

# ***NT Government position on the Best Practice Review of Work Health and Safety in the NT Final Report (Lyons report)***

*Timelines:*     *Phase 1: Immediate – within 1 year;*  
                       *Phase 2: Medium term – within 3 years;*  
                       *Phase 3: Longer term – within 5 years.*

Category	Recommendation	Position	Comments	Timelines for completion
<b>General Findings</b>				
	1. NT WorkSafe re-balance its priorities in favour of “hard” compliance work with a view to increasing on the ground visibility and activity of the inspectorate.	Supported-in-principle	The NT Government acknowledges the need to balance NT WorkSafe’s approach to compliance between education and enforcement activities to ensure that Territorians work in the safest possible workplaces.  To support achieving an effective balance, NT WorkSafe will review its systems and processes, with a particular focus on the appropriate use of infringement notices as an enforcement tool.	Phase 1
	2. That, over time, NT WorkSafe move resources from management and administration and into frontline inspectorate activity.	Supported	To be considered during the Department of the Attorney-General and Justice Regulatory Reforms.	Phase 1 and 2 (progressive)
	3. It is appropriate for some structural separation of NT WorkSafe’s operations into three streams: 3.1. Prosecutions and Investigations; 3.2. Inspectorate; and 3.3. Capacity Building and Engagement.	Supported	A version of this structure already exists at NT WorkSafe and will be formalised as part of the Regulatory Reforms undertaken for Recommendation 2.	Phase 1

	4. That an Injured Workers and Families Forum be established, actively supported, and consulted by both NT WorkSafe and the Work Health and Safety Advisory Council.	Supported-in-principle	This recommendation will be referred to the Work Health and Safety Advisory Council and the Workers' Rehabilitation and Compensation Advisory Council for consideration and response.	Phase 1
	5. That NT WorkSafe develop a more effective system to ensure that the families of victims of fatalities are supported, modelled on best practice used by police services.	Supported	This recommendation will be pursued in consultation with any forum established in response to recommendation 4.	Phase 1
<b>Inspectorate activity</b>				
	6. NT WorkSafe develop a plan to increase inspector visibility, especially outside of Darwin and Palmerston, and seek stakeholder feedback after implementation.	Supported	NT WorkSafe's 2019/2020 work plan has an increased focus towards "on the ground" activities. NT WorkSafe will explore options to engage with, and seek stakeholder feedback on its progress towards increasing Inspector visibility outside of Darwin and Palmerston.	Phase 1
	7. That inspectorate activity in remote communities be increased, and a properly resourced annual program of visits to remote communities be established, including increased support for indigenous social enterprises in managing WHS risks for employees and Community Development Employment Project (CDEP) participants.	Supported-in-principle	NT WorkSafe will consult with relevant stakeholders, including local governments and the Department of Local Government, Housing and Community Development to ensure that remote visitation and support programs are appropriate and effective.	Phase 2
	8. NT WorkSafe take additional steps to ensure all inspectors have a clear understanding of the availability of directed compliance as tool and of the systems used to track and support its use.	Supported	NT WorkSafe will roll out refresher training to the Inspectorate to ensure the processes are well-understood and the compliance tools are being utilised effectively.	Phase 1

	<p><b>9.</b> Given the size of the jurisdiction's Domestic Commercial Vessels fleet, NT WorkSafe, with the support of the Northern Territory Government, should work with the Australian Maritime Safety Authority to ensure that a larger number of inspectors exercising functions under both the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth) and the Occupational Health and Safety (Maritime Industry) Act 1993 (Cth) are located in the Northern Territory.</p>	Supported	<p>In December 2017 NT WorkSafe and the Australian Maritime Safety Authority (AMSA) signed a Memorandum of Understanding (MOU).</p> <p>The current MOU remains in force until terminated and is reviewed each year. The last review was completed in March 2019 with NT WorkSafe and AMSA agreeing to future collaborative workshops for both compliance and educational staff.</p>	Phase 1
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#### NT Worksafe Capabilities

	<p><b>10.</b> While recognising that as a small jurisdiction there is a requirement for inspectors to be generalists, NT WorkSafe should ensure:</p> <p>10.1. That inspectors with industry specific experience are appropriately used in both general compliance and investigations;</p> <p>10.2. That greater Continuing Professional Development (CPD) opportunities are made available to inspectors;</p> <p>10.3. Identify industry experience gaps in the inspectorate and target that experience in future recruitment and CPD of existing inspectors; and</p> <p>10.4. Consider reaching an agreement with a larger jurisdiction to access specialist inspectors in high risk sectors (including mining and construction) for both general compliance and investigations.</p>	Supported	<p>10.1 NT WorkSafe will continue to utilise inspector's specific industry experience wherever possible, while also managing the risk of regulatory capture.</p> <p>10.2 NT WorkSafe will identify and use Inspectors with industry experience to upskill generalist Inspectors. Where NT WorkSafe does not have the required skills it will make all reasonable efforts to seek external training (including other jurisdictional specialist inspectors), where appropriate and within budget.</p> <p>10.3 NT WorkSafe will use the Department of Trade Business and Innovation economic data, the Northern Territory Treasury Economic Outlook, and any other relevant published data to help identify industries with increasing business activities and aim to build inspectorate skills in those industry sectors.</p>	Phase 1
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			10.4 NT WorkSafe has and will continue to utilise experience from other jurisdictions and engage external experts where required.	
	<b>11.</b> That the employee engagement survey be carefully monitored for evidence of improved morale and job satisfaction amongst the inspectorate in particular.	Supported	NT WorkSafe will continue to monitor the results of employee engagement surveys and implement changes as required to address areas identified for improvement but also highlight and celebrate the positive indicators that are identified through the People Matter Survey.	Phase 1
	<b>12.</b> That NT WorkSafe work to upgrade systems and processes to meet best practice standards, including by consolidating IT platforms to avoid duplication, and by providing inspectors with tablet-based auditing and compliance tools.	Supported	NT WorkSafe business applications will be improved and optimised as part of the 5 year ICT Strategic Plan for the Department of the Attorney-General and Justice.	Phase 3
	<b>13.</b> That skills development program be developed with a view to bringing inspector qualifications and competencies up to a level of leading regulators such as the Health and Safety Executive in the United Kingdom. The program should aim to move the qualifications of inspectors to Diploma level, up from Certificate 4.	Supported-in-principle	In line with the response to recommendation 2, and taking into account the need to make best use of Inspectors' industry specific experience as outlined in recommendation 10, NT WorkSafe will identify educational gaps within the Inspectorate and work towards filling them.	Phase 2
<b>Investigations</b>				
	<b>14.</b> Consistent with recommendation to functionally separate the compliance and business engagement functions of NT WorkSafe, a Complex Investigations Unit (of 2-3FTE) led by an experienced senior investigator should be established to report to the Director of Work Health and Safety Prosecutions. Consideration should also be given to using the expertise of the Major Crime unit of NT Police.	Supported-in-principle	Further to the responses to recommendations 2 and 3, NT WorkSafe will ensure that there are functionally separate compliance and business engagement functions.  In relation to the creation of a Director of Work Health and Safety Prosecutions position see response to recommendation 16.	Phase 2

			NT WorkSafe will also explore the possibility of negotiating a Memorandum of Understanding with the Northern Territory Police, Fire and Emergency Services to enable NT WorkSafe to use the expertise of the Major Crime Unit	
	<b>15.</b> NT WorkSafe, with the support of the Northern Territory Government, should takes steps to ensure the Australian Maritime Safety Authority properly performs its agency duties contained in the Memoranda of Understanding.	Supported	Further to the response to recommendation 9, NT WorkSafe will provide the Attorney-General and Minister for Justice with an update following the annual MOU review.	Phase 1
<b>Prosecutions</b>				
	<b>16.</b> A new independent statutory office be created to exercise all functions in relation to work health and safety prosecutions under the Work Health and Safety (National Uniform Legislation) Act 2011 (NT) (WHS Act). The new independent statutory office should: 16.1 be headed by a part-time Director of Workplace Health and Safety Prosecutions to be appointed by the Administrator-in-Council for a five year renewable term and be supported by existing staff reporting to the Director; and 16.2. not affect the current powers held by the Director of Public Prosecutions under section 230 of the WHS Act to bring proceedings.	Not Supported Alternative solution identified	The NT Government does not support the creation of a statutory position of Director of Work Health and Safety Prosecutions as it would be an inefficient use of resources in a small jurisdiction.  Instead, legislation will be amended to require the Director of Public Prosecutions to be consulted on prosecution decisions (to proceed or not) where an incident has resulted in serious injury or death.	Phase 2
	<b>17.</b> That the Work Health and Safety Advisory Council monitor trends in relation to prosecutions in relation to the number of proceedings, success rate and penalties awarded.	Supported	This recommendation fits within the scope of the Work Health and Safety Advisory Council (WHSAC) functions. WHSAC will commence monitoring trends from 1 July 2019 and report on any identified trends to the	Phase 1

			Attorney-General and Minister for Justice within its annual reporting processes commencing in the 2019/2020 financial year.	
	<p><b>18.</b>In relation to the enforceable undertakings framework:</p> <p>18.1. The WHS Act be amended to require judicial oversight and approval to permit enforceable undertakings being accepted for contraventions, or alleged contraventions, of the WHS Act that relate to circumstances involving a fatality.</p> <p>18.2. Enforceable undertakings not be accepted (unless exceptional circumstances exist) where:</p> <p>18.2.1. the applicant has a recent prior conviction connected to a work-related fatality;</p> <p>18.2.2. the applicant has more than two prior convictions arising from separate investigations; or</p> <p>18.2.3. the application relates to an incident involving a very serious injury.</p> <p>18.3 For consistency, 'very serious injury' should be defined as stated in the 18.3 WorkCover New South Wales Enforceable undertakings: Guidelines for proposing an enforceable undertaking.</p>	Supported-in-principle	<p>The NT Government supports the strengthening of approval processes for enforceable undertakings. Whether introduction of judicial oversight relating to circumstances involving a fatality is the best way of achieving that aim will require further consultation and consideration.</p> <p>Tightening eligibility requirements for enforceable undertakings can be achieved by adopting guidelines similar to the 2018 SafeWork New South Wales Enforceable Undertaking Guidelines in the Northern Territory.</p>	<p>Phase 1 (18.2 and 18.3)</p> <p>Phase 2 (18.1)</p>

## Negligence Causing Death

**19.** That two new offences be created in the WHS Act to be called 'Industrial Manslaughter' in line with the following objectives:

- 19.1. create a 'senior officer' offence and an 'employer offence' where conduct negligently or recklessly causes death of a worker;
- 19.2. apply the existing standard in NT law for criminal negligence;
- 19.3. ensure that prosecution decisions in relation to these offences by the new Director of Work Health and Safety Prosecutions is subject to DPP approval as for Category 1 offences and that the DPP may take over any prosecutions under these sections; and
- 19.4. provide for the same maximum custodial sentence for an individual as available for manslaughter under the Criminal Code (life imprisonment) and a fine of up to 65,000 penalty units (\$10,075,000) for a body corporate.

Supported

This recommendation was considered and approved by Cabinet and is being progressed independently of the other recommendations.

Phase 1

## Penalties for work-related fatalities and injuries

	<b>20.</b> The new Director of Work Health and Safety Prosecutions advocate to seek to increase the penalties ordered by the courts in appropriate cases over time.	Supported-in-principle	<p>The 2018 Boland review of the model work health and safety laws recommended an increase in penalty levels in the model Work Health and Safety (WHS) Act and that Safe Work Australia work with relevant experts and the jurisdictions to develop national sentencing guidelines for WHS offences.</p> <p>The Northern Territory will implement this recommendation through its participation with Safe Work Australia.</p>	Phase 2
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## Further measures

	<b>21.</b> NT WorkSafe develop a comprehensive plan to support Health and Safety Representatives (HSRs) and Health and Safety Committees, and encourage uptake in industry, particularly within priority industry sectors.	Supported	NT WorkSafe will develop a plan to support Health and Safety Representatives and encourage uptake in industry in consultation with the Work Health and Safety Advisory Council (WHSAC). WHSAC is best placed to develop this plan as a tripartite Ministerial Advisory Council with membership that represent the interests of businesses and workers across a wide range of industries.	Phase 2
	<b>22.</b> The WHS Act be amended to: 22.1. require mandatory training for HSRs within six months of an HSR being elected to the role and refreshed at three yearly intervals; and 22.2. require persons conducting a business or undertaking to forward to the regulator a copy of all Provisional Improvement Notices (PINs) issued by HSRs.	Not Supported	The introduction of mandatory training and the compulsory reporting of PINs is not supported as it would be a significant additional impost to Northern Territory businesses, particularly those in remote areas.	Phase 2



	<b>23.</b> The WHS Act be amended to provide a framework for the appointment of Work Health and Safety Officers. The appointment of Work Health and Safety Officers should not be mandatory.	Supported-in-principle	This recommendation requires further consideration once the effectiveness of Work Health and Safety Officers in Queensland has been assessed.	Phase 2
	<b>24.</b> As per the current arrangements for codes of practice under the WHS Act, the appointment of a Work Health and Safety Officer should be permissible as evidence that a duty holder has taken action to mitigate health and safety risks at a workplace. This should also apply to duty holders whose workplaces have an elected and trained Health and safety representative.	Not Supported	The NT Government holds concerns that this defence may lead to reduced WHS outcomes by giving businesses the impression that they can simply hire a Work Health and Safety Officer and consider their WHS obligations have been met.  Further consideration could be given to this as described in response to recommendation 23.	Phase 3
	<b>25.</b> In relation to NT WorkSafe's response to, and notification to industry of, serious incidents: 25.1. NT WorkSafe refocus the content of incident alerts to address the public interest and stakeholder desire for information by providing information about the investigation process, communicating how further information about incident causation and preventative action will be provided (i.e. incident updates, eSAFE articles, safety alerts) and providing information about previous incidents similar in scope that might offer a relevant safety learning; 25.2. NT WorkSafe expand the scope of incident alerts to include all matters required to be notified to the regulator under the WHS Act and publish the refocussed incident alerts on its website.	Supported-in-principle	NT WorkSafe has commenced a review of its decision-making and development processes around the publication of Safety Alerts following serious incidents. The review will identify triggers for developing Safety Alerts and appropriate timelines for their release, giving consideration to the complexity of the investigations underway.	Phase 1

	<p><b>26.</b>That the status of Codes of Practice that existed under the Work Health Act 1995 (NT) be restored and that Codes of Practice in operation in the Northern Territory be regularly reviewed.</p>	<p>Not Supported Alternative solution identified</p>	<p>The Northern Territory will work towards adopting all model Codes of Practice that have been developed through Safe Work Australia as soon as possible. As a small jurisdiction, it is appropriate that the Northern Territory work within the national model including the national tripartite consultation process undertaken by Safe Work Australia.</p>	<p>Phase 3</p>
	<p><b>27.</b>That WorkSafe, in collaboration with WHS regulators in other Australian jurisdiction develop and implement an action plan to assist workers and employers to eliminate psychosocial hazards in workplaces.</p>	<p>Supported</p>	<p>The 2018 Boland review of the model work health and safety laws recommended that the WHS Regulations be amended to introduce specific regulations dealing with psychosocial risks, including how to identify psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks.</p> <p>NT WorkSafe will implement this recommendation of the Lyons report through its participation with Safe Work Australia.</p>	<p>Phase 2</p>