



# OUR APPROACH TO WORK HEALTH AND SAFETY REGULATION





# Explaining our approach

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The purpose of this document is to explain SafeWork NSW's approach to work health and safety (WHS) regulation and what this means for you and your business. It explains who we are, what we do and how we do it.

As a part of the Better Regulation Division, SafeWork NSW works alongside and in collaboration with other

NSW regulators to create a safer and more confident NSW community supported by better regulation.

SafeWork NSW's vision for WHS in NSW is in line with the Work Health and Safety Roadmap for NSW 2022 and the Australian Work Health and Safety Strategy 2012-2022.



Our vision is  
healthy, safe  
and productive  
working lives

# Who we are and what we do

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SafeWork NSW is the state's WHS regulator. We work with the NSW community to reduce work related fatalities, serious injuries and illnesses and make it easier to do business safely.

Our functions are clearly outlined in section 152 of the *NSW Work Health and Safety Act 2011* (the Act) as follows:

- (a) *to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act,*
- (b) *to monitor and enforce compliance with this Act,*
- (c) *to provide advice and information on work health and safety to duty holders under this Act and to the community,*
- (d) *to collect, analyse and publish statistics relating to work health and safety,*
- (e) *to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters,*
- (f) *to promote and support education and training on matters relating to work health and safety,*
- (g) *to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator,*
- (h) *to conduct and defend proceedings under this Act before a court or tribunal,*
- (i) *any other function conferred on the regulator by this Act.*

# Why we do it

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As the WHS regulator, we want:

- workers to be protected against harm to health, safety and welfare
- fair and effective workplace representation, consultation, co-operation and WHS issue resolution
- unions and employer organisations to take a constructive and collaborative role in promoting WHS
- advice, information, education and training to be made available
- to secure compliance with and enforce WHS and assist the State Insurance Regulatory Authority (SIRA) with securing compliance with workers compensation laws while ensuring our actions are fair and transparent
- to enable a consistent national approach to WHS with a focus on continuous improvement and higher WHS standards.

Ultimately we care about the health and safety of people at work in NSW and want to make it easier for business and workers to comply with their obligations.

# How we do it

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Our success in working with people to prevent harm or recover from a work-related injury or illness depends on their motivation to take positive action.

Before someone can adopt a positive behaviour, they need to be:

- willing to do it
- capable of doing it – with the necessary knowledge, resources and skills
- confident that they can do it.

We consider all of these factors when deciding what response or service to provide.

## WE FOCUS ON **PREVENTION**

We focus on preventing harm and improving the health and safety landscape in NSW workplaces. We direct our collective efforts towards those risks with greatest potential to cause serious harm.

We offer advice, information and education on WHS, and provide licensing and registration for potentially dangerous work and plant items. We also provide testing services for chemicals used in workplaces, and electrical and mechanical equipment used in hazardous areas.

## WE **RESPOND** WHEN REQUIRED

We respond to workplace incidents and requests for service from the NSW community. This includes investigating workplace incidents and taking appropriate enforcement action, if necessary, to ensure the laws we administer are followed.

We use a triage model based on the level of risk to determine our type of response.

## WE PROMOTE **RECOVERY AT WORK**

We aim to help reduce the social and economic costs of workplace injuries and illnesses. We do this by working in partnership with SIRA to ensure workers compensation compliance and to improve recover at work practice.

## WE **SECURE COMPLIANCE**

We take enforcement action, issuing improvement and prohibition notices and sanctions based on the seriousness of the risk and/or offence and the potential for harm in the workplace.

## WE USE **EVIDENCE**

We make informed decisions based on evidence and continually build insight to help us work smarter and deliver the best possible outcomes. We use data and business intelligence for targeted prevention and intervention. We regularly evaluate our performance with a view to continually improving what we do and how we do it. This also ensures we avoid adding unnecessary burden to business and that our actions are focused on reducing the greatest harms.

## WE **FOCUS OUR EFFORTS**

Being evidence-based allows us to make informed decisions about:



Where to focus our efforts to target issues with the greatest risk.



How many resources to commit.



What approach to apply to ensure compliance.

We focus our efforts on:

- Potential for harm, frequency and cost – we consult and collaborate with our stakeholders to prevent incidents that have a potentially severe social or economic consequence. We promote shared learnings and recognise people who deliver the right outcomes.
- High consequence, low frequency – we work to prevent the risk of harm from high-risk hazards that do not occur often, but when they do occur, the consequences are high.
- Emerging issues that are new and/or changing, as well as delayed issues – we remain vigilant, focusing on issues as they arise, and recognise that data alone may not necessarily reveal the potential risk of harm.

# Our guiding principles

## RESPONSIVE

- We are committed to working in partnership with the NSW community to provide customers with quality regulatory services.
- We recognise that 'one size doesn't fit all' and that not everything is black and white.
- We are flexible and agile in providing the most appropriate services to get the right outcome.
- We consider the seriousness of the risk, injury or illness and any breach of laws, and respond proportionately.
- We recognise effort and willingness to take positive action.

## ACCOUNTABLE

- We are fair and transparent and are happy to explain our actions and decisions – including those to do with enforcement.
- We provide avenues of complaint and appeal.
- If we make a mistake, we take ownership, and make it right.

## ENGAGING

- We actively seek to engage with our stakeholders, workplaces and workers.
- We listen, encourage input and involvement and aim to develop solutions through collaboration.

## SUPPORTIVE

- We acknowledge the role that others play in preventing workplace harm and facilitating recovery at work.
- We support our customers to make sustainable improvements with or without our involvement.
- We encourage and celebrate innovation and best practice.
- We know that a collective commitment is the only way to improve NSW's health and safety landscape.

## CUSTOMER FOCUSED

- The customer is at the heart of everything we do.
- We strive to deliver timely, valuable and consistent services designed to meet their needs.
- We seek input from the NSW community and our customers – those seeking regulatory services, advice, support or protection from health and safety harms.
- Where possible we co-design services and programs with our stakeholders and other regulators to ensure they are tailored to our customers needs.
- We make it easy for people to do business in NSW.
- We deliver innovative products and services and continually review those services by asking how we can improve things for our customers.

These are the five principles that guide how we work. They provide the basis of what the NSW community can expect from us at all times.

# Our approach to compliance

We undertake advisory, compliance monitoring and enforcement activities. The type of interaction depends on a range of factors. We recognise that every business faces different health and safety risks and has varied capabilities and willingness to comply with their WHS and workers compensation obligations. Our graduated approach to compliance and enforcement takes the level of risk, public interest and due diligence effort into consideration. Our inspectors are guided by SafeWork Australia's National Compliance and Enforcement Policy.





# Our services

We provide a range of services designed to reduce work related fatalities, injuries and illnesses, and to assist injured workers to recover at work as soon as possible.

## ASSISTANCE SERVICES

### Call centres:

- Information Centre: 13 10 50
- [contact@safework.nsw.gov.au](mailto:contact@safework.nsw.gov.au)

### Client service centres:

- Head office
- Metropolitan and regional offices
- Tailored safety advice

### Advisory services:

- Business including small medium enterprise
- Technical and specialist services
- Hazard management
- Safety coaching

### Testing services:

- TestSafe (Londonderry)
- Laboratory Services (Thornleigh)

### Research services:

- Research grants
- Private/public collaboration

## PUBLIC AWARENESS

- Awareness campaigns
- Video alerts
- Co-designed safety campaigns
- Media releases
- Interviews
- Articles
- Safety alerts
- Digital newsletters
- Website
- Facebook, Twitter, LinkedIn, Youtube
- Talks
- Workshops
- Seminars
- Conferences
- Live webinars
- Secondary, tertiary and vocational education

## CONSULTATIVE MECHANISMS

- Consultative committees and industry/sector/union forums
- Regional networks
- Sponsorships
- Partnerships and alliances
- Industry action partners
- National forums

## PREVENTION PROGRAMS

- Focus on:
  - High risk industries
  - Significant harms
- Collaborative industry action plans
- Mentoring program
- Specific industry/union/ SafeWork NSW harm prevention initiatives
- National WHS priorities

## INFORMATION AND ADVICE

- Regulatory advice
- Technical advice
- Statistical analysis and research findings
- Guidance materials and approved codes of practice
- Acts and regulations

## FINANCIAL INCENTIVES

- Sponsorships
- Subsidised consultancies
- Rebates
- Grants

# SafeWork NSW Services

## SANCTIONS

- Suspension or cancellation of licences or other authorisations
- Enforceable undertakings
- Court orders
- Criminal and other proceedings
- Penalty notices

## TRANSPARENCY AND ACCOUNTABILITY

- Review of inspector decisions
- Review of appealed improvement, prohibition, penalty and workers compensation notices

## REGULATORY RESPONSE

- Request for service
- Advisory visits
- Targeted inspections
- Incident inspections
- Co-design project visits
- Serious incident investigations
- Fatality investigations
- Improvement notices
- Prohibition notices
- Investigation notices

## AUTHORISATIONS, VERIFICATIONS AND AUDITS

- Notification and verification of high risk hazards and activities
- Registration and verification of high risk plant and activities
- Authorisation and verification of safety cases (major hazard facilities)
- Authorisation and verification of third parties (eg assessors)
- Certification or licensing of high-risk activities and self-insurers
- Third party audits.



# Applying our approach

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## EXAMPLE 1: LOCAL ASSISTANCE

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| Why  | A couple who run a small business made a phone call to 13 10 50 to ask us for assistance. They were willing but did not feel knowledgeable enough to implement changes that would make their business safer.  |
| What | One of our inspectors did the following: <ul style="list-style-type: none"><li>• visited the workplace and talked through low-cost options to improve safety compliance</li><li>• provided a written report and left contact details for future assistance</li><li>• helped the business apply for a \$500 rebate for a table lifter to help prevent back injuries.</li></ul>   |
| How  | Each year we interact with over 1.5 million members of the community through workplace visits, emails, calls and by issuing rebates and licences. Many businesses call us for free advice over the phone. We also offer tailored services at a time and place chosen by our customers. Our inspector went into this couple's workplace, listened to their issues and provided advice on matters relevant to them. The inspector provided clear, written confirmation of their advice and supported them in obtaining the equipment they needed to manage their risks. |

## EXAMPLE 2: INDUSTRY INTERVENTION

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| Why  | Through our Focus on Industry program, data analysis identified that the sheep and beef cattle farming industry was high-risk.  |
| What | We recognised that confidence was a barrier to change. Farmers felt they had to accept risk as they were willing but not able to facilitate the safety outcomes they wanted. Our integrated project included: <ul style="list-style-type: none"><li>• over 900 advisory visits</li><li>• targeted rebates to reduce high risks</li><li>• a campaign featuring farmers talking to farmers about health and safety.</li></ul>   |
| How  | Rather than applying sanctions to achieve compliance, we encouraged farmers to talk to other farmers to give real, practical, low-cost advice. We provided financial incentives that led to major safety improvements. We worked closely with stakeholders to explain our involvement and to support their ongoing ownership of agreed issues and we spent \$18 million to fund 9500 rebates which resulted in \$30 million in safety improvements for thousands of businesses. |

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### EXAMPLE 3: **CROSS BORDER COLLABORATION**

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| <b>Why</b>  | In discussions with WorkSafe Victoria, we found that construction businesses on and around our border needed clear and consistent support from the two regulators to help them reduce harm.   |
| <b>What</b> | Addressing potential shortfalls in ability and confidence, our inspectors collaborated with their Victorian counterparts to visit workplaces around Mildura and Wentworth. A common checklist helped businesses manage risks associated with high risk work, correctly use safe work method statements, and prevent falls down stair voids. With industry associations, they also held numerous breakfast sessions at major hardware suppliers to engage directly with our customers. |
| <b>How</b>  | We addressed the customers' need for consistent regulatory advice from different jurisdictions. We visited workplaces and points of supply to offer tailored advice for individual situations. To ensure transparency and help businesses prepare we distributed checklists through major hardware stores in the area prior to visits. We also engaged with and received support from industry stakeholders in both states.   |

### EXAMPLE 4: **SMALL BUSINESS SERVICES**

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| <b>Why</b>  | Statistics show that small businesses have higher rates of incidents and poorer recovery at work rates than larger businesses.  |
| <b>What</b> | We know that small businesses can be time and resource poor and benefit from simple, tailored advice. As part of ongoing service development we: <ul style="list-style-type: none"><li>• regularly consulted with small business representatives</li><li>• set up a dedicated small business hotline</li><li>• developed and market-tested tailored information products and incentives</li><li>• connected large business mentors with small business mentees.</li></ul> |
| <b>How</b>  | We put in place mechanisms to co-design services with our stakeholders, and provided a hotline for prompt and individualised customer service. We are open and transparent when engaging with a reference group, and have worked with members to increase the capability of their respective customers.   |

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## EXAMPLE 5: CASE MANAGEMENT

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| Why  | Knowledge-sharing with SafeWork South Australia helped us identify the risk of burns from cooking oil in a fast-food chain in NSW.  |
| What | <p>In NSW there was a knowledge gap around this issue. Given the size of the workforce we:</p> <ul style="list-style-type: none"><li>• took a case management approach</li><li>• presented to 70 supervisors</li><li>• visited multiple stores in Sydney</li><li>• developed a video safety alert for the industry.</li></ul>   |
| How  | We listened to our customers to find the most effective way to work with their businesses. Given the large number of workers who could potentially be harmed, we invested resources to address the risk. We made expectations and solutions clear and followed up with guidance products for the industry. When developing the video we engaged with our South Australian counterpart, larger businesses, individual stores and industry representatives. We empowered supervisors to take ownership in their own stores. |

## EXAMPLE 6: RECOVERY AT WORK

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| Why  | We know from research that the longer a worker is away from work, the less chance they have of ever recovering and returning to their pre-injury work. So when a worker sought our assistance to return to employment after a shoulder injury, we gave them the support to do so.   |
| What | The treating doctor confirmed the worker was fit to return to employment however the employer was concerned the worker would aggravate the injury if they returned to work too soon. We visited the workplace, discussed return-to-work options with the employer, and provided advice about a return-to-work program that would help the business.   |
| How  | Working with SIRA, we talked to the employer about the benefits of injured workers recovering at work. We recommended they seek support via their insurer from a rehabilitation provider who could help them identify suitable duties and develop a return-to-work plan for the injured worker. We gave the employer SIRA fact sheets and guides to help them understand their recover at work and work health and safety responsibilities. |

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## EXAMPLE 7: MEDIUM RISE CONSTRUCTION

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| Why  | The Commerce Regulation Program seeks to reform regulatory activities and requirements in order to increase customer experience and confidence. A joint regulatory approach - in this case SafeWork NSW and NSW Fair Trading - provides better customer experiences, strengthens business's capability to comply with their obligations and makes it easier for businesses to maintain strong workplace safety and public safety protections. |
| What | We undertook joint site visits of targeted businesses during construction of medium rise residential buildings. We assessed the business's compliance with obligations under both the work health and safety laws and the Home Building laws. They provided information and demonstrated where workplace and public safety protections could be improved.   |
| How  | We provided a better customer experience through the joint initiative and an opportunity for businesses to ask questions of both agencies at the one time. Our feedback was positive and we will be looking for further opportunities to work together.   |

## EXAMPLE 8: REQUEST FOR SERVICE

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| Why  | We know that assessing risk and tailoring our response to the nature of the risk so that it is appropriate and proportionate is important when trying to prevent harm and empower businesses. A young worker from a manufacturing business called 13 10 50 to lodge a request for service as he was experiencing a lack of support from his company in regards to electrical leads not being tested and tagged.                     |
| What | First we assessed the request to determine how we should respond. We took a number of factors into account, such as whether it was under our jurisdiction, the relevant legislation, level of risk and potential harm and how we might help the business achieve compliance.  |
| How  | In this case we took an administrative response and sent a letter to the business. Our data shows that an administrative response usually has the desired effect: 80 per cent of response letters are actioned appropriately before an inspector makes a site visit. When the inspector did the follow up site visit, they found that the business had indeed improved their testing and tagging system after receiving the letter. |

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## EXAMPLE 9: AN IMPROVEMENT NOTICE

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| Why  | We can't be everywhere, so we often rely on the community to help us identify potentially harmful workplaces. A local resident living beside a residential construction site notified us of a potentially dangerous situation if children were to access the site.  |
| What | An inspection of the site confirmed there were safety issues with the boundary fence which was incomplete. However, no immediate risk to anyone's health and safety was present at the time of inspection. We issued the business an improvement notice to rectify the fence and discussed options to consider site security and prevent unauthorised access. We also gave them some relevant guidance material, including a copy of the housing industry site safety pack. |
| How  | In order to respond we took into consideration that the business had made an effort to erect a boundary fence as well as their previous health and safety record. We accepted the explanation that they were unaware of the gaps at the back of the boundary and were assured they would rectify the problem within the agreed time. In the circumstances, an improvement notice was appropriate.   |

## EXAMPLE 10: A PROHIBITION NOTICE

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| Why  | Our data and research show that construction sites are high risk, falls from height are serious and all too frequent, and small businesses are time poor. When an anonymous caller notified us of dangerous work on a construction site, where two workers were observed working at height on unsafe scaffolding, we responded with the potential for harm front of mind.  |
| What | A makeshift scaffold was being used to apply cladding to the house and presented an immediate risk to health and safety. We directed the workers to stop using the makeshift scaffolding and issued a prohibition notice. We talked to the business owner to provide advice and discussed options to find a safer way to do the job. We gave them some guidance on how to prevent the situation happening again, as well as some material on how to develop safe work method statements and the safe use of modular scaffolding. |
| How  | We identified that the makeshift scaffold presented an immediate risk to health and safety. Before preparing and issuing a written notice, we gave an instant, verbal instruction to stop using it. We then talked to the business and provided information on alternative safe systems of work. In this case, a prohibition notice was the most effective way to ensure the risk was eliminated.  |

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## EXAMPLE 11: ENFORCEABLE UNDERTAKING

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| Why  | Data informs us that being trapped by moving machinery is a major cause of workplace injury. When we were notified that a worker's arm was caught in a machine he was repairing, we investigated why the business had not provided the necessary safety controls.   |
| What | <p>The business accepted their responsibility for what had happened and, triggered by the incident, showed a willingness to help improve health and safety in their workplace and the broader community. The employer submitted a proposal to enter into an enforceable undertaking (EU), including to:</p> <ul style="list-style-type: none"><li>• develop an internal due diligence guide</li><li>• produce a case study on the incident to share with the industry</li><li>• fund a regional television advertising campaign on chemical safety in the agricultural industry.</li></ul> <p>We accepted their proposal for an enforceable undertaking rather than proceed with prosecution. An EU is a high level sanction which is legally binding and may be used as an alternative to prosecution in the event of an alleged contravention of the WHS Act.</p> |
| How  | We had early and open discussions about the offence and our options for taking action. We considered what outcome was going to benefit the community most, before accepting the EU. We supported the business to develop its proposal and were clear and transparent in our dealings with them, including signing a written agreement for the enforceable undertaking.  |

## EXAMPLE 12: A PROSECUTION

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| Why  | Serious injuries and deaths from contact with overhead power lines have increased recently in a trend that causes great concern. We were notified of a worker suffering a serious injury while installing scaffolding near power lines.   |
| What | <p>The risk was foreseeable and control measures were not in place. Following investigation we prosecuted the company. Since the incident the company:</p> <ul style="list-style-type: none"><li>• has put controls in place to prevent a recurrence</li><li>• pleaded guilty and were fined</li><li>• continue to cooperate with us.</li></ul>   |
| How  | We considered the risk of harm in this workplace and in other businesses, the defendant's past compliance history and the benefit to the community of a deterrent prosecution. We engaged with parties affected by the incident itself. We looked at the severity of the offence and kept the company informed of our processes and decisions throughout. We then supported the company in significantly improving their controls and reducing the future potential for harm. |





