

Recent WHS Prosecutions: Learnings & Insights

Transport for NSW

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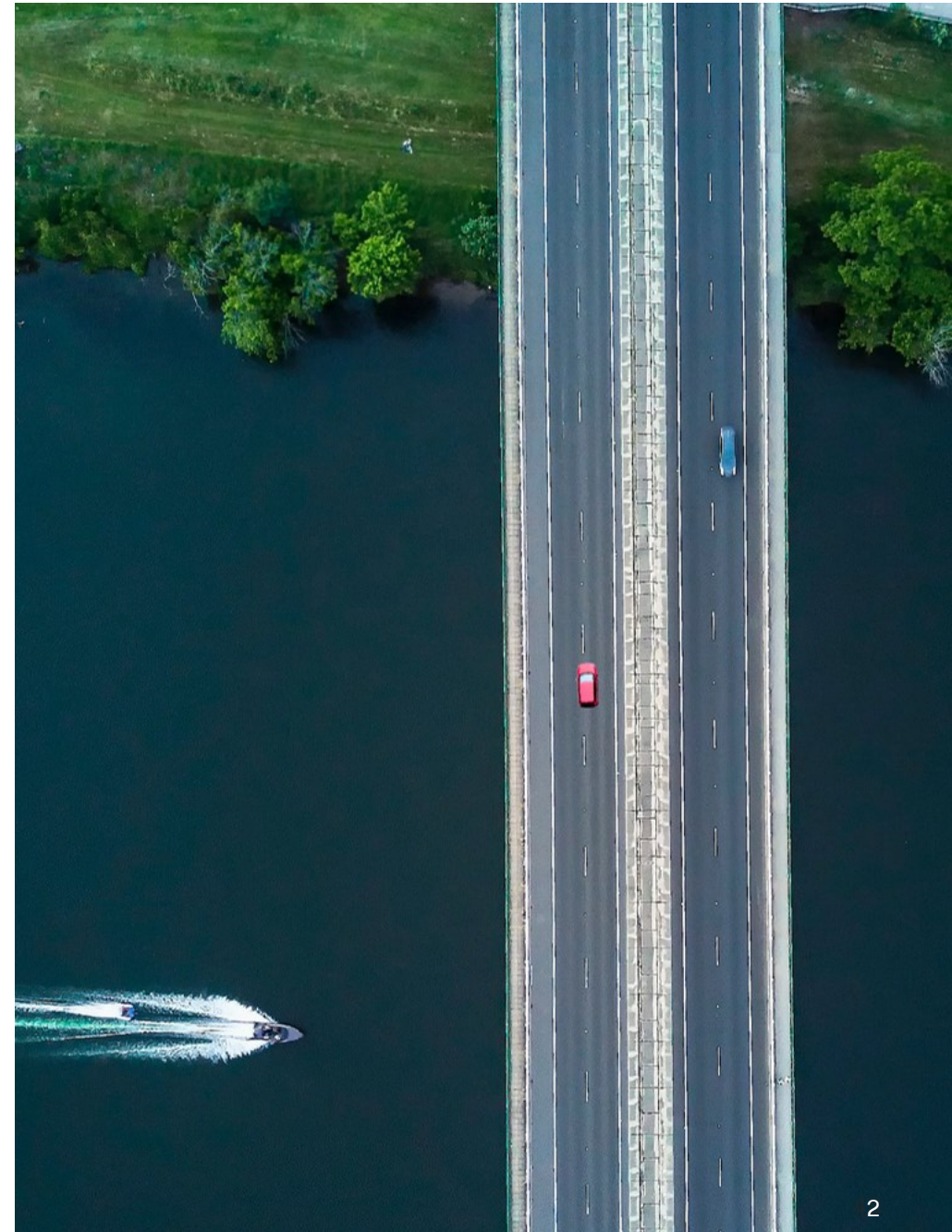


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Session outline

- 1 SafeWork Prosecutions: Statistics**
- 2 WHS Obligations: Overview**
- 3 Some case studies**
- 4 Questions**



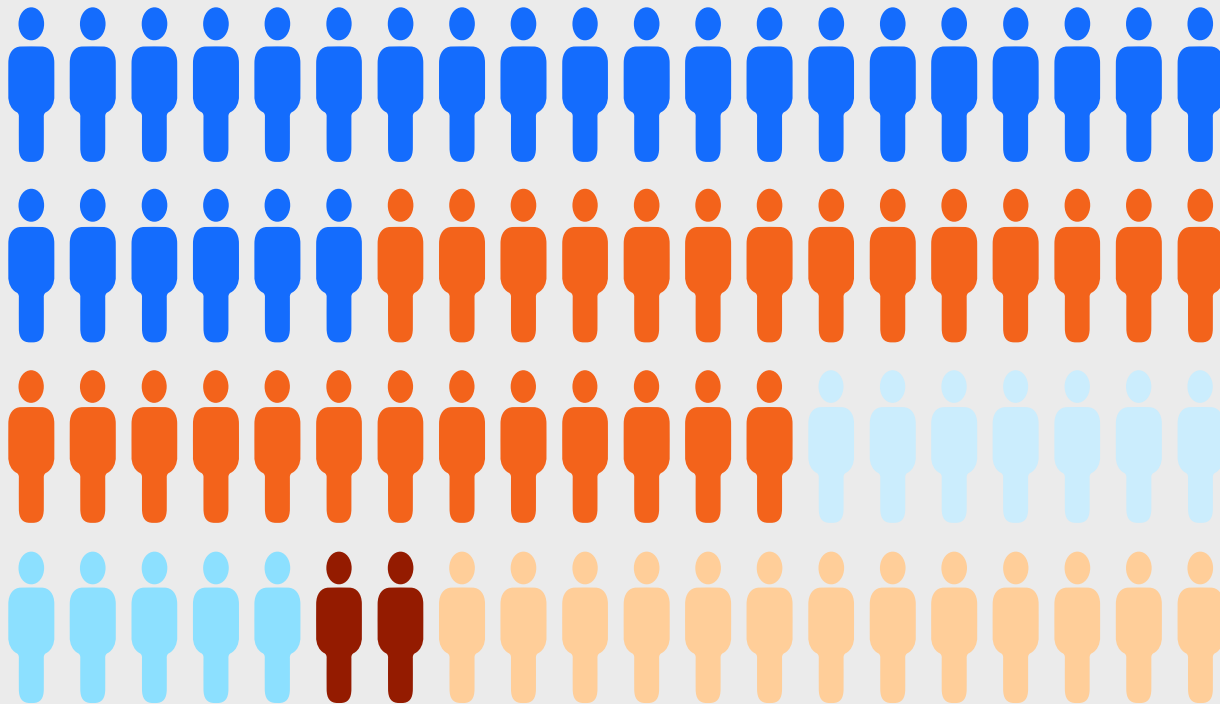


Question:

What do you think are some of the duties and obligations under the Work Health and Safety laws?

Between 2020 and 2021:

About 448 determined SafeWork prosecutions



Worker fatalities in 2022*:

- 195: in Australia
- 51: in NSW
- 42%: vehicle collision
- 13%: hit by moving objects
- 9%: falls from height
- 9%: hit by falling objects
- 6%: trapped by moving machinery

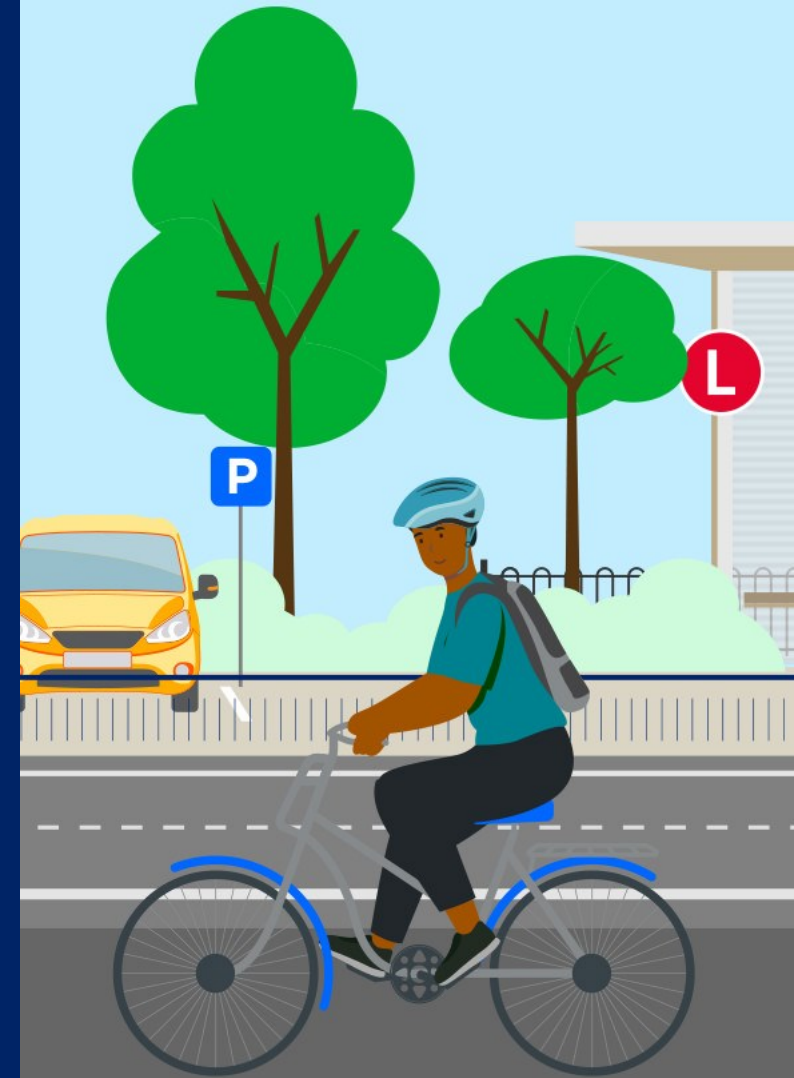
* Source: Safe Work Australia

The primary duty holder under the model WHS laws is a PCBU (Person Conducting Business or Undertaking)

A PCBU can be an employer, a sole trader, self-employed person, company or corporation, local government councils or government departments and authorities



PCBUs must meet their obligations, so far as is reasonably practicable, to ensure the health and safety of workers and other people like visitors and volunteers



What is reasonably practicable?

Likelihood of hazard or risk occurring

Degree of harm

What the PCBU knows or ought to reasonably know about the hazard

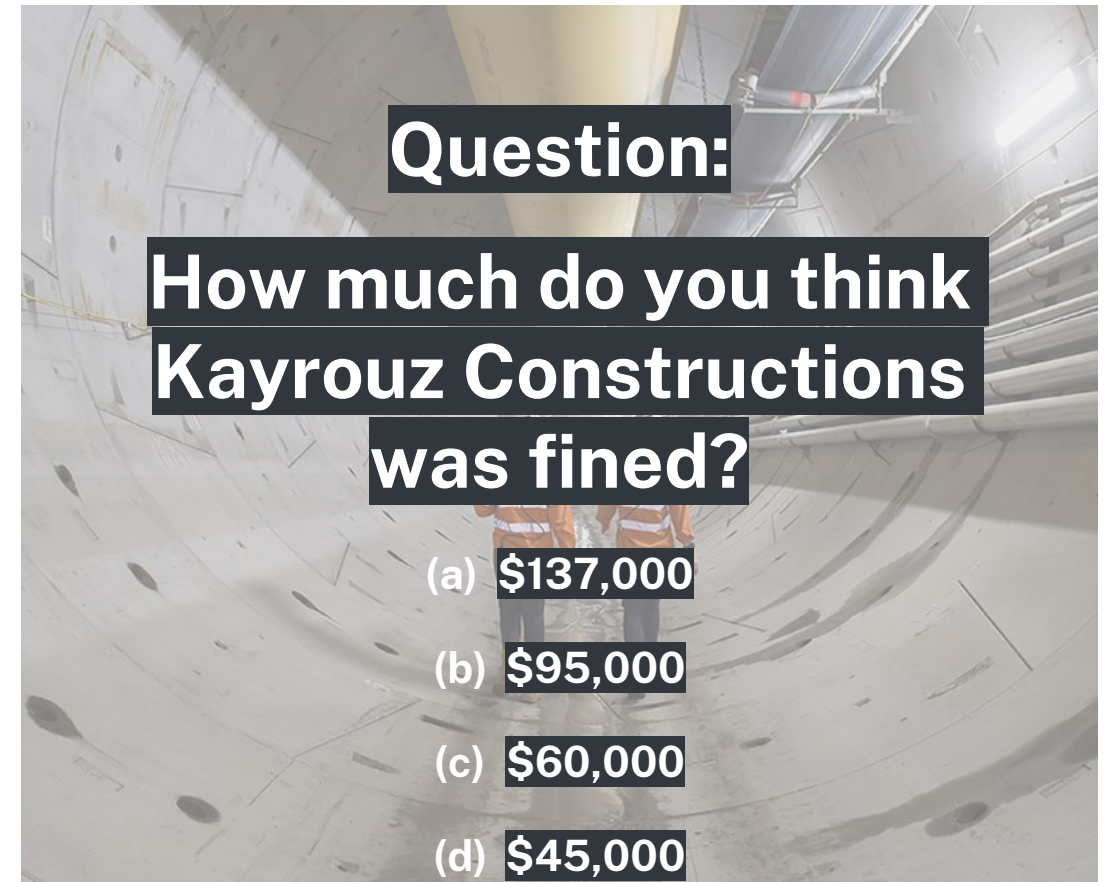
Availability and suitability of ways to eliminate or minimise the risk

Cost of the available ways – is the cost grossly disproportionate to the risk?

Duty to take steps to eliminate or minimise risks

Safe Work NSW v Kayrouz Constructions Pty Limited (No.2) [2021]

- Positive obligation to ensure the health and safety of workers and others in the workplace
- PCBUs must continually assess risks in the workplace and take steps to eliminate or minimise them
- PCBUs must be alive to changing conditions and circumstances and ensure that risks are managed



Failure to take reasonably practicable measures

Case Example

SafeWork NSW v Art Civil [2023]

Art Civil is a demolition company which was issued with a \$150,000 fine resulting from a serious injury to one of their workers. This was due to their failure to take reasonably practicable measures to eliminate or minimise the risk to his safety by:

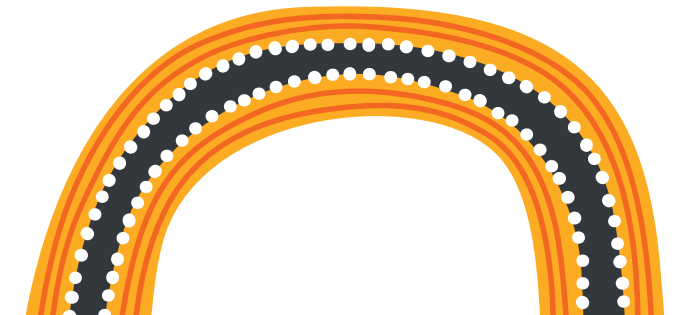
- verifying that a mesh screen was fitted on the excavator and prohibiting workers from using the excavator whilst the mesh screen was not fitted
- preventing the removal of the mesh screen from the excavator that was not authorised
- implementing and enforcing the Safe Work Method Statement (SWMS) for demolition
- providing the employee with adequate training, information and instruction in relation to the SWMS for demolition

Duty to ‘consult, co-operate and co-ordinate’ with other duty holders

SafeWork NSW v Aceline Plumbing Group Pty Ltd [2020]

- PCBUs that engage in complex work arrangements need to be aware of their work health and safety obligations, especially where it may not be clear who holds obligations with respect to their workers
- Consultation with other duty holders on the hazards, risks and control measures to navigate risks needs to occur
- Co-operation with duty holders to implement the control measures

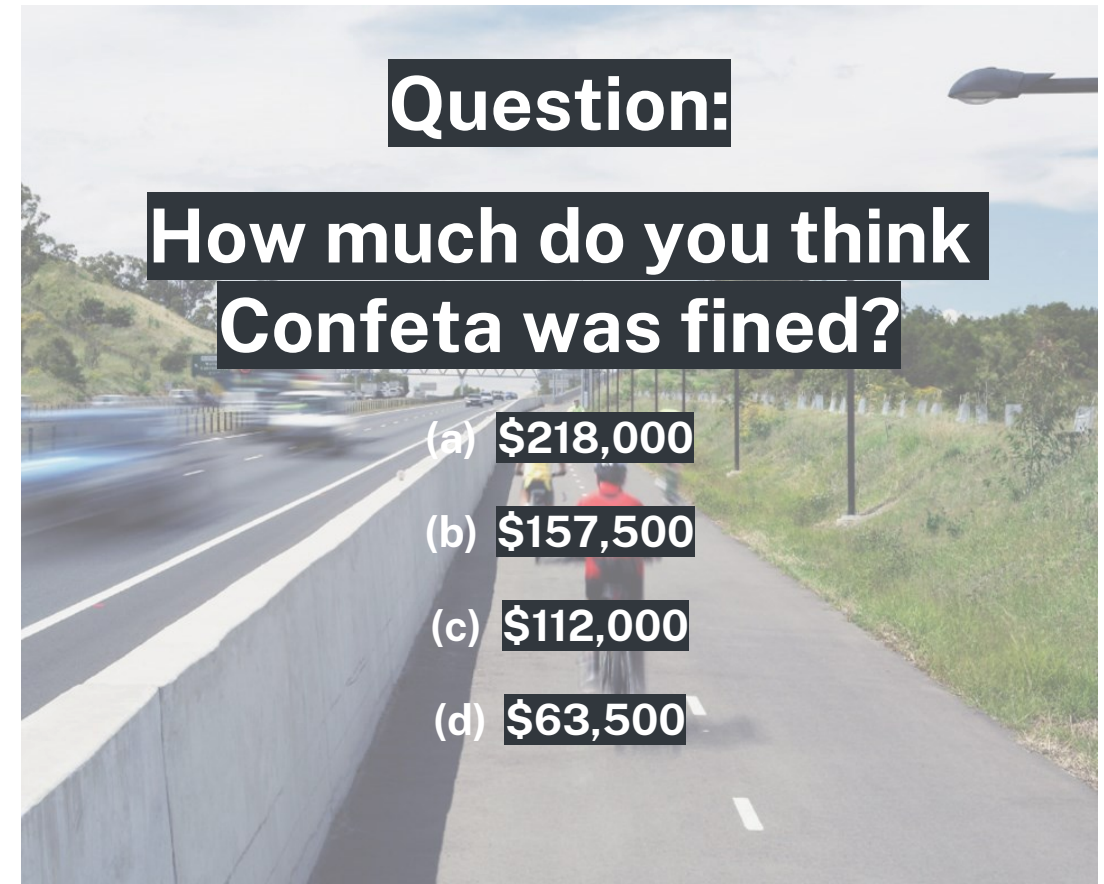
Aceline Australia was fined **\$60,000** for failing to consult, co-operate and co-ordinate with other duty holders and **\$30,000** for failing to notify SafeWork of the incident.



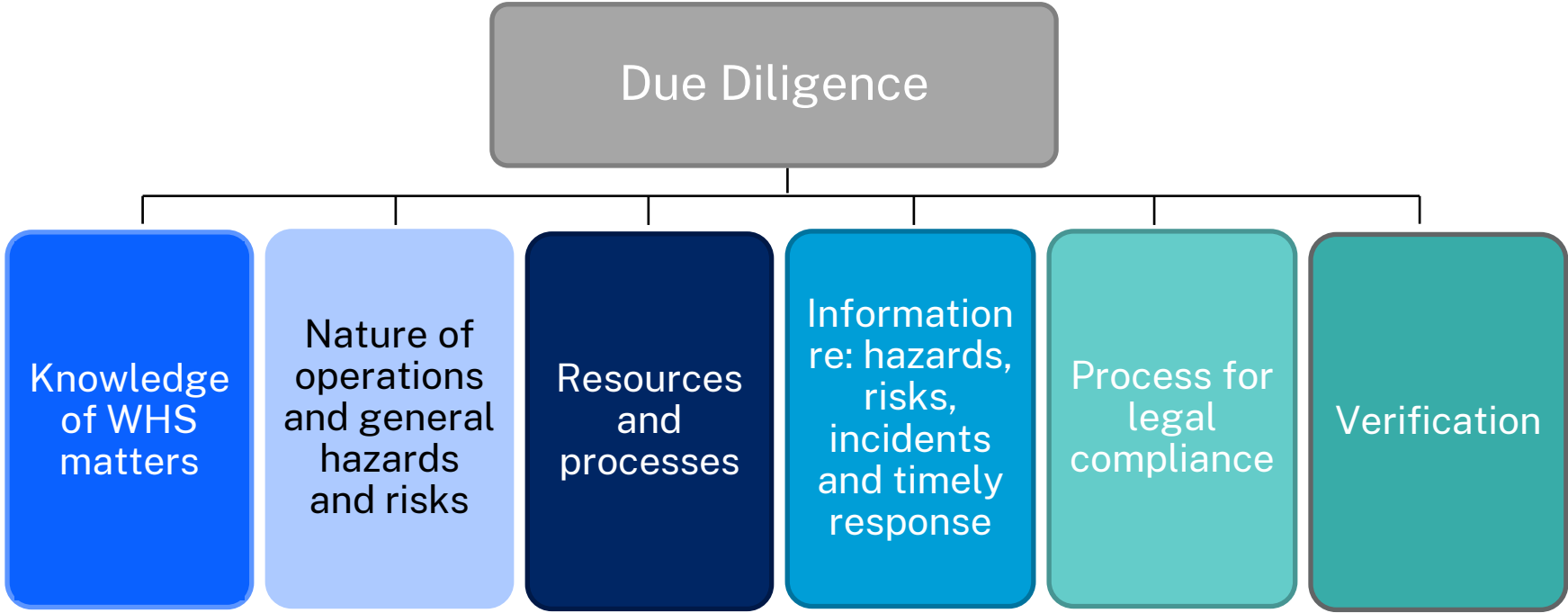
Duty to provide supervision and notify the regulator

SafeWork NSW v Confeta Pty Limited [2018]

- Required to provide adequate supervision, instruction and training
- PCBU's have a positive obligation to notify SafeWork NSW of any incidents as soon as they become aware of it through the fastest possible means
- There should be internal policies and procedures to allow incidents to be reported quickly and safely

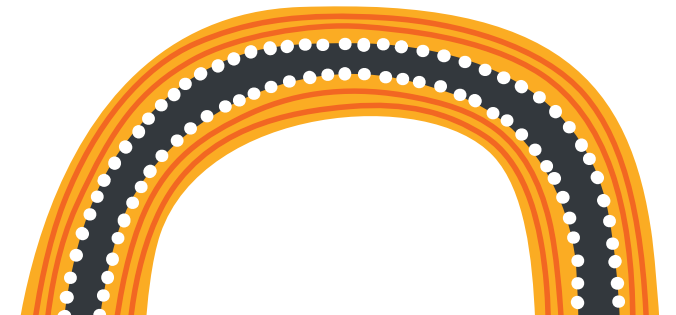


Due diligence means taking reasonable steps to:



1st Due diligence requirement for officers – up-to-date WHS knowledge

- Steps to address this requirement might include:
 - General awareness –
 - Seminars, briefings, email updates, induction and training sessions
 - Specific industry/workplace awareness:
 - Industry groups, engage with workers, obtain information about hazards and risks from a variety of sources
 - Executive discussions on WHS
 - Ensure WHS matters are regularly considered and discussed at executive meetings



Questions?