



HIA Submission

Work Health and Safety Regulation Consultation

To the Department of Customer Service

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Introduction

The Housing Industry Association (HIA) takes this opportunity to respond to the Discussion Paper (Paper) on the Work Health and Safety (WHS) Regulation Consultation released by the Department of Customer Service (DCS) as part of the review of the NSW *Work Health and Safety (WHS) Regulation 2017* (NSW WHS Regulation). This review follows the regulation's five-year anniversary, which will expire on 1 September 2025. HIA understands that the aim of this review is to ensure the regulation remains relevant, fit for purpose, and reflective of contemporary work environments.

The Discussion Paper is divided into two main parts:

1. Part 1: NSW-Specific WHS Regulations: This section focuses on non-Model provisions in the WHS Regulation 2017 that are unique to NSW and may require updates to address state-specific workplace safety challenges.
2. Part 2: Model WHS Regulation: This section covers harmonised national provisions and seeks feedback on their effectiveness and potential updates to maintain consistency across jurisdictions.

HIA observes that some of the proposed changes appear to be largely aesthetic in nature, while others seem vague and lack a thorough assessment. Additionally, there is insufficient clarity on how these changes will impact industry participants. A more detailed analysis and clear summary of the potential effects on the industry would be beneficial for understanding the full scope of these changes. In particular, HIA would like to see a summary of impacts and potential effects that would be relevant to the building and construction industry.

Additionally, while HIA values the consultation process and the opportunity for industry stakeholders to contribute, we note that the current approach places the onus on stakeholders to identify issues requiring revision, rather than the DCS proactively leading consultation based on priority areas, regulatory experience, its own findings (including enforcement and operational findings), compliance data, and industry observations.

Executive Summary

Data-driven approach

While some of the proposed changes in the Discussion Paper appear to be cosmetic, others require further exploration regarding their potential impacts. If additional regulations are proposed, HIA believes they should only address clearly identified market failures. Any new laws should be specifically defined, assessed in consultation with the industry, and determined to be necessary. A clearer, data-driven consultation framework would lead to more targeted feedback and ultimately result in more effective WHS regulations.

Concerns with the consultation approach & industry engagement

A more structured consultation process is needed, with clear guidance on priority areas for review. HIA suggests that the DCS outline key areas requiring attention, enabling more meaningful and targeted feedback. While stakeholder input is valuable, DCS is best placed to highlight regulatory gaps, enforcement challenges, and emerging risks based on compliance trends and workplace incidents. Instead of broadly asking stakeholders to identify areas for revision, the DCS should specify provisions requiring review based on regulatory experience, compliance data, and emerging WHS risks.

HIA also suggests that industry submissions be publicly presented for further consideration before finalising the new regulation, ensuring transparency and broader stakeholder engagement. Clear communication of



regulatory changes (including those from this review/consultation) through guidance materials and fact sheets is essential to ensuring industry practitioners are well-informed and can adapt accordingly.

Balanced approach

Beyond the proposed changes, HIA encourages SafeWork NSW to take a balanced approach to amendments, focusing on simplifying compliance obligations. Where possible, regulations should be streamlined to reduce unnecessary complexity and ensure businesses can efficiently interpret and implement their obligations. Efforts should also be made to avoid duplication with existing requirements under planning, environmental, and workplace safety laws.

Key issues for consideration

- **Raising the construction threshold:** The current \$250,000 threshold for requiring a WHS management plan no longer reflects rising construction costs, capturing low-risk projects unnecessarily. HIA recommends increasing the threshold and reviewing it periodically to align with inflation and industry trends.
- **Exemption for engineered stone work:** Most jurisdictions (except NSW and Tasmania) allow the removal and reinstatement of existing engineered stone benchtops for minor works, posing no additional silica exposure risk. HIA urges SafeWork NSW to adopt this exemption for regulatory clarity.

The importance of education and support for businesses

HIA advocates for prioritising education and support over increasing regulatory prescriptions. Rather than introducing additional regulations, SafeWork NSW should focus on providing practical guidance, templates, and case studies to help businesses comply effectively. Clear guidance and training would foster a culture of proactive safety management, enabling businesses to better understand their obligations and reduce incidents without relying heavily on penalties, which may create barriers to compliance.



Response to the Questions

Part 1: Work Health and Safety Regulation 2017 Remake (Non-Model Provisions)

1. What suggestions do you have specifically about the changes to the NSW-specific provisions being proposed by this discussion paper? How should this be addressed?

HIA acknowledges that the proposed changes aim to clarify, rather than impose new duties on the building and construction industry. However, effective communication is key to ensuring clarity. Practical guidance materials, industry engagement, and digital tools will help businesses navigate the changes and avoid confusion. Any provisions that simply clean up the regulation, such as removing expired sections, should make it easy for businesses to identify relevant references.

Based on the information provided in the Paper, HIA provides the following comments:

Part 4.6 | Demolition Work (Section 2.4.1 located on page 10-11 of the Paper)

HIA understands that the proposed changes relating to demolition work will not impact on imposing new duties, but simply clarifying that licence holders are required to ensure that a worker is trained when carrying out work requiring a demolition licence. HIA also understands that the proposed changes are intended to align this type of work with other high-risk work licensing schemes.

Should SafeWork NSW amend demolition work requirements, HIA supports efforts which:

- Enhance clarity around demolition licensing and competency requirements to ensure that businesses understand their obligations without unnecessary administrative complexity.
- Promote risk-based approaches that recognise the varying scales of demolition work, ensuring that regulatory requirements align with the level of risk rather than applying a one-size-fits-all approach.
- Encourage best-practice risk assessments and safety planning without imposing prescriptive obligations that may not be practical for all demolition projects.

HIA supports SafeWork NSW's goal of improving safety while ensuring regulatory changes remain practical and aligned with industry realities. We encourage a focus on education and industry collaboration.

Part 4.9 | Traffic Control Work (Section 2.4.2 located on page 12-13 of the Paper)

HIA acknowledges that the proposed changes under this section is intended to incorporate advancements in traffic management practices, such as clarifying matters relating to trainings requirements, etc.

In the event that the Paper proposes amendments to traffic control provisions, HIA supports:

- Clear criteria on when traffic management plans are needed, aligning obligations with risk levels.
- Improved guidance for small-to-medium projects to implement traffic control effectively, without excessive complexity.
- A focus on industry-led safety initiatives instead of rigid prescriptive requirements.

HIA urges SafeWork NSW to avoid overly complex regulations that could increase delays and costs without clear safety benefits.



Part 8.1 | Asbestos – Prohibition and authorised conduct (Section 2.6.1 located on page 15-16 of the Paper)

While the purpose of the proposed change is to ensure alignment in law, it might be prudent to develop a fact sheet or guidance outlining these changes.

In general, HIA supports the alignment of asbestos management laws but recommends:

- Investment in education and training to empower builders and contractors in safe asbestos handling.
- Clear, simplified guidance materials to aid businesses in adhering to regulations.
- A risk-based approach focusing on high-risk scenarios to avoid unnecessary compliance burdens for low-risk activities.

Part 2 | Fees payable (Section 2.9.1 located on page 18 of the Paper)

The Paper indicates that the changes proposed are aesthetic in nature and do not alter the effect of this section which include general reordering of provisions so that the Calculation of fee units precedes the list of Fees payable.

HIA does not object to these amendments so long as they do not result in increased costs for businesses or create unintended regulatory burdens. It is essential that any fee adjustments:

- remain cost-neutral for industry participants, ensuring businesses (particularly small-to-medium enterprises (SMEs)) are not unfairly impacted.
- do not create new administrative complexities that could unintentionally increase compliance costs.
- are clearly communicated, with transparent guidance on how any fee structures will be applied in practice.

HIA encourages SafeWork NSW to work closely with industry stakeholders to ensure that any adjustments achieve their intended purpose without placing unnecessary financial or operational burdens on builders and contractors.

2. Are there any other aspects (e.g., operational aspects) of the NSW-specific provisions that you believe require revisions or enhancements that have not been addressed by the changes proposed by this discussion paper.

A more targeted approach based on data

HIA appreciates the opportunity to provide feedback on the WHS Regulation Remake. However, as noted earlier in the submission, the consultation process places the primary burden on stakeholders to identify areas for revision, rather than the DCS proactively outlining key issues based on its own regulatory insights, compliance data, and industry trends.

For a more effective consultation, HIA recommends that the DCS:

- Identify key areas for review: Rather than seeking broad stakeholder input, DCS should highlight specific provisions under consideration, based on enforcement challenges, compliance trends, or emerging WHS risks.
- Provide rationale for proposed changes: Stakeholders can give more meaningful feedback when they understand why a provision is being reviewed, supported by data or case studies.

Clear communication of regulatory changes

It is also important that any changes to the Regulation should be clearly identified and summarised (via



guidance materials, fact sheets, etc) to ensure industry practitioners are well-informed and can adapt accordingly.

Noting the above, HIA's general comments and recommendations are as follows:

Continuous industry engagement & transparency in SafeWork NSW enforcement

Builders and contractors often face uncertainty regarding how SafeWork NSW enforces compliance, particularly in areas such as site inspections, penalties, and improvement notices. To address this, the Regulation could require SafeWork NSW to publish annual reports detailing common demolition safety breaches, enforcement trends, and best practices. This would enhance industry awareness, allowing businesses to take proactive measures to improve safety and compliance, rather than simply reacting to enforcement actions.

SafeWork NSW's initiative to promote and encourage learning

As the construction industry evolves, so too must the safety knowledge of its workers. While existing training, such as the White Card, provides foundational knowledge, ongoing awareness of new risks, regulations, and safety practices is essential. However, imposing regulatory burdens, especially on small businesses, should be avoided.

Key challenges:

- Evolving construction risks and regulatory changes require continuous learning.
- Small businesses may struggle with the cost and administrative burden of mandatory training.
- Industry-wide initiatives should focus on ensuring safety knowledge without enforcing rigid compliance requirements.

Proposed Approach: Industry-Led Training and Knowledge Updates

To support ongoing learning, HIA recommends a proactive, industry-led approach where SafeWork NSW plays a key role in encouraging knowledge retention without imposing mandates. Specifically:

1. Proactive engagement by SafeWork NSW
 - SafeWork should develop and promote accessible tools (such as online refresher courses, industry newsletters, and regular safety updates) designed to keep workers and businesses informed about evolving safety practices and regulations.
 - These tools should be voluntary but designed to engage and incentivise participation through creative ways rather than necessarily impose formal requirements.
2. Tailored support for small businesses
 - Recognising that small businesses often have limited resources, SafeWork should work with industry groups to offer cost-effective, flexible training solutions that reduce the burden on small operators.
 - Providing subsidies or access to free resources, as well as tailored safety guidance, would help small businesses stay compliant and up-to-date without excessive costs.
3. Embedding WHS updates into existing practices
 - Encourage businesses to integrate safety updates into daily practices, such as toolbox talks and site inductions.
 - SafeWork should provide guidelines on how to incorporate ongoing learning into these routines, making safety education seamless and part of regular work.
4. Self-assessment tools and recognition programs
 - SafeWork should promote self-assessment tools for workers and businesses to evaluate their



current safety knowledge and identify areas for improvement.

- Consider recognition programs that incentivise businesses and workers to engage in regular training, such as through digital certificates or discounts on insurance premiums.



Part 2: Consultation on the Work Health and Safety Regulation Model Provisions

Considering the Model provisions in the WHS Regulation 2017:

1. What feedback do you have about changes to the Model Regulations that have been proposed by this discussion paper?

Chapter 2 | Representation and participation

Part 2.2 Issue Resolution (Section 2.2 located on page 27 of the Paper)

- **Section 22 | Agreed procedure—minimum requirements**
- **Section 23 | Default procedure**

HIA holds reservation on this change as it is unclear from the Paper (located on page 27) what the impact of the change would mean. HIA requests further information to be provided as HIA's concerns lie on that this change may increase administrative burden on construction companies that engage subcontractors, requiring stronger WHS documentation to prevent disputes. Further, the expanded scope of issue resolution beyond a workplace could lead to more legal disputes between person conducting a business or undertaking (PCBUs), requiring clear guidance from regulators.

It is important that clear dispute resolution guidelines are developed for the industry to understand the proposed changes and the actual procedures.

Based on the lack of information provided under this section, HIA can only make limited comments as follow:

- **Agreed Procedure - Minimum Requirements (Section 22):** The minimum requirements for an agreed procedure may not suit all businesses, especially smaller ones in the construction industry. Allowing flexibility is crucial for businesses to adapt the procedure to their needs, ensuring it still meets the core safety goals but without unnecessary burden.
- **Default Procedure (Section 23):** The default procedure could be overly burdensome and may not be appropriate for all businesses. Businesses should be allowed to opt out if they have their own effective issue resolution process in place.
- **Consultation and communication:** Small businesses may struggle with formal representation during issue resolution. Support should be provided to businesses without dedicated WHS representatives to ensure effective consultation and communication.

Chapter 8 | Asbestos (Section 5.5 located on page 28-29 of the Paper)

Part 8.3 Management of asbestos and associated risks Section

- **Section 423 | Analysis of sample**

While HIA acknowledges the rationale for the proposed change, it is also important to ensure that there are sufficient laboratories which are approved before this change is enforced to avoid potential backlog in approved laboratories, leading to delays in asbestos testing for construction and demolition projects.



Additionally, it is also important to ensure that there are sufficient approved laboratories in regional areas to prevent businesses from facing higher costs and logistical challenges.

Part 8.10 Licensing of asbestos removalists and asbestos assessors (Section 5.5.3 located on page 29 of the Paper)

- **Section 529 | Work must be supervised by named supervisor**

HIA notes that the proposal on page 29 of the Paper includes a reconsideration of this section in relation to sections 498 and 499 of the Model Regulations.

The rationale explained is that *“Section 497(1), in conjunction with sections 498 and 499, requires the regulator to grant a licence if satisfied that the applicant meets certain conditions. Section 529 requires that the person supervising the asbestos removal work be named on the worker’s licence. If the applicant needs to change the supervisor on the licence, the applicant will need to do so in accordance with section 507 and this will not take effect until approved by the regulator.”*

In HIA’s view is that if they wish to align with the WHS laws they should retain the concept that a change in supervisor needs not be approved by the regulator, as this may be unnecessary red tape for licence holders. In some cases, businesses should be allowed to appoint a temporary supervisor without waiting for regulatory approval if a supervisor is unavailable, subject to relevant checks and appropriateness.

2. What suggestions do you have more broadly about Model provisions? How should these be addressed?

3. Are there any other aspects (e.g., operational aspects) of the Model provisions that you believe require revisions or enhancements that have not been addressed by the changes proposed by this discussion paper?

Section 21 | Training for health and safety representatives

On page 36 of the Paper, under section 21 of the NSW WHS Regulation (Training for health and safety representatives (HSR)), NSW states “an initial course of training of 5 days” rather than “of up to 5 days”. In HIA’s view the HSR course of training should be up to 5 days in accordance with the model laws. There is no reason for a mandatory 5-day course that could be delivered in less than the 5 days and some HSRs in smaller workplaces may not need a full 5 days of training.

Section 272A | Registration of plant items

On page 37 of the Paper, section 272A of the NSW WHS Regulation refers to the duration of plant registration under the Model WHS Laws. The registration of plant items should be valid for at least 5 years, but some jurisdictions may impose a 1-year limit, which could be overly burdensome for businesses, especially when dealing with new plant items.

In this context, HIA recommends that jurisdictions follow the model laws and extend the duration of plant item registration to 5 years to reduce unnecessary administrative burdens and better align with industry practices.

Section 529F | Exemption for engineered stone

HIA is aware that a further exemption to the prohibition on working with engineered stone has now been granted by safety regulators in most jurisdictions (except for NSW and Tasmania), using powers akin to those under section 684(1) of the NSW WHS Regulation.



The exemption provides necessary clarity to those involved with alterations and additions, kitchen and bathroom projects, and insurance work, by specifically permitting the removal and reinstatement of an existing engineered stone benchtop, slab or panel to facilitate repair work or modification of the cabinetry or structure below. In the context of the WHS Regulation in NSW, the exemption would apply to the prohibition under section 529D and would expand upon the exempt activities already listed under section 529F(a).

We understand interstate regulators have taken the position that the work subject to the exemption does not increase the risk of exposure to respirable crystalline silica, when compared to that arising from the conduct of engineered stone tasks that are not prohibited. For this reason, HIA requests SafeWork NSW to make a similar exemption for this type of work in NSW.

Section 292 | Meaning of “construction project”

Low threshold for NSW

Section 292 of the NSW WHS Regulation establishes the value threshold of \$250,000 for a construction project, below which a WHS management plan is not required.

HIA considers the current \$250,000 threshold for requiring a WHS management plan too low, particularly in light of rising construction costs in NSW.

According to CoreLogic's latest Cordell Construction Cost Index (CCCI):

- Annual Increase: Residential construction costs in NSW rose 3.4% in the 12 months to December 2024, the largest annual rise since September 2023.
- Quarterly Increase: Costs grew 1.0% in the September 2024 quarter, aligning with the pre-COVID decade average.

These increases highlight ongoing challenges, including tight profit margins, labour shortages, and escalating material costs. Since March 2020, housing construction input prices have surged 31-35% across Australia's six major capital cities, driven by rising costs of timber, cement, and steel, along with a shortage of skilled labour.

Given these pressures, the current threshold does not reflect industry realities. HIA urges SafeWork NSW to reassess the threshold to ensure WHS management plans are required only where justified by project complexity and risk.

As construction costs increase, the threshold of \$250,000 does not reflect the current economic realities of the industry. Many smaller projects, now valued over this threshold, might not have the complexity or scale that would typically warrant the full requirements of a WHS management plan.

In light of the rising costs in the construction sector, the threshold should be raised to a more reasonable level to ensure that WHS management plans are required for projects where the scope, complexity, and risks truly justify them. A higher threshold would reduce the regulatory burden on smaller projects that are unlikely to pose significant WHS risks. Raising the threshold would allow smaller projects to focus on practical safety measures without being burdened by unnecessary, one-size-fits-all requirements, ultimately improving overall compliance without stifling the industry.

Additionally, the threshold should be reviewed periodically, taking into account inflation, building cost indices, and other economic factors to ensure it remains relevant.



Section 378 | Health monitoring records

Onerous health monitoring and record keeping requirements

While HIA supports appropriate health monitoring to protect workers from hazardous exposures, HIA remains concerned that the current requirements under section 378 of the WHS Regulation are overly prescriptive and impose significant administrative and financial burdens on businesses, SMEs in the residential building industry.

We encourage SafeWork NSW to work with industry to develop clearer, more practical guidelines that balance safety and workability.

Regulation 58 | Audiometric testing requirements

Overlap with noise-induced hearing loss requirements under Workers Compensation Laws

HIA highlights its key concerns below:

1. **Duplication with Workers Compensation Laws:** Audiometric testing overlaps with existing Workers' Compensation laws, adding confusion and unnecessary costs.
2. **Burden on low-risk exposures:** Testing is required for workers with minimal or intermittent noise exposure. A risk-based approach should be used, testing only those with consistent high noise exposure.
3. **Burden on small businesses:** Small businesses face extra costs and administrative burdens, especially when dealing with subcontractors. Cost-effective options, such as mobile testing providers or subsidised programs, should be made available.

While HIA supports measures to protect workers from hearing loss, HIA urges SafeWork NSW to review Section 58 to ensure it is practical, cost-effective, and avoids duplication with existing Workers Compensation testing. A harmonised, risk-based approach will keep testing targeted, necessary, and feasible for businesses.

Additional comments:

- **Clarity on subcontractor compliance:** Given the complexity of multi-tiered subcontracting in the construction industry, clearer provisions are needed to ensure that all parties are aligned on WHS obligations, particularly in high-risk environments. This will help avoid gaps in compliance responsibility.
- **Support for regional areas:** More flexibility is needed for remote worksites to ensure compliance without sacrificing safety. Digital tools and extended timelines could help businesses overcome challenges like limited access to resources.