Australian Industry Group

The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia

Submission to
Commonwealth
Education and Employment
References Committee

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Ai GROUP

THE FRAMEWORK SURROUNDING THE PREVENTION, INVESTIGATION AND PROSECUTION OF INDUSTRIAL DEATHS IN AUSTRALIA

SUBMISSION TO COMMONWEALTH EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than one million staff. Our longstanding involvement with diverse industrial sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Ai Group is a member of Safe Work Australia and its sub-group Strategic Issues Group – Work Health and Safety (SIG-WHS), which had oversight of the development of the Model Work Health and Safety (WHS) Laws. We are also actively involved in consultative forums with state and territory regulators in relation to the application of safety and workers' compensation legislation.

We have ongoing contact and engagement with employers in all Australian jurisdictions on work health and safety issues, including informing them of regulatory changes, discussing proposed regulatory change, discussing industry practices as well as providing consulting and training services. We promote the importance of providing high standards of health and safety at work, and we hear from employers about their success, issues and concerns related to work health and safety.

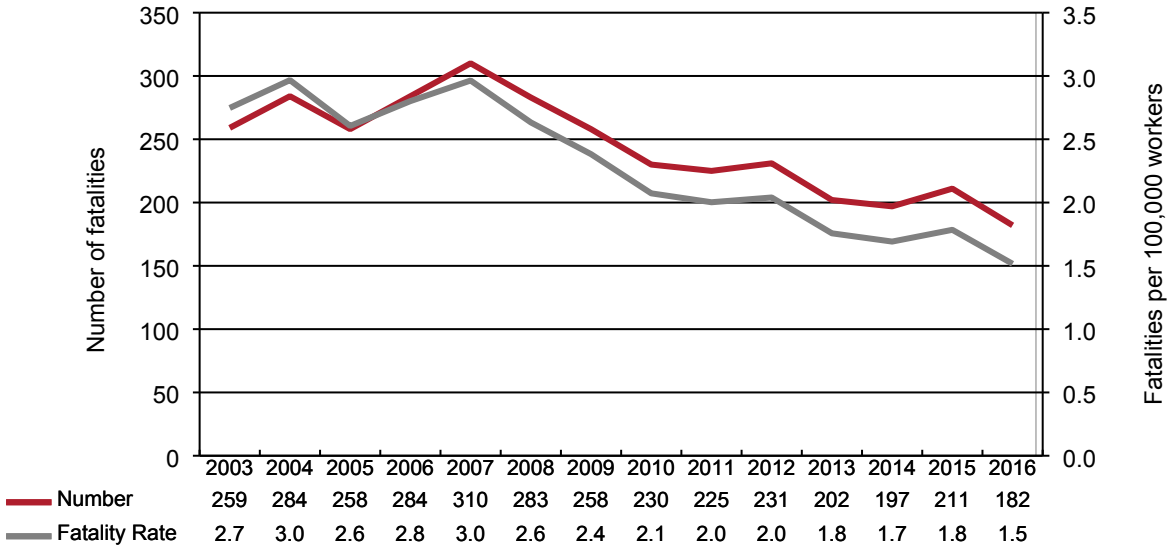
We note that there are two other reviews of WHS matters running more or less concurrently with this Inquiry: 2018 Review of WHS Laws, managed by Safe Work Australia on behalf of state, territory and Commonwealth WHS Ministers; and the review of Work Health and Safety Regulatory Framework in the Building and Construction Industry, commissioned by the Commonwealth Department of Jobs and Small Business.

It is not clear to us why all three processes are required or how they will relate to each other, if at all. The 2018 Review of WHS Laws will have the benefit of seeing the outcomes of this inquiry and the Construction review. It is hoped that, to the extent that there are any recommendations in relation to legislation, that these will considered as input for consideration by the review and not result in separate recommendations which may impact on the harmonised laws that were well considered and broadly adopted.

With this caveat, Ai Group welcomes the opportunity to make a submission to the Senate Inquiry into *the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*. However, we encourage the committee to also read the submissions to the reviews referred to above; these are now publicly available on the relevant websites.

The issue of workplace deaths is important

Safe Work Australia[1] has most recently reported that 182 Australian workers were fatally injured at work in 2016. This is 41% lower than the highest number of worker deaths recorded in 2007. The fatality rate per 100,000 workers has decreased by 49% from 3.0 in 2007 to 1.5 in 2016.



Regardless of this significant reduction over the last ten years, every work-related death is a story of deep loss and trauma for families, friends and work colleagues.

Serious claims data should also be considered to get a broader picture of WHS performance. Safe Work Australia[2] reports that there were 104,770 serious claims in 2015-16. The rate of serious claims per 100,000 workers has decreased by 9% between 2011-12 and 2014-15; the serious claims rate for 2015-16 is 9.3%, compared to 12.3% in 2011-12.

[1] Work-related Traumatic Injury Fatalities, Australia, 2016
https://www.safeworkaustralia.gov.au/collection/work-related-traumatic-injury-fatalities

[2] Comparative Performance Monitoring Report – 19th Edition
https://www.safeworkaustralia.gov.au/collection/comparative-performance-monitoring-reports

As a proxy measure for WHS performance, fatality and serious claims data has limitations. However there is no reason to doubt the trends that show that Australia has experienced improved WHS performance over the last decade.

Clearly Australia's WHS performance is improving. We can do more but not at the expense of undermining what has been working.

It is incumbent on those who run businesses, and organisations like Ai Group that represent them, to contribute to a continual dialogue about how work-related fatalities and serious injuries can be prevented.

Focusing on fatalities will not address the issue

In specific instances the facts uncovered in a fatality investigation may provide insights into how to stop that particular type of incident, in those particular circumstances, from happening again in the future. The learnings from these investigations should be shared broadly to aid prevention.

However, we cannot reduce the risk of fatalities by focusing only on incidents that result in a death; we reduce the risk of fatalities by focusing on the exposure to risks that could have serious consequences and how we can best eliminate or minimise those risks.

Penalties within the harmonised WHS laws were set after a comprehensive review of national workplace safety legal framework[3]. specifically focus on the level of risk to which a person is exposed, not on whether that exposure leads to a fatality, a serious injury, a near miss, or an uneventful day at work. This approach was strongly supported as the best way to determine the level of culpability of a duty holder, rather than focusing on the outcome.

[3] 2008 National Review into Model Occupational Health and Safety Laws First Report pp130-149
https://docs.jobs.gov.au/system/files/doc/pdf/national_review_into_model_ohs_laws_firstreport.pdf

Organisations and individuals can be prosecuted for unreasonably exposing a person to a risk; actual harm does not have to eventuate. Under the harmonised laws, large financial penalties and a prison term of up to five years can be applied if that exposure involves *a person, without reasonable excuse, engaging in conduct that exposes an individual … to a risk of death or serious injury or illness, if the person is reckless as to the risk… of death or serious injury or illness*. Similar provisions apply in Victoria and Western Australia, where the Model WHS Laws have not been adopted.

Individual workplaces can make sure they consider how to reduce the risk of death or serious injury in their organisations. Businesses and their officers have legal and moral obligations to eliminate or minimise risk in the workplace, so far as is reasonably practicable. Workers can also contribute by actively engaging with WHS issues that relate to their work; and by questioning and challenging others if they believe the work activity poses too great a risk.

Representative bodies, regulators, legislators and others focusing on the bigger picture need to consider how the external systems can assist and influence everyone in workplaces to focus constructively on WHS issues.

The challenge that faces us all is that each fatality has its own unique set of circumstances, and external observers may never be able to fully understand exactly what was going on and what went wrong to identify how the situation that led to the fatality could have been avoided.

In many scenarios, a near miss could just as easily have resulted in a fatality, if it occurred at another time; the space of minutes or seconds could mean the difference between a near miss (that no one may pay any attention to) and a fatality.

Inevitably, any discussion about work-related deaths will become emotive. Passionate people who have been directly affected by a work-related fatality want to contribute to ensuring this same experience doesn't happen to others, and they want justice on behalf of their loved one. Similar positions are evident in other public policy debates in relation to legal outcomes. These voices are valid and valuable

contributors to the debate; they make sure we all focus on the impact that a work-related death has on family, friends and work colleagues.

However, what may seem like an obvious solution to those impacted, may not be a practical and effective prevention solution with broad application across Australian businesses.

Ai Group hopes that this review will provide some practical solutions to further reduce the level of fatalities in Australian workplaces. We trust that it will be more than reflexive calls for merely increased regulation and higher penalties (both of which have been tried previously), but rather a holistic and evidence-based package of interventions going to the issue of perceiving and managing key risks across a broad range of work scenarios.

Generally, workplaces are best assisted to improve their health and safety performance by having access to clear and concise guidance to assist them to identify hazards and implement risk controls. It is also important that (1) workplace parties understand there are significant legal consequences for not taking all reasonably practicable measures to avoid exposing people to the risk of injury; and (2) there is a strong and fair compliance and enforcement mechanism behind such laws.

There is no evidence that the significant legal consequences that exist in the way of duties and penalties in the harmonised WHS regime (up to five years imprisonment and $600,000 fines for individuals and $3 million for corporations) and in the legislation of the two non-harmonised jurisdictions are inadequate to attract the attention of the relevant workplace parties, if well publicised and intelligently enforced.

It is important that publicity and enforcement are as close to the source of the thinking and behaviour that may lead ultimately to the worst outcomes – at the point of daily decision making about looking for, evaluating and managing risks. No worker goes to work each day expecting to die from the work they are doing; no business owner or manager expects someone to die at work today. The messages should be aimed at influencing the everyday behaviour in workplaces, not just focusing on the tragic but infrequent worst outcomes.

RESPONDING TO THE SPECIFIC TERMS OF REFERENCE

The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia

We note that the overarching Term of Reference focuses on *prevention, investigation and prosecution.*

It is Ai Group's hope that the inquiry will have a strong focus on prevention; regulatory investigation for the purpose of informing prevention is also an important focus for the inquiry.

A focus on prosecution and the investigation processes is important, but the real value lies in increasing the state of knowledge that can aid prevention.

On this topic, please see our response to Term of Reference (f) later in this submission.

The effectiveness and extent of the harmonisation of workplace safety legislation between the states, territories and Commonwealth

Ai Group members are generally strong supporters of harmonisation. Whilst it is argued that harmonisation is mostly only relevant to multistate businesses, many single-jurisdiction businesses also interact with suppliers and/or customers in other jurisdictions. The real channels of WHS information and learning are often from these supply chains, not from regulators or through detailed knowledge of legislation. A common language of WHS helps to send a consistent message about what needs to be done to enhance risk management and reduce the level of injury and fatality within Australia.

Throughout the development of the harmonised laws there were compromises made by all participants and, ultimately, there are some things in the Model WHS Laws that are not the preferred position of our members. However, we have continued to argue, through reviews and legislative change, that we must not lose sight of the inherent benefits of harmonisation due to jurisdictional or political pressures.

The initial adoption of the laws involved some necessary variations at jurisdictional level, as reflected by jurisdictional notes in the Model WHS Laws. These were designed predominantly to allow the Model to interact appropriately with other laws in each jurisdiction.

The unfortunate political reality was that other amendments were made when the laws proceeded through individual jurisdictional legislative processes. These amendments included, but are not limited to: union right to prosecute in NSW; a modified approach to union right of entry in SA; Qld maintaining work related electrical safety provisions in separate legislation; and some jurisdictions not adopting the mines chapter of the Regulations.

However, for many years, the integrity of the key parts of the legislation has remained largely intact; obligations of duty holders; consultation provisions; and penalty regimes. However, the recent amendments to the Qld WHS Act have created a fissure which puts at risk the collaborative approach to maintaining a harmonised system, particularly in relation to the industrial manslaughter provisions.

The inclusion in Queensland's WHS laws of higher penalties for offences that result in fatalities changes the focus of the legislation from one that is about level of risk to which people are exposed (category 1, 2, or 3) to one where the outcome becomes a determinant for the most serious offence with industrial manslaughter provisions triggered by a death in circumstances that may have less culpability than a similar incident that does not result in death. This is totally inconsistent with the risk-based focus of penalties established during the harmonisation process.

Ai Group continues to hold the position that harmonisation of WHS laws is important to Australian businesses and workers. We are pleased to see that Western Australia

is currently progressing the development of its laws. Members continue to express frustration that Victoria is relying on a very limited Supplementary Impact Assessment undertaken in 2012 to justify retention of its Occupational Health and Safety (OHS) laws, even where there are provisions of the Model WHS Act which undoubtedly increase organisational focus on risk management.

It is Ai Group's view that many of the key provisions in the WHS laws provide an increased focus on the obligations of duty holders.

- Placing the primary duty on a person conducting a business or undertaking (PCBU), rather than an employer is positive.
- Creating a positive duty on officers to exercise due diligence and clearly outlining what this means, has increased the focus of officers across all organisational sizes.
- Pre-harmonisation case law has regularly shown that multiple duty holders need to work together to address health and safety issues, but it was not explicitly stated in previous legislation. This has been addressed in harmonised laws through the duty to consult, cooperate and coordinate with other duty holders; whilst highlighting the obligation, it has been our experience that many employers do not yet clearly understand what is expected of them to meet this obligation in a practical way, considering the commercial and competitive structures in which they operate.

We note also that courts are beginning to take into account penalties applied under WHS laws in other jurisdictions when setting penalties in their own jurisdictions. There have been at least two recent cases in Queensland where the penalties applied in other jurisdictions have been used as precedent when appeals to sentencing have been made by WHSQ.

In *Williamson v VH&MG Imports Pty Ltd [2017] QDC 56* it was stated that "sentencing in respect of harmonised work safety laws in Queensland is analogous to the sentencing in federal offences by state courts", and the Court should look to relevant decisions in other harmonised jurisdictions for guidance on sentencing. The penalties applied were increased accordingly,

However, it was also stated that the penalty would not be as high as it might otherwise be for a range of reasons, including that it was the first appeal to address the issue of the harmonised national work health and safety laws. This has sent a clear message that future prosecutions should more closely consider interstate penalties.

In *Steward v Mac Plant Pty Ltd and Mac Farms Pty Ltd [2018] QLD* the appellant Judge determined that the original decision had placed too much weight on there being only a minor injury; she referred to the principles of a NSW case where it was highlighted that "the risk to be assessed is not the risk of the consequence, to the extent that the worker is in fact injured, but the potential risk arising for the failure to take reasonably practicable steps to avoid the injury occurring".

The fines were increased significantly. (We note, in passing, the conflict between the reasoning in this decision, which is consistent with the intent of the WHS laws, and the concept of industrial manslaughter under which consequence is an element of the offence).

These cases highlight that the harmonised laws are creating an approach which should see more consistency of the application of the laws across jurisdictions and ensure increased consistency of decisions and penalties.

Jurisdictional issues surrounding workplace investigations which cross state and territory boundaries. Issues relating to reporting, monitoring and chains of responsibility between states, territories and the Commonwealth.

It is Ai Group's view that these two terms of reference are best addressed by the Regulators who understand the cross-jurisdictional issues they are facing. However, we do have some general observations about consistency of expectations and enforcement approaches.

During our consultations in preparation for the 2018 Review of WHS Laws we spoke to many of our members specifically about harmonisation and its operation. We regularly received feedback from employers that their biggest frustration with WHS laws was inconsistent expectations across jurisdictions, and between inspectors within individual jurisdictions.

We recognise that this level of inconsistency may create issues for achieving a sharing of information across jurisdictions and for cooperative investigations across jurisdictional boundaries.

Any move towards a fragmented approach to the application of penalties would most likely exacerbate this issue. It would also weaken the sentencing consistency outlined above.

Safety implications relating to the increased use of temporary and labour hire workers

Australia is not experiencing an increase in the level of temporary and labour hire workers.

Ai Group is regularly required to highlight to a range of commentators that there is no evidence to support the view that casualisation is increasing.

We draw attention to The Fact Check released by www.theconversation.com.au in

March 2016, which concludes that "The Ai Group is correct. Its assertion that the level of casual employment has not increased in Australia for the past 18 years is supported by ABS data."

In a recent media release, dated 21 March 2018, Ai Group presented the following information in response to ACTU assertions on these issues:

ACTU Assertion	The Facts	
1	That casual employment is increasing in Australia	ABS statistics show that casual employment has been stable in Australia for the past 20 years at about 20% of the workforce.[1]
2	That labour hire is increasing in Australia	ABS statistics show that approximately 1% of all employed persons across Australia are labour hire employees.[2] This remains a very small proportion of the workforce.
3	That independent contracting is increasing in Australia	ABS statistics show that self-employed independent contractors make up about 8.5% of employed people. This proportion has decreased from 9.1% in 2014. By far, the biggest group of independent contractors are engaged in the construction industry (e.g. plumbers and electricians).[3]

[1] ABS Catalogue 6333.0 - Characteristics of Employment
[2] ABS Catalogue 6333.0 - Characteristics of Employment
[3] ABS Catalogue 6333.0 - Characteristics of Employment

In circumstances where workers may be reluctant to speak up about WHS issues, organisations and officers are missing the opportunity to identify and fix the risks that may lead to serious injuries and fatalities. Later in this submission we consider how due diligence activities can be increased in workplaces. If this approach is effective

more cooperative approaches to consultation may also be achieved; genuine consultation should reduce the fears associated with speaking up.

In the context of labour hire the involvement of two PCBUs has the potential to improve health and safety outcomes. We are aware of a number of situations where the labour hire provider, with sophisticated systems and a good understanding of health and safety, has worked with a host employer to improve that organisation's approach to health and safety. This benefits both organisations, the labour hire worker and other workers within that workplace.

It may be more useful to recognise the contribution to healthy and safe workplaces that can be made by good labour hire providers. Their insights can be used to help others to improve and to demonstrate what is reasonably practicable; this benchmark can then be utilised to address the behaviour of any labour hire organisations that need a greater focus on WHS management.

It may also be helpful to analyse serious claim and fatality data to determine whether labour hire workers are over, or under, represented in the statistics. In doing so it would be necessary to exercise caution, as it is suggested that workers are at greater risk of injury when they are new to a workplace; labour hire workers may have an increased level of risk due to this factor, irrespective of the manner in which they have been engaged.

The role of employers and unions in creating a safe-work culture

The key parties that should be working together to create a *safe-work culture* are employers and their workers, as emphasised by the duties in WHS legislation.

Unions can play a role in sharing their knowledge about health and safety with workers and employers. However, they need to be careful about the way in which they engage so as not to disempower the workers, elected HSRs or employer from undertaking their role in the workplace as reflected in the legislative duties. Inappropriate involvement by unions in health and safety in the workplace runs a risk

of workers disengaging and employers thinking that their workplace will be healthy and safe if they just do what the union is telling them, but nothing more.

There are also situations where unions utilise health and safety issues, which may or may not be significant or legitimate, to access the workplace for other purposes. When this occurs employers, and some workers, are rightly cynical about their real commitment to and interest in the health and safety of the workplace and their members.

As stated by Commissioner Cole in the 2003 Royal Commission into the Building and Construction Industry: "*Occupational health and safety is often misused by unions as an industrial tool. This trivialises safety, and deflects attention away from real problems"*[4].

In more recent times, the 2015 Heydon Royal Commission into Trade Union Governance and Corruption[5] also identified the problem. In his final report Commissioner Heydon said:

> "*79. Safety on work sites is paramount. No rational person would dissent from that view. It does not follow from that view, and it is not presently the law, that union officials should be permitted untrammelled access to work sites to ensure that they are safe. To say that safety is paramount merely begs the question of how it should be regulated.*
>
> *80. The ACT CFMEU and CEPU case studies strongly suggest that the trust that underpins the rights conferred on permit holders has been abused. The scheme has fallen into disrepute in the sense that participants in the industry in the ACT believe that the CFMEU exercises its rights of entry to apply industrial pressure, and in particular pressure to seek to ensure that all industry participants are signed up to CFMEU EBAs. For example, a scaffolder, in the course of explaining why he agreed to sign a CFMEU EBA, said that he felt that if he didn't the CFMEU would 'maybe go around the builders saying, recommending to use someone else or finding safety issues for an excuse to get on to sites'. There was other evidence to similar effect.*
>
> *81. The threat made by the Secretary of the ACT Branch of the CFMEU to the principal of a building company in 2014 spells out the approach adopted:*

[4] Royal Commission into the Building and Construction Industry, February 2003, Final Report, Volume 6.

[5] Royal Commission into Trade Union Governance and Corruption, December 2015, Volume 5.

> *'If you don't sign up [to a CFMEU EBA], you will find you can't get access to a cement pour, there will be trades you can't access – you won't be able to build … there will be all sorts of authorities and officials visiting to check you over and close you down'.*

82. *Statements such as this indicate that a perception that the CFMEU uses safety as an industrial tool is well justified.*

83. *There were examples of these apprehensions in other case studies. Part of the strategy implemented by the Thiess John Holland Joint Venture on the Eastlink Project (one of the AWU case studies) was to avoid non-working delegates because of their tendency to 'create often bogus safety issues'. In the Maritime Employees Training Fund case study, an employer was prepared to make large payments to a union controlled training fund because of a fear that fictitious industrial issues ('fabricating issues that are maybe not really there'), some of which were related to safety, would be raised.*

84. *Concerns from industry participants of this kind are rationally based. The conduct of officials in the case studies referred to above reveals a lack of motivation by genuine safety concerns and defeats the purpose for which rights of this kind are conferred."*

Unions can assist in the development of a *safe-work culture* by genuinely engaging with workplaces on real health and safety issues and by supporting workers to more effectively develop positive interactions with employers. They should also actively seek to negate the effects outlined in the quoted references above by their behaviour, governance, processes and culture.

Further, it is important to recognise that the majority of workplaces do not have a union presence and are unlikely to ever have a union presence. This is one of the reasons why the focus of the inquiry should not be on how third parties can contribute to a safe-work culture, but on how employers and workers can create a *safe-work culture*.

The effectiveness of penalties in situations where an employer has been convicted of an offence relating to a serious accident or death.

We have widened our response to this term of reference to address convictions of employers, officers, workers and others.

We believe that the issue should be about the effectiveness of penalties in situations where a person has been exposed to a risk of serious injury or death, not just where a death has occurred.

In harmonised jurisdictions, every person who interacts with a workplace has the potential of being prosecuted under WHS laws for a category 1 (reckless conduct) offence. The maximum penalty is five years' imprisonment, with potential fines of $3m for a corporation, $600k for an officer and $300k for others.

It also is becoming clear that work-related fatalities can become the subject of criminal manslaughter charges. There have been highly publicised successful prosecutions of officers for manslaughter in South Australia (October 2015) and Queensland (March 2018), with custodial sentences of 12½ years and 7 years respectively. Charges have recently been laid against workers under general manslaughter provisions in the ACT.

Influencing the behaviour of those that control businesses and others that can have a significant influence is complex and requires a range of solutions. We conclude this part of our submission with consideration of some alternative thinking about how to improve WHS in the workplace.

The Australian Public Service Commission has produced a paper[6] that considers a range of strategies for public policy makers to influence behaviours. The paper recognises that changing the behaviour of human beings is a complex scenario and must employ a range of diverse tools and strategies.

[6] Changing behaviour: A public policy perspective: Last updated 14 Dec 2015
http://www.apsc.gov.au/publications-and-media/archive/publications-archive/changing-behaviour

When considering the impact of penalties on behaviour, it may be of value to consider the concept of Behaviour Based Safety, and how the principles can be applied to changing the behaviours of those who make decisions in a business.

Behaviour Based Safety has a mixed reputation, but it is mostly criticised by unions as an approach which focuses on lower level controls, and on blaming the worker. It is true that in some cases it has been utilised this way. However, when we consider the concept in its proper form, it provides good insight into the impact that possible future punishment may have on changing behaviour.

The ABC theory behind Behaviour Based Safety is simple:

***A**ntecedents* are designed to initiate behaviour – training, awareness, information, legislation

***B**ehaviours* occur

***C**onsequences* arise from these behaviours

Consequences that are soon, certain and positive are more likely to reinforce that behaviour: the chocolate tastes good; I will have some more.

Consequences that are later, uncertain and negative are less likely to reinforce the desired behaviour – the chocolate may cause me to put on weight which may have long term health effects; the chocolate still tastes good, I will worry about that tomorrow and have some more now.

In the context of influencing the behaviour of officers and others who are integral in making health and safety related decisions in the business, the same concepts apply. If we rely too heavily on post-incident prosecutions and penalties to drive behaviour change, we are relying on later, uncertain and negative consequences; very poor influencers of behaviour.

Any other related matters.

Potential penalties must be fair and balanced

Penalties, and the processes under which they are applied, that may be applicable to business owners and officers must be seen as fair, with appropriate protections and defences. Employing people, including in industries that have significant inherent hazards, is economically and socially useful exercise that is otherwise encouraged, provided it is done with a risk management approach.

The level of penalty applied will be related to the culpability and a business owner or officer may receive a higher penalty due to higher culpability. The current approach which allows for standard maximum jail terms for reckless conduct and criminal manslaughter, irrespective of the status of the individual in the workplace, seems to provide the requisite sense of fairness and balance.

Educating business owners and officers

Business owners and officers need to clearly understand their WHS obligations. They need to recognise that when it comes to WHS breaches they are not individually protected by the corporate veil that may protect their personal financial assets in the case of a business failure. They need to understand how to manage risks and how to exercise due diligence. They need to understand that they can be prosecuted for a failure to do all that is reasonably practicable and that recklessness in relation to serious risk can lead to a jail term, for any individual responsible for or involved in the work.

Importantly business owners and officers should understand that they can be prosecuted even if there has not been an incident. However, this knowledge will not in itself lead to improved WHS performance.

Business owners and officers need clear guidance on what they need to do, and regulators may need to be more proactive in addressing officer due diligence during inspectorial activities, using the legislative tools that are available under the harmonised model laws. If it is found during a workplace visit that there is a significant risk in the workplace, inspectors can and often do issue a notice requiring the risk be addressed (improvement notice) or a notice requiring that the work cease until the risk is addressed (prohibition notice).

It would seem appropriate, if significant risks are identified, that the inspector may also want to meet with officers in the business to understand what they are doing to exercise due diligence, as the existence of the risk may indicate that they are not doing so. If no due diligence action is currently being taken, it would be extremely beneficial to provide them with the necessary information and guidance to assist them to commence that process, and understand the legal requirement to do so even in the absence of an incident. In some circumstances it may also be appropriate to issue an improvement notice requiring the officers to demonstrate their approach to due diligence at a later visit.

Whilst business owners and other officers may not welcome this focus in the first instance, it would be a much better outcome for all involved if an inspector driven focus on due diligence led to a better practical understanding of WHS obligations and to reduced risk in workplaces.

Conclusion

In summary, it is Ai Group's view that the range of offences and penalties for workplace safety breaches is adequate. Regulator and inspectorate activity that focuses up front on the key obligations to exercise due diligence, have a risk management system and to consult with workers will have the greatest impact on further preventing serious injuries and fatalities.

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