that they were unlikely to modify their OHS activities based on the Model WHS laws if Victoria did not adopt them. However, there were some instances where businesses indicated that they may adopt certain changes, which tended to reflect a preference by some businesses to adopt 'best practice'.

SMEs are the most exposed by the reforms ...

By their very nature, small and medium sized enterprises (SMEs) tend to lack the flexibility and capacity to easily adjust to some of the changes proposed in the Model WHS laws. For example:

- as SMEs are unlikely to have a dedicated OHS officer, they may need to seek external advice in order to be able to understand their obligations, which will add to costs in the short term, and
- SMEs tend to operate only within one jurisdiction and so will be less likely to be able to benefit from any cost savings from cross-jurisdictional harmonisation.

... but lower levels of compliance mean that the apparent compliance costs may be somewhat overstated.

While the costs of adoption of the Model WHS laws are expected to be disproportionately borne by SMEs, this view needs to be tempered somewhat by the reality that 54% of Australian SMEs are either 'not aware', 'somewhat aware of' or 'don't know' their existing OHS obligations.¹⁵ To the extent that SMEs do not comply now, and will not comply in the future, they are not likely incur any costs associated with change.

There are a number of changes for which a quantified impact cannot be identified ...

PwC is aware that there are other costs that sit outside the 20 changes modelled, and that these additional changes may be likely to impose costs on Victoria businesses. These relate to direct impacts from other elements of the Model WHS laws, or reflect indirect impacts such as 'flow on' costs related to industrial relations matters.

... and benefits were generally harder to estimate.

Even when stakeholders perceived that a change could potentially lead to improved safety outcomes (ie training of HSRs), it was challenging for stakeholders to provide an estimate of the quantum of workplace deaths and/or injuries avoided. This is consistent with the overall outcomes of the national RISs.

Some stakeholders have suggested that new officer duties will elevate OHS in corporate thinking ...

The obligation on officers is proposed to change from a negative obligation (ie an officer of a body corporate must not fail to take reasonable care with respect to OHS in the organisation) to a positive duty (ie officers will have a proactive duty to exercise due diligence in relation to health and safety within their organisation). It is expected that this change will mean that officers will need to take reasonable steps to: keep up to date knowledge of health and safety matters; understand the risks associated with their work; ensure the entity eliminates and minimises risks; ensure they have

¹⁵ Productivity Commission (2010), *Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety*, Productivity Commission Research Report, Canberra.

processes for responding to incidents, hazards and risks; and ensure the entity is compliant with its duties.

While there is obviously concern that this proposed change will increase compliance costs for organisations, and there was the view amongst some that the risks associated with being an officer were increased, a theme expressed by OHS managers in the public and private spheres was that this additional focus would elevate OHS matters within an organisation's list of priorities. Stakeholders were reluctant to specifically claim that this would lead to quantifiable safety benefits.

... but adoption of the model WHS laws is not expected to increase compliance with OHS laws generally ...

While the profile of OHS may be elevated in some organisations, it is expected that this will be in larger organisations which are more likely to already be compliant. Consultations suggested that organisations not currently compliant with the Model WHS laws would be unlikely to increase compliance simply through adoption of the laws.

... and there is also a concern that some of the proposed reforms may undermine compliance by trivialising workplace safety.

A consistent theme from stakeholder discussions was that codification of the existing general duty does not necessarily mean that people are going to do things any differently.

Indeed, there may be a concern that by increasing the emphasis on prescription of the way in which an organisation must manage specific risks, the focus moves onto smaller things (ie processes and prescription) and hence exposes the OHS system to some ridicule if the focus on the broader obligation to assessing and managing all workplace risks is undermined.

Considerable uncertainty exists regarding the details underpinning the national model ...

An issue that posed a challenge for the collection of information from stakeholders, and more fundamentally reflects the challenge of the transition to the Model WHS laws, is the ongoing uncertainty about the exact scope of the laws. Many stakeholders were particularly concerned that guidance material (ie codes of practice) had not been finalised by Safe Work Australia and that interpretation of a range of provisions had not yet been settled in the Victorian context, and that in any case such guidance material had not yet been tested in a litigation context.

... which is a factor in perceptions of compliance costs ...

A key observation was that for many businesses, the costs they reported were driven by significant uncertainty about how the Model WHS laws could be met and how the regulator would enforce them.

In relation to some changes, such as removing the 2 metre threshold for falls, businesses felt that strict interpretation of the law would result in significant and unnecessary costs in their workplace. For other changes, such as the requirement for immediate access to first aid, businesses with mobile workforces or workplaces that may have only one or two employees at a time considered that training every single worker in first aid to meet this requirement was not only costly but impractical. In this context, it may be that some of the changes may induce 'efficient breaches' where the business cannot see a possible or reasonable method to comply.

... which is particularly relevant to the adoption of the new concept of PCBU ...

At the same time, this would suggest that there may be room to manage down some of the costs associated with the Model WHS laws through more thorough guidance material. This would also assist in narrowing down the true cost of the proposed legislative changes.

Particular concerns about uncertainty were raised about the introduction of the concept of the PCBU. The concept is a new one, and while guidance material is available, the concern was expressed that this is an untried legal concept and until case law is in place, organisations remain at risk of non-compliance, and officers may remain personally liable.

... and suggests that Victorian organisations would not have been ready for a 1 January 2012 commencement.

Given this entrenched level of uncertainty, organisations consistently expressed the view that even if national harmonisation were adopted, they would not have been ready to comply on 1 January 2012.

A 'break-even analysis' was undertaken to identify the health and safety benefits that would be needed to offset the costs ...

In the SIA benefits have been quantified using a break-even analysis. This analysis uses the percentage of illnesses, injuries and deaths which would need to be avoided in order for the cost of the change to be neutral overall. For example, the requirement for the installation of RCDs is estimated to cost Victorian businesses \$44 million. The analysis finds that there are a number of illnesses, injuries and deaths related to exposure to electricity each year. These illnesses, injuries and deaths are valued at \$105 million. Therefore, in order to break-even from the cost of installing RCDs, Victorian businesses would need to avoid 42% of relevant illnesses, injuries and deaths.

For the total costs of the 20 changes assessed to be neutral overall in net terms, 8.7% of workplace injuries, illnesses and deaths would need to be avoided.

Looking solely at claims (reported injuries and illnesses only), the reduction required to reach the break-even point is 4.5 claims per 1,000 workers over five years. This equates to an annual reduction of 0.91 claims per 1,000 workers. At the estimated claim per 1,000 workers for 2012-13 of 9.95,¹⁶ the rate would need to go down to 8.31 claims per 1,000 workers in 2016-17 in order to break even.

Our analysis suggests that, should this package of reforms be introduced, the overall impact would, in net terms, likely have a negative effect on the Victorian economy (subject to any other considerations made outside this report). This is based on our analysis that the annual number of claims would need to be reduced by 0.91 claims per 1,000 workers for these changes to 'break-even'. Over the past ten years, claims per 1,000 workers have decreased on average by 0.39 claims per 1,000 per year. It therefore appears unlikely that the necessary reduction would be achieved.

... and incorporated into an overall assessment framework ...

We undertook an overall assessment of each proposed change taking into account the total cost, the break-even percentage and the likelihood of achieving the benefits. The results of this assessment are set out in Table 5. The required number of reported illnesses and injuries to break-even are provided in brackets next to the break-even percentage. Using an assessment decision tool which takes into account the costs, the break-even percentage and the qualitative assessment of the likelihood of achieving the benefit, an overall assessment of whether the change is likely to have a net positive or a net negative impact has been made. See Appendix A for further detail.

¹⁶ Advice by WSV on 24 February 2012 suggested that based on recent historical results (excluding years in which major legislative change occurred) the trend is a decline in the claims per 1,000 works of 1.9% per year, in 2010-11 claims per 1,000 were 10.34, applying this decline in 2011-12 and onto the first year of the analysis 2012-13, this shows claims per 1,000 workers will start at 9.95.

Table 5: Summary of break-even analysis and overall assessment

Title of change	NPV costs (\$ million)	Avoidable costs¹⁷ (\$ million)	Break-even (reduction in injuries & illnesses required to B-E)	Qualitative assessment	Overall Assessment
Extended definition of confined spaces	738	508	145.3% (2,785)	Low likelihood	Negative
Officers duty extended to due diligence	402	13,140	3.1% (1,518)	Moderate likelihood	Negative
Removing the 2 metre height threshold for falls	328	3,327	9.9% (1,102)	Moderate likelihood	Negative
Plant – broader scope	304	861	35.3% (1,246)	Low likelihood	Negative
Absolute duty to have and test emergency plans	280	22,271	1.3% (1,005)	Low likelihood	Negative
Extended definition of a worker	276	12,118	2.3% (1,042)	Moderate likelihood	Negative
Absolute duty to provide an adequate level of first aid	238	21,381	1.1% (900)	Low likelihood	Negative
Duty to consult, co-operate and co-ordinate with other PCBUs	182	12,794	1.4% (686)	Moderate likelihood	Positive ¹⁸
Manual handling – <i>Change in hierarchy of controls</i>	92	16,489	0.6% (348)	Low likelihood	Negative
Prescribed requirement to control the risk of falling objects	76	257	29.7% (263)	Moderate likelihood	Negative
Effective communication for remote or isolated workers	63	1,513	4.2% (239)	Low likelihood	Negative
Asbestos management plans	63	204	30.8% (124)	Low likelihood	Negative
Electrical safety in hostile operating environments – <i>Residual current devices (RCDs)</i>	44	105	41.5% (182)	Moderate likelihood	Negative
Manual handling – <i>Extended definition</i>	36	16,490	0.2% (137)	Low likelihood	Negative

¹⁷ The avoidable cost is calculated as the total cost of the change identified in the cost modelling multiplied by the percentage of applicable businesses (determined by the percentage of businesses impacted by the change, the percentage of businesses already compliant with the change and the percentage of businesses that are expected to comply if the change was introduced).

¹⁸ Using the assessment matrix this change could result in a positive or negative outcome. PwC has assessed that the cumulative regulatory costs of this change are not significant. This change is expected to reduce duplication in OHS compliance for some PCBUs. Therefore this change is assessed as likely to have a net positive impact.

Title of change	NPV costs (\$ million)	Avoidable costs¹⁷ (\$ million)	Break-even (reduction in injuries & illnesses required to B-E)	Qualitative assessment	Overall Assessment
Training required for health and safety representatives (HSRs) to issue provisional improvement notices (PINs) and cease work notices (CWNs)	19	1,021	1.9% (73)	Moderate likelihood	Positive
Electrical safety in hostile operating environments – <i>Testing and tagging</i>	17	152	11.3% (71)	High likelihood	Positive
Information provision for hazardous waste	13	271	4.8% (54)	Low likelihood	Negative
Plant – rolls bars on earth moving machinery	11	9	118.4% (71)	Low likelihood	Negative
Extended definition of construction work requiring a Construction Induction Training Card (CITC)	5	3,480	0.1% (18)	Low likelihood	Negative
Minimum standards for agreed issue resolution procedures	5	5,176	0.1% (18)	Low likelihood	Negative
Total	3,439	39,567¹⁹	8.7% (12,974)		

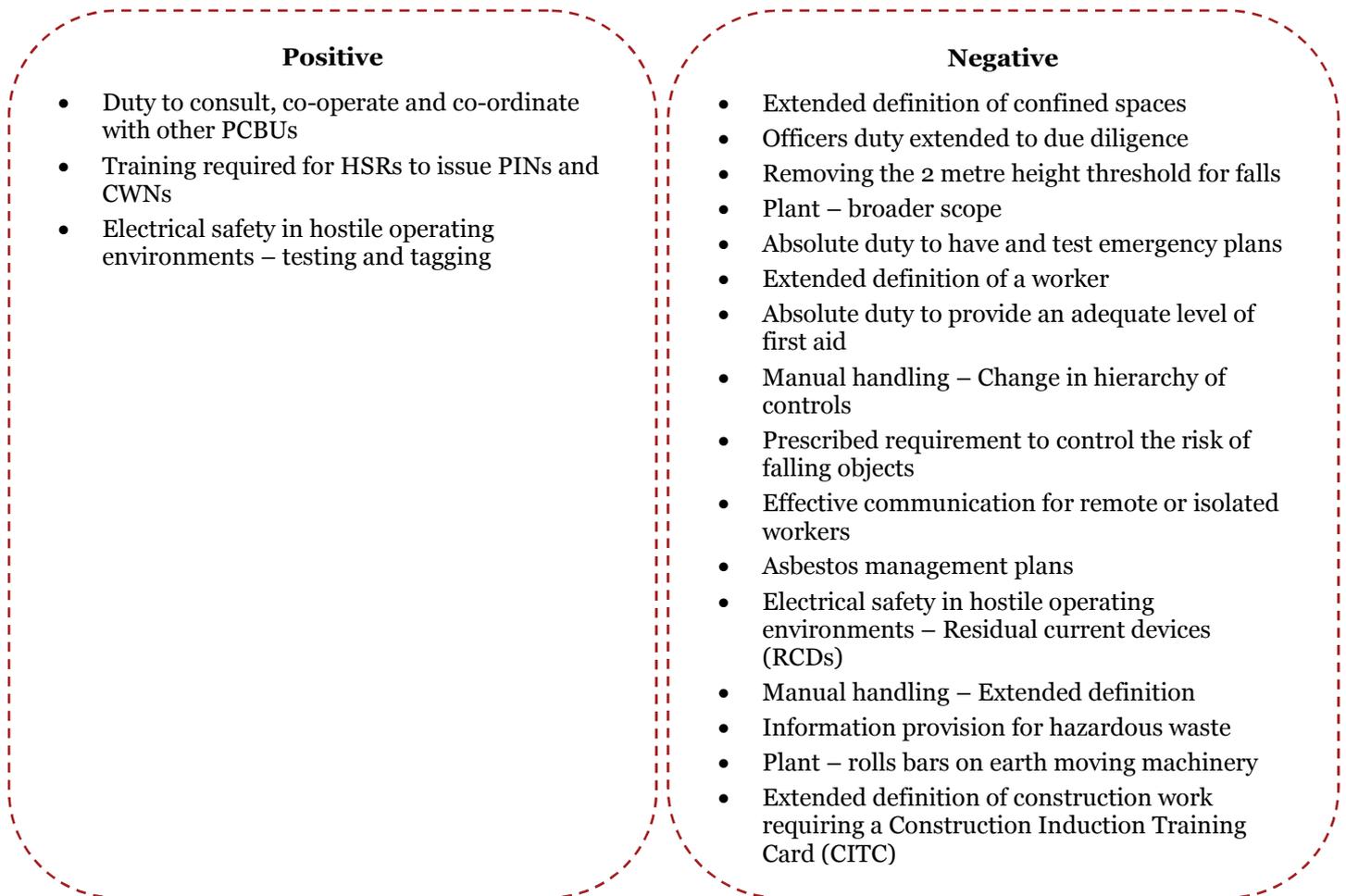
The sum of the figures in this table will not equal to the total cost, as the total includes the 'overarching cost of understanding the new laws'.

¹⁹ The total avoidable costs does not reflect the sum of the avoidable costs column as the avoidable costs against each change are not mutually exclusive. For further explanation of the methodology see Appendix A.

... that revealed that three of the 20 changes assessed are likely to have a positive net impact on the Victorian society.

Overall the SIA finds that three of the 20 changes modelled are likely to result in a net positive impact on the Victorian economy, while the remaining 17 changes are expected to result in a net negative outcome. A summary of the specific outcomes of the break-even analysis is provided in Figure 1.

Figure 1: Overarching assessment of likely net impacts²⁰



Business has the potential to benefit from the proposed WHS changes ...

The break-even analysis presented above takes into account the total societal avoidable costs of reportable illnesses and injuries, non-reportable illnesses and injuries and deaths (ie those costs that are related to employers, employees and the community). This is aligned to Victorian Department of Treasury and Finance (DTF) Guidelines which note that regulatory assessments should consider the impacts on society as a whole.

However, the Victorian Government has previously stated that ‘any harmonised national OHS framework must benefit Victorian businesses, and not result in increased compliance costs and more onerous regulations.’²¹

²⁰ Note that using the assessment matrix means that one change – duty to consult, co-operate and co-ordinate with other PCBU's – could result in a positive or negative outcome. PwC has assessed that the cumulative regulatory costs associated with this change are likely to be offset by an adequate decline in illnesses, injuries and/or deaths and therefore this change is assessed as likely to have a net positive impact.

To consider the impact on Victorian businesses without inclusion of employee and community costs, a 'business' break-even sensitivity assessment has been undertaken. To identify the appropriate ratio to conduct this assessment, the 'societal' value has been adjusted based on Industry Commission findings that employers bear about 40% of the total cost of a work-related injury. These costs include the workers' compensation (that we have defined as the direct cost) plus costs associated with lost productivity and overtime.²²

Looking solely at reported illnesses and injuries, the introduction of the Model WHS laws would possibly lead to a positive outcome for businesses if the number of claims per worker could be reduced.

... but this is considered unlikely given the scale of WHS benefits required.

In relation to the business break-even, 11.32 claims would need to be avoided per 1,000 workers over the next five years (ie the annual number of claims would need to fall by 2.26 claims per 1,000 workers for these changes to break-even).

As mentioned on page 13, looking back over the past ten years, the largest five year reduction in claims was 2.46 claims per 1,000 workers.²³ Therefore, given that there would need to be an annual reduction of 11.32 claims per 1,000 over five years to break-even, and this is almost five times the maximum reduction experienced in the past, and that Victoria already has the lowest rate of claims per 1,000 workers in Australia, it is unlikely that the business break-even point will be met.

²¹ The Hon Gordon Rich-Phillips MLC (2011), *Important information missing in Commonwealth Regulation Impact Statement for National Occupational Health and Safety harmonisation*, 14 September.

²² Industry Commission (1995), *Work, Health and Safety: An Inquiry into Occupational Health and Safety*, page 18.

²³ This was over the five years to 2007-08; these five years included the two major regulatory changes of 2004-05 and 2007-08.

Appendices

Appendix A Methodology overview

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Appendix A Methodology overview

The approach has been tailored to specifically assess the major impacts on Victoria businesses

The approach used in the SIA takes into account a limited timeframe and accounts for previous work undertaken in assessing the Model WHS laws at a national level. The aim of the SIA is to specifically address the shortcomings of the National RISs in assessing the impact of the major changes on Victorian businesses. The National Model Act RIS surveyed 17 businesses (out of 30 responses) and the National Model Regulations RIS surveyed 23 Victorian businesses (out of 73 responses), and did not include a quantitative assessment of the impact of the change in laws on Victorian businesses.

The approach does not follow the usual RIS process, and therefore is different to the approach undertaken for the 2007 RIS on the Victorian Regulations.²⁴

To take into account the particular circumstances of this analysis, PwC agreed the analytical approach used in the SIA with WSV, the Department of Treasury and Finance (DTF) and the Victorian Competition and Efficiency Commission (VCEC).

The key differences between the Victorian and the Model WHS laws were identified

WSV's policy and legal team provided a comprehensive analysis of the Model WHS Act and Regulations to detail each specific changes required for the Victorian law to meet the requirements under the Model WHS laws.

This analysis, along with further consultation with WSV and DTF, formed the basis of the identification of key changes for assessment as part of the SIA (ie those changes likely to have a significant impact on Victorian businesses). The changes assessed were selected because the change was likely to have:

- a significant impact on a small number of businesses
- a significant impact on a large number of Victorian businesses, or
- a minimal impact, but affect a large number of Victorian businesses.

The key changes modelled in this SIA are detailed in Boxes 1 and 2.

Box 1: Key changes assessed under the Model WHS Act

PCBU concept/extended definition of a 'worker'

The primary duty holder under the Model WHS Act is a 'PCBU', in contrast to an 'employer' under the Victorian OHS Act.

PCBU results in an expanded number and type of duty holders and will mean that businesses who do not engage employees directly, such as taxi licence owners, taxi licence assignees and franchisors are likely to hold

²⁴ WorkSafe Victoria, *Regulatory Impact Statement: Proposed Occupational Health and Safety Regulations 2007; Proposed Equipment (Public Safety) Regulations 2007*, Melbourne.

‘employer like’ duties under the Model WHS Act.

The expanded definition incorporated by PCBU follows through to the definition of a ‘worker’, which captures more than the current definition of ‘employees’ of a business. Employers (as currently defined) will owe more extensive duties to their deemed employees (independent contractors and their employees). Certain duties that employers currently owe to their direct employees will now apply to deemed employees, most notably, the duty to monitor employee’s health.

Examples of obligations that PCBUs would have under the Model WHS Act that they would not have had under the OHS Act if they were not employers, include those which concern negotiations for designated work groups; payment for training of health and safety representatives (HSRs) and the associated leave; and health and safety issue resolution. More limited consultation obligations also apply under the OHS Act than under the model Act as a result of the PCBU concept, among other things.

For self-employed persons, impact comes from being both a PCBU and a ‘worker’ at the same time. It is expected that the only significant impact in relation to this scenario is the absolute duty to provide adequate access to first aid to themselves and the provision of an emergency plan.

Officer liability

If a person meets the definition of an ‘officer’ they will owe a duty under section 27 of the Model WHS Act. Section 27 casts a positive duty on officers of a PCBU to exercise ‘due diligence’ to ensure that the PCBU complies with any duty or obligation under the Model WHS Act. A person who would ordinarily be an officer under the OHS Act will also be an officer under the Model WHS Act.

This compares to the OHS Act which only attaches liability to officers of a body corporate where the body corporate contravenes a provision of the OHS Act or regulations and that contravention is attributable to an officer of the body corporate failing to take reasonable care.

Duty to consult, co-ordinate and co-operate

The duty is a new duty that extends to all persons who share health and safety duties about the same matter. Under the OHS Act there is no comparable explicit duty, although arguably it may be implied.

The new explicit duty is expected to heighten awareness of the need to consult, co-ordinate and co-operate. However, it is expected that this would reflect current industry practice in high risk sectors.

In practical terms it may not be a significant change for Victorian duty holders (employers, self employed, suppliers etc) operating in high risk industry sectors. However, it could be argued that creating an explicit duty with significant penalties will create an additional burden and all types of PCBU and officers will feel the need to create more onerous formal processes.

HSR training

The provisions dealing with HSR powers in the Model WHS Act are substantively the same as under OHS Act. The key difference is that HSRs must first receive training before exercising the power to issue provisional improvement notices (PINs) and cease work notices (CWNs).

Box 2: Key changes assessed under the Model WHS Regulations

Prescribed minimum standards for issue resolution procedures

Under current Victorian laws, if there is no agreed issue resolution procedure, then the regulations provide a default procedure. Under the Model WHS laws, the regulations mandate steps that must be followed regardless

of whether a formal agreement is in place. These steps require that the issue resolution procedure must be set out in writing and communicated to all relevant workers and where an issue is resolved through this process, it must be in writing should any party request it.

Prescribed requirement to control the risk of falling objects

Currently in Victoria, the management of risk associated with falling objects is covered under the general duties of the OHS Act. Under the proposed Model WHS Regulations, employers will have a specific duty to manage the risks to health and safety associated with falling objects. An employer will be required to, so far as is reasonably practicable, eliminate the risk of falling objects at the workplace; or if this is not possible, provide a system of work to minimise the risk of an object falling on a person.

Absolute duty to provide adequate access to first aid

The Model WHS Regulations impose a new general duty to provide first aid at the workplace, ensure that all workers at the workplace have access to the first aid equipment, and ensure that an adequate number of workers are trained to administer first aid.²⁵

Absolute duty to have and test emergency plans

The Model WHS Regulations impose a new general duty to prepare, maintain and implement an emergency plan for all workplaces. The requirement is prescriptive about the content of the plan. Comparatively, the Victorian OHS Regulations impose a duty to prepare, test and implement an emergency plan only for workplaces which are major hazard facilities and prescribe mines.

Effective communication for remote or isolated workers

Currently in Victoria, the management of risk associated with remote or isolated work is covered under the general duties of the OHS Act. The Model WHS Regulations impose a new general duty to manage risks to workers undertaking remote or isolated work. In doing so, a system of work must be provided that includes effective communication with the worker. Since remote or isolated work is defined with regards to the location and nature of the work and the time the work is undertaken, this duty will likely apply in respect of night shift workers, as well as those working in remote and isolated workplaces, eg farm workers.

Extended definition of confined spaces

Under the Victorian Regulations, the definition of a confined space is a space that is likely to have a hazardous atmosphere, as well as having limited or restricted means for entry or exit that makes it physically difficult for a person to enter or exit the space. The Model WHS Regulations have a broader definition of what a confined space is in that it would no longer include the requirement to have limited or restricted means for entry or exit. Therefore the definition under the Model WHS Regulations could include spaces such as cool stores, shipping containers, and warehouses where there is a hazardous atmosphere.²⁶

Manual handling – change in hierarchy of controls

The Victorian OHS Regulations contain a specific approach to the control of risks tailored for manual handling risks. The proposed laws introduce a general control approach. The risk control approach in the Model WHS Regulations would require that manual handling risks are managed by controls such as substituting the task with something else, separating the person from the risk or implementing engineering controls, before considering administrative controls (such as policies and procedures outlining the safe lifting technique for a certain task). The final step specifies the use of personal protective equipment (PPE) if a risk remains – this is a

²⁵ WSV advice suggests that the term adequate access to a trained first aid officer is likely to mean ‘immediate access’.

²⁶ Guidance material from SafeWork Australia does not suggest that the impact would be this broad, however, for the purposes of this SIA a conservative view has been adopted based on WSV advice, that the meaning could be open to broader interpretation by a court.

new requirement.

Manual handling – extended definition

The definition of a hazardous manual task is also proposed to become broader. Tasks that would now be classed as hazardous include: tasks involving ‘sudden’ force; tasks involving any exposure to vibration (rather than sustained vibrations); and tasks involving a ‘sustained or awkward posture’ (rather than the awkward posture being both sustained and repetitive) for example sitting in the same position for a sustained period of time.

Removing the 2 metre height threshold for falls

Currently in Victoria, the management of risk associated with falls of 2 metres or less is covered under the general duties of the OHS Act. Under the Victorian OHS Regulations, employers are required to provide certain prevention procedures for falls above 2 metres. The Model WHS regulations remove this 2 metre threshold. Duty holders will therefore need to ensure that they are, so far as is reasonably practicable, using specific control measures for falls from one level to another which are likely to cause injury.

Electrical safety in hostile operating environments – Residual Current Devices (RCDs)

The Model WHS Regulations include a requirement to fit RCDs to sockets in hostile environments. This will require retrofitting of RCDs to existing workplaces or use of a portable device to protect sockets. It will impact on a large number of PCBUs, including potentially a number of small businesses and home offices. The meaning of a hostile operating environment is broad and could potentially capture home offices.

Electrical safety in hostile operating environments – testing and tagging

The Model WHS Regulations require a PCBU to ensure that electrical equipment is regularly inspected by a competent person if supplied through an electrical socket outlet; and if used in a type of environment specified in the regulation. These new requirements may lead to an increase in obligations for businesses that will now be required to get a competent person to carry out inspection and testing.

Plant – broader scope

Currently in Victoria, equipment which is either hand held or manually powered is excluded from the coverage of the regulations (but covered by the general duties of the OHS Act). Under the Model WHS Regulations, only equipment which is both manually powered and hand held (ie pens and staplers) would be excluded. This means that hand held power tools (such as drills, skill saws, chainsaw, nail guns etc), as well as manually powered plants that are not hand held (such as block and tackle, trolleys, wheel chairs etc) fall under the scope of the Model WHS Regulations.

Plant – protective structures on earth moving machinery

Under the Model WHS Regulations protective structure (ie roll bars where a risk of overturning exists and protective guarding where a risk of objects falling exists) will be required on all earth moving equipment/vehicles. This is not a specific requirement under the Victorian legislation. The definition of earth moving vehicles includes trucks and road vehicles such as utes that are used to transport earth on a work site.

Extended definition of construction work requiring a Construction Induction Training Card (CITC)

Under the Model WHS Regulations, during a shutdown that occurs for renovation, repair, maintenance or refurbishment, anyone conducting that renovation, repair, maintenance or refurbishment work would be required to have a CITC before coming on site.

Information provision for hazardous waste

The Victorian regulations require that manufacturers of hazardous substances develop material safety data

sheets (MSDS), however they do not require that waste products are classified and MSDS developed. Under the Model WHS Regulations, certain hazardous wastes will need to be classified, labelled and have a safety data sheet prepared. Hazardous waste will include waste consisting of hazardous sludge, dust, solids, chemicals or other substances. For example, wood dust, insulation wool, concrete, oil.

Asbestos management plans

Under the current Victorian laws, a person who manages or controls a workplace is required to maintain a register of the asbestos with information on its location, type and condition. Under the proposed Model WHS Regulations, a person with management or control of a workplace with asbestos will have to prepare a more detailed Asbestos Management Plan. This plan would need to include: reference to the asbestos register; location of signs and labels; safe work procedures and control measures; procedures for detailing incidents and emergencies; and consultation, information and training responsibilities for workers carrying out work involving asbestos.

In order to understand where the impact would be, particular categories of businesses by industry, or by characteristic are set out. As agreed with WSV and DTF, the target cohorts for analysis are:

- small businesses compared to medium/large businesses²⁷
- single-state businesses compared to multi-state businesses
- regional businesses
- organisations with large volunteer workforces
- government entities
- upstream duty holders
- businesses involved in labour hire (as a user or provider)
- newly regulated industries (ie diving), and
- construction, manufacturing and power industries.

As such, the approach employed in the SIA concentrates on the impact in these particular categories.

Data was collected from stakeholders

There were four main sources of information used in our analysis. These were:

- **a literature review:** PwC used existing literature to understand the likely impacts, where relevant, of the key changes being analysed. This information included data from sources such as the 2007 Victorian RIS, the National RISs on the Model WHS laws and literature from other relevant research.²⁸

²⁷ The separation by business size is based on the numbers of employees and uses the ABS definition.

²⁸ WorkSafe Victoria, *Regulatory Impact Statement: Proposed Occupational Health and Safety Regulations 2007; Proposed Equipment (Public Safety) Regulations 2007*, Melbourne.

- **consultation with key representative organisations:** PwC consulted with key representative groups to gain specific insight into the key sectoral issues and the likely benefits and costs if Victoria were to adopt the Model WHS laws.
- **a survey of Victorian businesses:** PwC conducted a series of telephone interviews and focus groups with Victorian businesses from the target cohorts (and based on a cross section of business types). A total of 91 businesses participated in the full survey, a supplementary survey targeted ten additional small businesses to ask a subset of the survey (which included questions on general business characteristics, first aid, emergency evacuation plans, and electrical safety). In addition to this, we were also requested to speak to some businesses who might be impacted by a requirement to conduct annual inspections on amusement devices. Nine additional businesses were consulted in relation to this change. Overall 110 businesses were surveyed. In our view, this sample size forms the basis of a reasonable sample of Victorian businesses to assess the impact of the key changes identified. This sample size was agreed between PwC, WSV and DTF.
- **industry experts:** PwC conducted specific consultations with industry experts to understand the specific implication of particular changes or to verify some cost data obtained during the surveys. This included discussions with: WSV about claims data, notifications to the regulator, expected benefits and the percentage of businesses for which each change applies;²⁹ Energy Safe Victoria to identify average costs for installation of residual current devices (RCDs), testing of RCDs and cost of testing and tagging plug-in equipment; asbestos assessors regarding the cost of the preparation of an Asbestos Management Plan and notifications, and other businesses as needed to confirm costs, such as for the purchase of satellite phones, the cost of first aid courses and the cost of construction induction training card training.

The stakeholders consulted included...

Consultation with key representative organisations

The industry associations consulted with through this process are listed in Table 6.

Table 6: Industry Consultations

Organisation Name
Victorian Employer Chamber of Commerce and Industry
Victorian Trades Hall Council
Australian Industry Group
Housing Industry Association (HIA) – Victorian Branch
Master Builders Association of Victoria (MBAV)
Independent Contractors Australia
Building Designers Association of Victoria
Australian Institute of Architects
Consult Australia
Victorian Farmers Federation

²⁹ Technical views included in this report are used to determine:

- The likelihood of a particular change leading to safety benefits and the potential magnitude of those benefits in terms of a decline in illnesses, injuries and deaths (based on a qualitative scale from no decline to a very high decline). This is an assessment made by PwC, informed by discussions with technical specialists from WSV during the development of this report.
- The likelihood the estimated break-even point could be achieved for each change. This assessment is based on advice provided by WSV technical specialists.

Organisation Name

Volunteering Victoria

Survey of Victorian businesses

A series of telephone interviews and focus groups with Victorian businesses from the target cohorts (and based on a cross section of business types) was also used in the analysis. Businesses were selected using existing business contact details available to WSV against which it was possible to identify their business size and the relevant cohort.

Telephone interview and focus group participants were taken through a detailed survey, developed by PwC with input from WSV, DTF and VCEC. The telephone interviews and focus groups were conducted by PwC with a WSV representative (from the policy and legislative areas, not the inspectorate) to assist with clarification of changes and any questions where necessary.

The survey contained 63 general questions for all businesses, with 29 additional questions that related to specific business cohorts. Not all questions were asked of all businesses due to lack of applicability to the specific businesses circumstances, or due to time constraints. The survey was not asked 'word for word'; interviewers modified the language and descriptions as appropriate to assist businesses to understand how it might apply in their workplace.

A total of 91 businesses were surveyed at the completion of the formal consultation process. However, due to some concerns about low numbers of small business respondents, a supplementary interview exercise was conducted by PwC which involved targeting ten additional small businesses to ask a specific subset of the survey (which included questions on general business characteristics, first aid, emergency evacuation plans, and electrical safety). In addition to this, we were also requested to speak to some businesses who might be impacted by a requirement to conduct annual inspections on amusement devices. Nine additional businesses were consulted in relation to this change.

The final mix of businesses surveyed by cohort is detailed in the following tables.

Table 7: Surveyed businesses by cohort

Business cohort	Number surveyed
Volunteer organisation	11
Labour hire	6
Upstream activities	6
Construction	10
Government	6
Power generation	6
Manufacturing	11
Other businesses	45
Amusement device industry	9
Total	110

Table 8: Surveyed businesses by type

Business type	Number surveyed
Multi-state	45
Single-state	56
Metropolitan Melbourne (or Victoria wide)	78
Regional Victoria	23
Small business (0-19 employees)	28
Medium/large business (20 plus employees)	73
Total	101³⁰

While the number of businesses surveyed does represent the views of a large number of businesses, it would have been preferable to get a greater number of businesses involved in the survey to provide greater levels of statistical confidence. This was not possible due to time constraints. However, the number of businesses obtained in each cohort does meet the minimum numbers agreed with WSV and DTF.

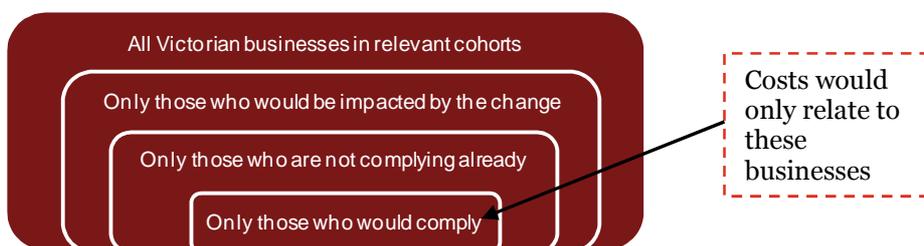
In our view, this sample size forms the basis of a reasonable sample of Victorian businesses to assess the impact of the key changes identified. This sample size was agreed between PwC, WSV and DTF.

A framework was used to determine who will be impacted...

Figure 2 and Figure 3 explain the approach taken to estimating costs. These diagrams are designed to demonstrate how each of the components have been brought together to calculate the total cost of each change. The approach taken factors in a number of variables including firm size, percentage of businesses that would be impacted by the change, estimated future compliance rates and efficiency reductions. It also takes into account other factors such as wage rates where costs are estimated by employer time.

Figure 2 demonstrates how we identified the number of businesses that would be affected by each change. Figure 3 then shows our approach to calculating the total cost for each change. This diagram shows the approach for a typical calculation and as such does not include topic specific assumptions or implementation efficiency, as these are not applicable to all of the key changes modelled.

Figure 2: Diagrammatic explanation of population selection (ie number of businesses affected)



...and how the costs are determined.

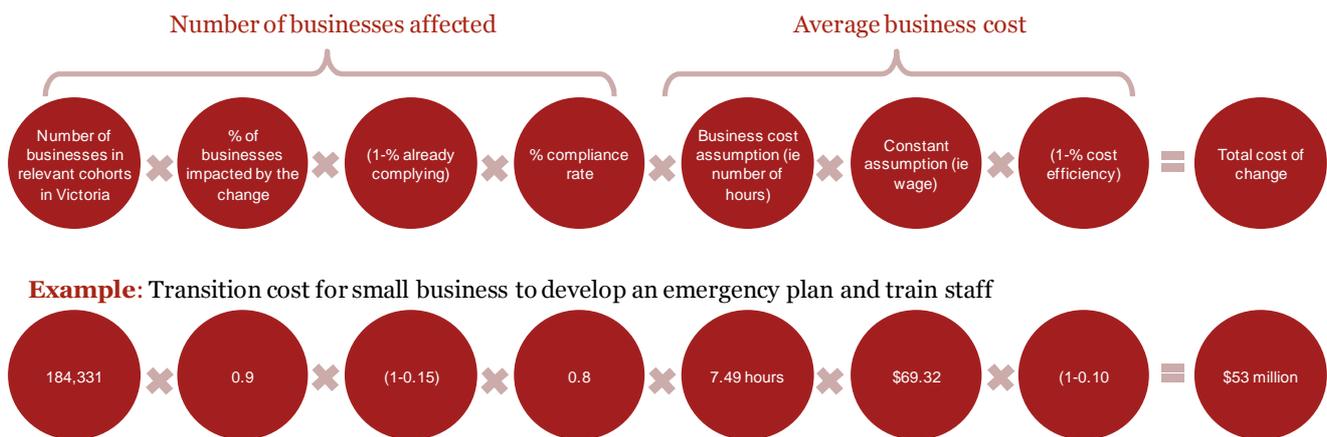
The costs of adopting the Model WHS laws have been estimated on the basis of Victoria adopting the laws along with all other State and Territory governments (national harmonisation). Under this

³⁰ Note that those businesses consulted in the amusement device industry were not allocated to categories and therefore are not included in this table.

scenario, costs for businesses that operate across multiple jurisdictions are not included where multi-state businesses identified they would adopt the change regardless of whether Victoria introduced the Model WHS laws. This typically related to policy and procedure based changes where these were likely to be implemented nationally for administrative simplicity.

The costs for each of the changes applicable to small and large businesses are calculated using the inputs illustrated in Figure 3. An example is shown below the general approach, which calculates the transition cost for small business under the absolute duty to have and test emergency plans.

Figure 3: General approach to calculations



That is:

- **The number of businesses in relevant cohorts in Victoria** – the starting point is all Victorian businesses. Where a change is specific to only certain cohorts, such as the extended definition of construction work requiring a CITC, only businesses in those cohorts are included. This initial number also takes into account the multi-state businesses that would do it anyway under national adoption.

In the example above: the number of small businesses in Victoria, adjusted for multi-state businesses that would comply anyway. In this case, 80% would do it anyway and we have assumed that 0.9% of businesses are multi-state (ie $185,664 \times (1 - 0.009 \times 0.8)$ note that this will not lead to the exact answer due to rounding of 0.9%).

- **Percentage of businesses impacted by the change** – this ensures the cost is only applied to those businesses in the cohort who the change is applicable to and who would actually need to change their current practices to become compliant. This also accounts for practicability.

In the example: 90% of businesses would be impacted. This has been discounted to allow for efficiencies where compliance by one PCBU impacts another.

- **Take out those already complying** – only apply the cost to those businesses who are not already complying. Businesses that are already in compliance with the change would not incur an additional cost under the new Model WHS laws.

In the example: it is assumed that 15% of small businesses already have an emergency plan.

- **Estimated future compliance rates** – only apply the cost to those who will comply with the change by actively changing their business practices.

In the example: it is assumed that 80% of small businesses would comply with this requirement (this is the average compliance rate from 2007 RIS).

- **Business cost assumption** – the average input cost per business, for example the number of hours to consult, co-ordinate and co-operate with a PCBU.

In the example: 11.6 hours for small business has been adjusted to discount the impact on 'other businesses'. A discount rate of 50% was applied and 70.8% of businesses are in the 'other business' cohort (ie $11.6 \times (1 - 0.708 \times 0.5)$).

- **Constant assumption** – for example, the wage rate.

In the example: wage rate (average across all businesses).

- **Percentage for cost efficiency** – an assumption that as businesses will be making a number of changes to WHS together, there will be a cost efficiency of 10% for regulatory changes and 20% for changes in the Act.

In the example: A cost efficiency of 10% is assumed for all key changes under the Model WHS Regulations.

Note that due to rounding, the total cost value in the example will not be exact.

PwC is of the view that some of the costs provided during consultations may be overstated by businesses due to:

- uncertainty as to the impact of some changes at the time of conducting the interviews, and
- a potential upwards bias reflecting respondents interest in OHS and potential willingness to incur costs in complying with OHS laws.

Accordingly, it seems highly likely that some of the estimated transition and ongoing costs foreshadowed by stakeholders may be able to be reduced in practice by the provision of guidance material from WSV to Victorian businesses. There are also likely to be other options to mitigate the costs identified as associated with some of these changes, such as retaining the existing Victorian regulatory approaches or providing specific guidance material to assist businesses to minimise the cost of compliance.

The SIA analysis takes into account that there may be some duplication and overstatement of costs from stakeholder consultation. For example, a cost efficiency factor is included to ensure that changes where there is an obligation on multiple PCBUs do not double count costs related to the identification of risks, provision of information and record keeping. In addition to this, an implementation efficiency factor takes into account that the cost of compliance will reduce as businesses become more certain about their obligations and the regulator refines guidance material.

It should be noted that the costs presented in Table 1 do not include costs for non-employing businesses. Based on advice from WSV, it is understood that the most significant impact for non-employing businesses relates to the changes associated with the absolute duties around first aid and emergency plans. Our analysis suggests that these two changes are likely to result in total costs over five years of \$175 million (NPV).

Equally, there are other costs that sit outside the 20 changes modelled, and that these additional changes may be likely to impose costs on Victoria businesses. These relate to direct impacts from other elements of the Model WHS laws, or reflect indirect impacts such as 'flow on' costs related to

industrial relations matters. In most cases these costs have not been quantified in the SIA, however some evidence (often anecdotal) has been reported where possible.

Economic benefits in regard to safety outcomes are inherently hard to value...

An expected challenge in this assessment has been determining the degree to which adoption of the Model WHS laws will generate workplace health and safety benefits to offset the identified costs.

It is commonly acknowledged that, for the most part, the current Victorian OHS laws represent a best practice approach to ensuring workplace safety. As such, across many issues, the proposed Model WHS laws have adopted the Victorian approach. In this regard, the safety benefits of reform are generally considered to be limited as they are already embedded in the Victorian OHS laws.

... as such, a break-even analysis was undertaken.

In scoping the SIA, and due to time constraints, it was considered that it would be challenging to quantify the benefits related to the reforms in Victoria. A break-even analysis was considered the most appropriate methodology to support an overall assessment of the identified costs.

A break-even analysis identifies the minimum amount of benefits needed for a regulatory proposal to provide a net neutral outcome. In this case, what level of workplace illnesses, injuries and deaths need to be avoided to break-even from the costs incurred from complying with the laws.

The break-even percentage is the costs of the proposed change as a proportion of the value of the benefits. That is, the percentage of the workplace injuries, illnesses and deaths that would need to be avoided in order to provide an overall neutral outcome to the community. Therefore, the closer the break-even percentage is to 100%, the more difficult it would be for that change to deliver a net benefit.

The break-even analysis considers three different types of benefits. These are:

- the number of reported injuries and illnesses which can be avoided³¹
- the number of non-reported injuries and illnesses which can be avoided, and
- the number of deaths which can be avoided.

A break-even analysis has been conducted by each change and in aggregate across all changes modelled in the SIA. The outcome of each break-even analysis is a factor in the overall assessment tool that makes an assessment of whether each change is likely to have a net positive or a net negative impact.

This break-even analysis considers the number of workplace injuries, illnesses and deaths (based on the direct and indirect value of a claim) that would need to be avoided for the impact of the change to be at least neutral in net terms based on the relevant avoidable cost.³² For example, the total value of avoidable costs (claims, non-reported illnesses and injuries and deaths) related to the extended definition of worker is \$12,118 million. When compared to the total costs associated with this change — \$276 million — 2.3% of claims, non-reported illnesses and injuries and deaths would need to be avoided in order to justify the costs of this change.

³¹ Based on WSV claims data.

³² The avoidable cost is, in general, calculated as the value of the reported illnesses and injuries, non-reported illnesses and injuries and deaths multiplied by the percentage of businesses impacted by the change, the percentage of businesses already compliant with the change and the percentage of businesses that are expected to comply if the change was introduced.

Figure 4: Calculation of break-even percentage



Two components are used to determine the assessment of the benefits of the changes proposed in the Model WHS laws. These are:

- **the break-even analysis** which combines the costs primarily identified in business interviews and the benefits determined by the number of avoidable costs required to break-even (ie obtain a net neutral outcome), and
- **our qualitative assessment** taking into account technical views³³ of the likelihood that each change could decrease the number of workplace illnesses, injuries and deaths; technical views of the likelihood that each change would achieve the benefits required to break-even;³⁴ as well as relevant literature and business views on whether there are safety benefits relating to each change.

These two components are used to determine the assessments of benefits into one of eight categories that are used in the overall assessment matrix explained in Table 9.

The break-even analysis and qualitative assessment are combined with the total costs to determine an overall assessment of each change...

To form an overall assessment of the likely outcome against each change, an assessment matrix has been developed based on VCEC, DTF and WSV advice as well as our own expertise and views. The estimated benefits of each change are compared against the estimated costs. The assessment matrix determines whether a change is likely to result in a net negative or a net positive outcome. The matrix is set out in Table 9.

³³ These technical views are an assessment made by PwC, informed by discussions with technical specialists from WSV during the development of this report. These views are an assessment as to the likelihood of a particular change leading to safety benefits and the potential magnitude of those benefits in terms of a decline in illnesses, injuries and deaths (based on a qualitative scale from no decline to a very high decline). The views provided only assess whether safety benefits may be achieved and are not an assessment about the likelihood of a particular change achieving its break-even point.

³⁴ Technical views in relation to the likelihood of the break-even percentage being achieved are based on advice from WSV policy officers who have consulted relevant WSV technical specialists to arrive at a view as to the likelihood that a proposed change would break-even.

Table 9: Assessment matrix to determine whether a change is likely to produce a net negative or a net positive outcome

	High break-even / High likelihood	High break-even / Moderate or Low (or unknown) likelihood	Low break-even / Moderate or High likelihood	Low break-even / Low (or unknown) likelihood
Low cost (<\$100m)	Positive	Negative	Positive	Negative
High cost (≥\$100m)	Positive or Negative (Negative if concern about cumulative regulatory costs ³⁵)	Negative	Positive or Negative (Negative if concern about cumulative regulatory costs)	Negative

Based on advice from VCEC, the assessment matrix uses the following thresholds:

- a five year NPV of \$100 million to rank costs as either low or high. That is, a low cost change is one which has a NPV of costs less than \$100 million, and a high cost change has an NPV of costs equal to or greater than \$100 million, and
- 2% to rank the break-even percentage as either low or high. That is, a low break-even percentage is less than 2%, and a high break-even percentage is greater than or equal to 2%.

In order to take into account the complexity of determining the benefits associated with each change, the likelihood of the change resulting in benefits is also taken into account in the assessment matrix. That is, we have made a qualitative assessment based on relevant literature, business views (where available) and technical views, as to how likely is it that safety benefits will be achieved as a result of the change. The likelihood is assessed as either low, moderate or high.

...and finds it will be difficult to achieve the benefits required.

Alternatively, the estimated 8.7% reduction in workplace injuries, illnesses and deaths can be considered in terms of claims per 1,000 workers – for comparability with an indicator reported annually by WSV. This method considers the reduction in claims required (therefore does not include non-reported illnesses and injuries) to reach the estimated break-even point of 8.7% over five years. As shown in Table 5, 12,974 claims would need to be avoided over the next five years for the 20 changes assessed to ‘break-even’. Looking at this figure on a per 1,000 worker basis, this means that 4.5 claims per 1,000 workers would need to be avoided over the next five years (based on the ‘societal break-even’). As this analysis has been conducted over five years, this break-even must be divided by five to make it comparable to the annual figure reported in the WSV Annual Report. Therefore, the annual number of claims would need to be reduced by 0.91 claims per 1,000 workers for these changes to ‘break-even’.

As reported in the WSV Annual Report in 2011, the claims rate per 1,000 workers is 10.34 claims per 1,000 workers.³⁶ To achieve the required reduction, the claims rate would need to reduce to 8.31

³⁵ Cumulative regulatory costs are used to determine whether a change with a high cost but a high likelihood of achieving benefits should be determined as positive or negative. Cumulative regulatory costs refer to the additional costs on businesses as a result of the change. Businesses already incur significant costs to comply with OHS regulations and the Victorian Government has expressed concern regarding additional costs to Victorian business (see The Hon Gordon Rich-Phillips MLC (2011), *Important information missing in Commonwealth Regulation Impact Statement for National Occupational Health and Safety harmonisation*, Wednesday 14 September 2011). If the change is expected to unnecessarily add to business costs then it will be assessed as negative, and vice versa.

³⁶ WorkSafe Victoria (2011) Annual Report 2010-11.

claims per 1,000 workers in 2016-17 (on the assumption that the claims rate is likely to reduce by 1.9% per year regardless of any further legislative or regulatory change).³⁷

The required reduction in the claims per 1,000 workers is set out in Table 10.

Table 10: Number of claims per 1,000 workers

Year	Forecasted number of claims per 1,000 under current regulatory framework	Number needed to break-even under the new laws under the social break-even
2012-13	9.95	9.04
2013-14	9.76	8.85
2014-15	9.58	8.67
2015-16	9.39	8.48
2016-17	9.22	8.31

As stated on page 13, while non-reported illnesses and injuries and deaths are not included in the claims per 1,000 break-even, it appears unlikely that this safety outcome would be achieved as a reduction of 4.5 claims per 1,000 over five years to break-even and over the past 10 years the largest five year reduction in claims was 2.46 claims per 1,000 workers.³⁸

³⁷ Advice provided by WSV on 24 February 2012 based on recent historical results excluding years in which major legislative/regulatory change occurred.

³⁸ This was over the five years to 2007-08; these five years included the two major regulatory changes of 2004-05 and 2007-08.

