

2024 REVIEW OF THE DUST DISEASES SCHEME

Friday 2 May 2025

Responses to Questions taken on Notice

Question	Division
<p>The Hon STEPHEN LAWRENCE: Lastly, could you give us a bit of an overview of criminal prosecutions of these companies involved in the tunnelling projects in Sydney over time?</p> <p>TRENT CURTIN: I can take that on notice. Most of our prosecutions in terms of silica have been in relation to the engineered stone industry. We do currently have an investigation underway at the moment in relation to the workers identified at CPB. That's the main prosecution that's underway at the moment. But I'll take it on notice just to make sure we come back to you with accurate information.</p>	SafeWork NSW
<p>ANSWER</p> <p>SafeWork NSW has not commenced any prosecutions in relation to exposure to silica dust in tunnelling projects. SafeWork NSW currently has one active investigation related to silica in tunnelling. As the investigation is ongoing, no further information can be provided at this time.</p> <p>SafeWork NSW continues to actively monitor the tunnelling sector and will take appropriate compliance and enforcement action where breaches of work health and safety laws are identified.</p>	
<p>The Hon. ANTHONY D'ADAM: Can you just clarify the nature of the agreement around the national consistency? New South Wales is obliged to maintain our legislation in strict compliance with the harmonised model legislation. Is that right?</p> <p>TRENT CURTIN: Yes, the agreement—it might be appropriate for me to provide the agreement on notice, if you like—details a process whereby, if we intend a legislative amendment to the model provisions and the laws and regulations, we would propose those amendments in the national forum first and work through that national process to get the model laws changed in the first instance. If that is not carried forward in the model provisions, then it's available to us to change those at a State level. It's really the timing of undertaking that process that can sometimes be of concern. The question at hand is whether we stay true and positive to that particular agreement and do that in a purest form or whether we form a view that potentially we might like to move more quickly and we notify the other Ministers that we intend to do that and they might consider similar amendments in those provisions at the same time.</p>	SafeWork NSW
<p>ANSWER</p> <p>The Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety is attached (Tab A).</p>	
<p>The Hon. ANTHONY D'ADAM: Presumably you're the first port of call in terms of disputes. What advice do you provide to disputants in relation to that question of whether you can take a photograph in a workplace of, say, a noncompliant piece of equipment? Surely this is something that has been happening for years: Authorised officers have been entering workplaces. If they can't actually gather any evidence, what's the purpose of an authorised officer?</p> <p>TRENT CURTIN: I understand that there have been disputes between unions and other parties in relation to that. I think there's an opportunity for clarity if the Parliament wants the unions to have that power to go and seek that information.</p>	SafeWork NSW

<p>The Hon. ANTHONY D'ADAM: My question is really about, what do you advise at the moment? Do you say, "Yes, the authorised officer does have the ability to take photographs," or, "No, the authorised officer doesn't have the power to take photographs"? What is the current advice that's provided by SafeWork in that instance?</p> <p>TRENT CURTIN: It'd be better for me to take that on notice, Mr D'Adam, so I can give you an accurate picture of what an inspector has experienced in providing advice around entry permit.</p>	
<p>ANSWER</p> <p>Section 118 of the <i>Work Health and Safety Act 2011</i> (the WHS Act), sets out the rights that a WHS entry permit holder may exercise while at a workplace in relation to a suspected contravention of the WHS Act. This provision does not expressly provide for the right to take measurements, conduct tests and make sketches or recordings.</p> <p>In comparison, inspectors appointed by SafeWork NSW who enter a workplace are expressly authorised to take measurements, conduct tests, and make sketches or recordings, including photographs, films, audio, video, digital or other recordings (section 165 of the WHS Act).</p> <p>If a dispute arises about the exercise or purported exercise of a right of entry by a WHS entry permit holder, any party to the dispute may ask SafeWork NSW to appoint an inspector to attend the workplace to assist in resolving the dispute (section 141 of the WHS Act). An inspector <i>assists</i> the parties to resolve the dispute, an inspector does not have legal authority to decide the dispute. If the dispute remains unresolved, either party may apply to the Industrial Relations Commission of New South Wales (IRC) to deal with the dispute, including by arbitration, under section 142 of the WHS Act.</p> <p>Notably, some jurisdictions in Australia have amended their WHS laws to include an express right for entry permit holders to take measurements, conduct tests, and make sketches or recordings. For example, the <i>Work Health and Safety Act 2012</i> (SA) includes section 118(1)(ab), which expressly permits such activities where they are directly relevant to the suspected contravention of that Act.</p>	
<p>Ms ABIGAIL BOYD: I just wanted to get clarification on the obligation of PCBU's to notify when they have a silicosis diagnosis with their worker. Is there an obligation to notify SafeWork or is it just an obligation to notify the Dust Diseases Authority, or none of the above?</p> <p>TRENT CURTIN: I think, Ms Boyd, in the absence of being able to describe that full process accurately and specifically, I might take on notice the full process so I can come back to you to describe exactly how it works across the full process, so I have some detail on it.</p> <p>Ms ABIGAIL BOYD: I know it was reported that there was a number of cases that had not been reported to SafeWork from CPB. I guess I'm just wondering what the obligations are in the first place. From my previous questions, when I was asking you about section 1.5, you were saying it would be really good if there was a direct obligation to notify. I'm just curious as to what the current situation is then.</p> <p>TRENT CURTIN: If you'll forgive me, I think it's best placed if I take that on notice so we can map it out for you.</p> <p>Ms ABIGAIL BOYD: Yes, that would be good. I'm trying to piece it all together, but I remember we had this discussion when we had the obligation for Health to no longer notify SafeWork when it came to silicosis cases, and the idea was it was going to go into a Federal register and then SafeWork would be able to get it from the Federal register. But, obviously, that's when it's going through doctors and through Health. I'm just curious as to what the obligation is on a PCBU to tell SafeWork.</p>	<p>SafeWork NSW</p>

TRENT CURTIN: Let me come back to you. Doctors have an obligation to report through the national occupational disease register, but I'll need to check the obligation and how the actual process works for a PCBU to notify SafeWork.

ANSWER

PCBU requirements to notify SafeWork NSW

Under [clause 368](#) of the *Work Health and Safety Regulation 2017* (the Regulation), a person conducting a business or undertaking (PCBU) must ensure that health monitoring is provided to a worker, if the worker is carrying out ongoing work that involves the use, handling, generating or storing of hazardous chemicals and there is a significant risk to the worker's health because of exposure to a hazardous chemical. [Schedule 14, Table 14.1, Item 7](#) of the Regulation, establishes that crystalline silica is a hazardous chemical requiring health monitoring.

Additionally, the *Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024* introduced further provisions under Chapter 8A of the Regulation, effective from 1 September 2024. These amendments impose duties on PCBUs to provide health monitoring for workers engaged in high-risk crystalline silica processes ([clause 529CE](#)).

Under [clause 376](#) of the Regulation, a PCBU is required to provide a copy of a health monitoring report to SafeWork NSW, where the report contains any advice that test results indicate that the worker may have contracted a disease, injury or illness, or where there is any recommendation from a medical practitioner that the PCBU take remedial measures, including whether the worker can continue to carry out the work involving hazardous chemicals that triggered the requirement for the health monitoring.

The PCBU must provide a copy of the adverse health monitoring report to SafeWork NSW as soon as practicable after obtaining the report. Penalties are prescribed under the Regulation for failure to comply with notification requirements.

Reporting requirements for medical practitioners

Under [section 271C](#) of the WHS Act, SafeWork NSW is required to maintain a register of the information provided by the Secretary of the Ministry of Health (NSW) regarding notifications of occupational dust diseases, including silicosis, asbestosis and mesothelioma. This register is known as the NSW Dust Diseases Register.

[Section 271B](#) of the WHS Act sets out the requirements for the provision of information from the Secretary of the Ministry of Health to SafeWork NSW relating to the notification of cases of occupational dust diseases and deaths resulting from occupational dust diseases.

The *National Occupational Respiratory Disease Registry Act 2003* (Cth) commenced on 22 May 2024 and established the National Occupational Respiratory Disease Registry (NORDR). The NORDR currently only requires mandatory notifications of silicosis diagnoses, while other occupational respiratory diseases such as asbestosis and mesothelioma can be notified with consent from a patient.

Since the commencement of the national registry, medical practitioners are required to notify the NORDR of all diagnoses of silicosis.

Consistent with the commencement of the NORDR and to avoid duplicate reporting, amendments were made to the *Public Health Act 2010* which removed the requirement for medical practitioners to notify the NSW Secretary of Health of silicosis diagnoses and related deaths. The Regulation was also amended to remove the related requirement for the Secretary of Health to provide SafeWork NSW with the information contained in those silicosis notifications (see [clause 702AA](#) of the

Regulation). All other required notifications remain in place for other notifiable diseases.

SafeWork NSW now sources silicosis diagnoses data directly from the NORDR for the NSW Dust Diseases Register, and annual Dust Diseases Report.

Inter-Governmental Agreement
for
Regulatory and Operational Reform in
Occupational Health and Safety

The COMMONWEALTH OF AUSTRALIA
The STATE OF NEW SOUTH WALES
The STATE OF VICTORIA
The STATE OF QUEENSLAND
The STATE OF WESTERN AUSTRALIA
The STATE OF SOUTH AUSTRALIA
The STATE OF TASMANIA
The AUSTRALIAN CAPITAL TERRITORY
The NORTHERN TERRITORY OF AUSTRALIA

Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety

AN AGREEMENT made on the 3rd day of July 2008 between:

The COMMONWEALTH OF AUSTRALIA; and
The STATE OF NEW SOUTH WALES; and
The STATE OF VICTORIA; and
The STATE OF QUEENSLAND; and
The STATE OF WESTERN AUSTRALIA; and
The STATE OF SOUTH AUSTRALIA; and
The STATE OF TASMANIA; and
The AUSTRALIAN CAPITAL TERRITORY; and
The NORTHERN TERRITORY OF AUSTRALIA

RECITALS

- A. The Parties are committed to improving the health and safety of Australian workers.
- B. The Parties recognise that occupational health and safety (OHS) regulation affects every workplace in Australia. All Parties have OHS laws that aim to prevent workplace death, injury and disease. While these laws are based on similar underlying principles there are differences between jurisdictions in the details and application of these laws.
- C. The Parties have agreed to work cooperatively to harmonise OHS legislation. The Parties have endorsed the development of this Agreement to strengthen and formalise jurisdictional commitment in implementing OHS reforms.
- D. The Parties have agreed to the Commonwealth submitting legislation to the Commonwealth Parliament to establish [*ASCC replacement body*] as a replacement to the Australian Safety and Compensation Council (ASCC).
- E. The Parties acknowledge that [*ASCC replacement body*] will also have a workers' compensation role that is not covered by this Agreement.
- F. This Agreement sets out the principles and processes for cooperation between the Parties to progress OHS regulatory and operational reform.

THE PARTIES AGREE AS FOLLOWS –

PART 1 - OBJECTIVES OF THE INTER-GOVERNMENTAL AGREEMENT

- 1.1 The purpose of this Agreement is to formalise cooperation between the Commonwealth, state and territory governments on the harmonisation of OHS legislation and to establish appropriate governance arrangements to support this cooperation.
- 1.2 The Parties agree that OHS harmonisation means national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by a nationally consistent approach to compliance policy and enforcement policy.
- 1.3 The Parties to this Agreement affirm their commitment to work cooperatively to achieve harmonisation of OHS laws. Supporting this commitment, all Parties have agreed to:
 - (a) the development by the Commonwealth of legislation to replace the ASCC with a national independent body, [*ASCC replacement body*];
 - (b) the development, monitoring and maintenance of model OHS legislation by [*ASCC replacement body*], including compliance and enforcement provisions; and;
 - (c) the adoption and implementation of model OHS legislation by each jurisdiction, as agreed by WRMC.
- 1.4 The fundamental objective of the reform covered by this Agreement is to produce the optimal model for a national approach to OHS regulation and operation which will:
 - (a) enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
 - (b) address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
 - (c) create efficiencies for governments in the provision of OHS regulatory and support services; and
 - (d) achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

PART 2 – THE WORKPLACE RELATIONS MINISTERS’ COUNCIL

2.1 Role and Functions

2.1.1 The primary role of the Workplace Relations Ministers’ Council (WRMC) in relation to this Agreement is to work cooperatively to harmonise OHS legislation by 2011 or earlier if agreed by COAG and to ensure that the terms of this Agreement are complied with.

2.1.2 The members of WRMC represent the Parties to this Agreement.

2.1.3 In relation to the Commonwealth legislation under which [ASCC *replacement body*] will be established, WRMC will be responsible for:

- (a) making decisions about a model OHS Act, regulations and codes of practice and a consistent compliance and enforcement policy as recommended to it by [ASCC *replacement body*];
- (b) making decisions about any other matters submitted or recommended by [ASCC *replacement body*];
- (c) making decisions about the three year strategic plan and the annual operational plan, including the annual budget of [ASCC *replacement body*];
- (d) providing direction to [ASCC *replacement body*] on policy development; and
- (e) performing any other function conferred on it by this Agreement.

2.1.4 WRMC will perform any other function conferred on it by this Agreement.

2.1.5 For the purposes of this Agreement, WRMC will conduct its affairs in accordance with the processes established by this Agreement.

2.2 Procedural and voting arrangements

2.2.1. When considering matters raised by [ASCC *replacement body*] and/or covered by this Agreement:

- (a) each member of WRMC shall have one vote on a proposed resolution and this vote shall represent the views of each Party to this Agreement;
- (b) where a member of WRMC is unable to be present at a meeting at which a vote is to be taken, that member may:
 - (i) advise the WRMC Chair of the voting intentions of his or her government, in writing prior to the meeting; or

- (ii) by notice in writing to the Chair appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the member's place;
- (c) where WRMC is required to vote on a matter, it may do so:
 - (i) at a meeting of WRMC; or
 - (ii) by a written vote where [*ASCC replacement body*] submits the recommendation to each of the members of WRMC through the WRMC Secretariat and the members provide their vote to the WRMC Secretariat by the deadline agreed by WRMC;
- (d) at a meeting of WRMC, members who do not vote in person or by written vote or by proxy will be counted as having voted to approve a recommendation. Where a vote is conducted without a meeting, a member who does not submit his or her vote by the deadline set, will be counted as having voted to approve the recommendation;
- (e) a vote on a resolution, either at a meeting or out-of-session, will be carried by a two thirds majority of all members of WRMC, unless otherwise stated in this Agreement;
- (f) any changes to the funding arrangements in Part 4 of this Agreement will require the unanimous agreement of WRMC; and
- (g) any variation to this Agreement will require the unanimous agreement of the Parties.

2.2.2 For the purpose of clause 2.2.1 of this Agreement, all Parties to this Agreement will have a single vote on all matters raised by [*ASCC replacement body*] and/or covered by this Agreement, notwithstanding the number of WRMC members representing each Party.

2.3 Reporting Requirements

2.3.1 WRMC will report to the Council of Australian Governments (COAG) in accordance with any requirements established by this Agreement or by COAG guidelines and protocols or at least annually.

PART 3 – ADMINISTRATIVE ARRANGEMENTS FOR [ASCC replacement body]

3.1 Establishment of [ASCC replacement body]

- 3.1.1 [ASCC replacement body] will be established under Commonwealth legislation and will be subject to Commonwealth corporate governance regimes.
- 3.1.2 The Commonwealth will use its best endeavours to have enacted by the Parliament of the Commonwealth the legislation required to establish [ASCC replacement body]. The main features of the proposed legislation are set out in Schedule 1 to this Agreement.
- 3.1.3 In appointing members representing employees and employers the Commonwealth Minister will request the nominating bodies to ensure nominees have practical experience and high level expertise.

3.2 Responsibilities and Functions of [ASCC replacement body]

- 3.2.1 [ASCC replacement body] will be an independent Australian Government agency with the primary responsibility of driving national policy development in respect of OHS and workers' compensation matters.
- 3.2.2 The functions of [ASCC replacement body] in relation to this Agreement will include to:
 - (a) develop, monitor, maintain and provide advice to WRMC on model OHS legislation consisting of a model principal act, model regulations and model codes of practice, to be adopted by all jurisdictions;
 - (b) develop a compliance and enforcement policy to ensure nationally consistent regulatory approaches across all jurisdictions;
 - (c) research, develop and recommend national OHS standards as appropriate;
 - (d) provide policy advice to WRMC on initiatives to improve workplace safety;
 - (e) collect and analyse workplace injury and disease data and undertake research in order to inform the development and evaluation of OHS policy;
 - (f) oversee maintenance and further development of the National OHS Strategy 2002-2012;

- (g) monitor key developments both national and international in OHS;
- (h) drive a national communications strategy to raise awareness of health and safety at work; and
- (i) undertake any other functions that are agreed by WRMC.

3.3 Reporting Requirements

- 3.3.1 The Chief Executive of [ASCC replacement body] will provide an annual report to Parliament and to the Members of [ASCC replacement body] and to WRMC which will include progress of the jurisdictions in implementing OHS reform and any other matters covered by this Agreement.
- 3.3.2 The [ASCC replacement body] Members will report to WRMC in accordance with any requirements established by this Agreement or as required by WRMC. This reporting will include a three year strategic plan and annual operational plans, consistent with the strategic plan, for approval by WRMC.

PART 4 – FINANCIAL ARRANGEMENTS FOR [ASCC replacement body]

4.1 Funding of [ASCC replacement body]

- 4.1.1 The Parties agree to provide funds for the establishment and ongoing maintenance of the [ASCC replacement body].
- 4.1.2 The Parties agree to the following funding arrangements:
 - (a) the Parties will each provide a share of the [ASCC replacement body] budget based on the following:
 - (i) the Commonwealth will fund 50 per cent of the budget;
 - (ii) the States and Territories will, together, fund 50 per cent of the budget with the contribution of each State and Territory proportional to its population. Proportions will be calculated each year using the most recently published Estimated Resident Population of Australia as published by the Australian Bureau of Statistics in 3101.0 – Australian Demographic Statistics;
 - (b) for 2008-09, the [ASCC replacement body] will have an initial budget of \$17 million, pro-rated to the date of establishment of [ASCC replacement body], and subject to indexation by the CPI as a minimum each year;

- (c) for 2009-10 and subsequent years, [ASCC replacement body] will submit to WRMC, by the end of May of the previous year, an annual operational plan, including the annual budget, consistent with the strategic plan; and
- (d) on each occasion the annual operational plan, including the annual budget will be approved by a two thirds majority vote of WRMC.

PART 5 – OCCUPATIONAL HEALTH AND SAFETY REFORM

5.1 Model OHS Legislation

- 5.1.1 The Parties commit to work cooperatively to harmonise OHS regulation through the adoption and implementation of model OHS legislation.
- 5.1.2 The Parties support the National Review into Model Occupational Health and Safety Laws, announced by the Commonwealth Minister on 4 April 2008.
- 5.1.3 Model OHS legislation will comprise a model principal Act supported by model OHS regulations and model codes of practice. Model OHS legislation will be developed by [ASCC replacement body] in accordance with the terms of this Agreement.
- 5.1.4 The development process for model OHS legislation will allow for interested persons to make representations concerning any proposed model legislation. Prior to submitting any proposed model legislation to WRMC, [ASCC replacement body] will give due consideration to any representations duly made to it and make such alterations to the proposed legislation as it sees fit.
- 5.1.5 The Parties agree that a national compliance and enforcement policy will be developed to ensure a consistent regulatory approach across all jurisdictions.
- 5.1.6 For the purpose of ensuring that model OHS legislation applies throughout Australia, each Party to this Agreement will, subject to its parliamentary and other law-making processes, take all necessary steps to enact or otherwise give effect to model OHS legislation within its jurisdiction within the timeframes agreed by WRMC.
- 5.1.7 For the purposes of subclause 5.1.1, the adoption and implementation of model OHS legislation requires each jurisdiction to enact or otherwise give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction.

- 5.1.8 The adoption and implementation of model OHS legislation is not intended to prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation, for example, by providing for a consultative mechanism within a jurisdiction.
- 5.1.9 [ASCC replacement body] will make model OHS legislation publicly available on its website when it is agreed by WRMC. [ASCC replacement body] will hold and maintain all original copies of agreed model OHS legislation, including any subsequent amendments.

5.2 Model OHS Act

- 5.2.1 WRMC will consider and respond to the recommendations of the National Review and will subsequently decide on the optimal structure and content of a model OHS Act to be adopted by all jurisdictions.
- 5.2.2 Following its agreement on the optimal structure and content of a model OHS Act, WRMC will request [ASCC replacement body] to develop the proposed model OHS Act in accordance with its decision.
- 5.2.3 As part of its development of the model OHS Act, [ASCC replacement body] will undertake consultation processes to allow for interested persons to make representations concerning the proposed model OHS Act. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation. [ASCC replacement body] must consult with the states and territories in developing the RIS.
- 5.2.4 [ASCC replacement body] will submit the proposed model OHS Act to WRMC for consideration and decision.
- 5.2.5 Where WRMC agrees to the proposed model OHS Act by consensus, it becomes the agreed model OHS Act. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Act no later than December 2011.

5.3 Model OHS Regulations

- 5.3.1 Model OHS regulations to support the Act will be developed by [ASCC replacement body] and submitted to WRMC progressively in three stages:
- (a) Stage one will set out an overall framework for a consolidated body of regulations and will incorporate detail on those matters broadly common to all current jurisdictional regulations, as well as recently reviewed national standards material;

- (b) Stage two will include consideration of matters that are broadly included in some, but not all, jurisdictions' regulations, as well as material from national standards currently under review; and
- (c) Stage three will cover those matters identified as requiring considerable policy development and will complete the remainder of the regulations identified in the framework.

5.3.2 As part of its development of model OHS regulations, [ASCC replacement body] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS regulations. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation.

5.3.3 Where WRMC agrees to proposed model OHS regulations by consensus, they become agreed model OHS regulations. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS regulations no later than December 2011.

5.4 Model OHS Codes of Practice

5.4.1 Model OHS Codes of Practice will be developed by [ASCC replacement body].

5.4.2 As part of its development of model OHS Codes of Practice, [ASCC replacement body] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS Codes of Practice. Model OHS Codes of Practice will be developed in accordance with COAG guidelines.

5.4.3 [ASCC replacement body] will submit proposed model OHS Codes of Practice to WRMC for consideration and decision.

5.4.4 Where WRMC agrees to proposed model OHS Codes of Practice by consensus, they become agreed model OHS Codes of Practice. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Codes of Practice within timeframes established by WRMC.

5.5 Maintenance of Nationally Uniform OHS Legislation

5.5.1 The Parties commit to ensure that their laws and other instruments giving effect to the agreed model OHS legislation will remain nationally uniform over time.

- 5.5.2 Any Party that proposes to amend its legislation or introduce new legislation so as to materially affect the operation of model OHS legislation will submit the proposed amendments or new legislation to WRMC for decision. Each Party agrees that it will not progress implementation of any such amendment or such new legislation unless WRMC has endorsed the proposed amendment or new legislation.
- 5.5.3 Where WRMC approves an amendment to legislation or new legislation that affects the operation of the agreed model OHS legislation, all Parties will (unless otherwise agreed by WRMC) undertake all necessary steps to introduce appropriate changes to their legislation with a view to ensuring that OHS legislation remains nationally consistent.

PART 6 - REVIEW OF ARRANGEMENTS ESTABLISHED BY THIS AGREEMENT

- 6.1 The Parties commit to review the operation of [*ASCC replacement body*] and this Agreement no later than the sixth anniversary of the commencement of the Act establishing [*ASCC replacement body*] or as agreed by WRMC.

PART 7 - OPERATION AND INTERPRETATION OF AGREEMENT

7.1 Commencement of Agreement

- 7.1.1 This Agreement commences when it has been signed by all Parties.

7.2 Provision of Information

- 7.2.1 The Parties agree to provide such information to [*ASCC replacement body*] as is necessary for [*ASCC replacement body*] to undertake its responsibilities and functions as set out in this Agreement and the legislation establishing [*ASCC replacement body*].

7.3 Definitions

7.3.1 In this Agreement, except where a contrary intention appears:

Agreed Reform means a reform relating to OHS as agreed by WRMC, including any amendments to that reform that have been made in accordance with this Agreement;

Agreement means this document, including the schedules, as amended from time to time;

[ASCC replacement body] refers to the agency or organisation that will replace the Australian Safety and Compensation Council;

COAG means the Council of Australian Governments;

Codes of Practice refers to codes of practice supporting the model OHS Act;

Commonwealth means the Commonwealth of Australia;

Commonwealth Minister means the Commonwealth Minister responsible for the operations of *[ASCC replacement body]* and its enabling legislation;

Compliance policy and enforcement policy mean the arrangements for determining whether the model OHS legislation is being complied with and how breaches are dealt with;

Jurisdiction means the Commonwealth, States and Territories;

Model OHS Act is the principal Act of the model OHS legislation;

Model OHS legislation is legislation, regulations and codes of practice developed by *[ASCC replacement body]*;

OHS means occupational health and safety;

Party means the Commonwealth, a State or a Territory that is a Party to this Agreement;

Regulations refer to regulations supporting the model OHS Act;

State means a State of the Commonwealth of Australia that is a Party to this Agreement;

Territory means a Territory of the Commonwealth of Australia that is a Party to this Agreement;

WRMC means the Workplace Relations Ministers' Council.

7.4 Amendment to the Agreement

7.4.1 This Agreement may be varied from time to time by the unanimous agreement of the Parties.

7.4.2 Any amendment to this Agreement will be made in writing and executed by all Parties, and will include the date on which the amendment will come into force.

7.5 Dispute Resolution

7.5.1 Where a dispute arises under or in relation to this Agreement:

- (a) WRMC will negotiate to resolve the dispute in the first instance; and
- (b) if the negotiations fail, WRMC will refer the dispute to COAG to seek a resolution.

7.6 Publication of the Agreement

7.6.1 The Parties agree that this Agreement is to be made publicly available by the Commonwealth by the following means:

- (a) by tabling in both Houses of the Commonwealth Parliament; and
- (b) by publication on relevant Commonwealth Government websites.

7.6.2 Any future amendments to this Agreement made in accordance with clauses 7.4.1 and 7.4.2 of this Agreement are to be made publicly available in accordance with clause 7.6.1 of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

The Honourable Kevin Rudd MP)
Prime Minister of the Commonwealth of Australia) _____

The Honourable Morris Iemma MP)
Premier of the State of New South Wales) _____

The Honourable John Brumby MP)
Premier of the State of Victoria) _____

The Honourable Anna Bligh MP)
Premier of the State of Queensland) _____

The Honourable Alan Carpenter MLA)
Premier of the State of Western Australia) _____

The Honourable Michael Rann MP)
Premier of the State of South Australia) _____

The Honourable David Bartlett MP)
Premier of the State of Tasmania) _____

Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory) _____

The Honourable Paul Henderson MLA)
Chief Minister of the Northern Territory of Australia) _____

**Schedule 1 – Matters to be included in Commonwealth Legislation
establishing [ASCC replacement body]**

1. The legislation will establish [ASCC replacement body] as the principal national organisation driving policy development in respect of occupational health and safety (OHS) and workers' compensation matters and subject to Commonwealth corporate governance regimes including:
 - (a) the *Financial Management and Accountability Act 1997*, and
 - (b) the *Public Service Act 1999*
2. [ASCC replacement body] will be constituted by Members who will be accountable to WRMC. [ASCC replacement body] will be assisted by a Chief Executive and staff who will be accountable to the Commonwealth Minister.
3. The legislation will:
 - (a) specify the membership of the [ASCC replacement body] as being:
 - i. an independent chair, nominated by the Commonwealth Minister in consultation with WRMC;
 - ii. a member nominated by the Commonwealth Minister;
 - iii. 8 members, each of whom is nominated by a State or Territory Minister;
 - iv. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of workers across Australia;
 - v. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of employers across Australia; and
 - vi. Chief Executive (non voting);
 - (b) provide for Members (other than the Chief Executive) to be part-time and to be formally appointed for up to 3 years by the Commonwealth Minister;
 - (c) provide for the Chair to be part-time, to be remunerated as determined by the Remuneration Tribunal and to be appointed by the Commonwealth Minister after consultation with WRMC;
 - (d) provide for the appointment by the Commonwealth Minister of a Chief Executive with responsibility for the day to day operations of [ASCC replacement body], who is to be the head of [ASCC replacement body] for

the purposes of the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*, and who is to take into account any recommendations of the [ASCC replacement body] in carrying out the functions of [ASCC replacement body];

- (e) provide for staff of [ASCC replacement body] to be appointed under the *Public Service Act 1999*;
- (f) establish the reporting requirements of [ASCC replacement body] to WRMC;
- (g) establish the functions of [ASCC replacement body];
- (h) establish a Special Account under the *Financial Management and Accountability Act 1997* to ensure that financial contributions of States and Territories are applied in accordance with the intergovernmental agreement;
- (i) establish the convening of and procedures at meetings including that:
 - i. members will meet as directed by the Chair with a minimum of three meetings a year;
 - ii. decisions will be made by a two thirds majority of votes of the voting Members present and voting, but decisions on the model OHS legislation will be made by a two thirds majority of the votes of voting Members present and voting and a majority of the votes of all voting Members who represent the Commonwealth, States and Territories;
 - iii. a quorum will consist of a majority of voting Members, but on deliberations or decisions relating to the model OHS legislation a quorum is not constituted if a majority of all of the voting Members who represent the Commonwealth, States and Territories are not present for the deliberation or decision; and
- (j) provide for the Chair to constitute committees for the purpose of assisting [ASCC replacement body] in the performance of its functions and the exercise of its powers.

