

SUMMARY

This Compliance Advice provides important information about:

- Obligations to undertake audiometric testing when workers are exposed to noise, and information about how to manage noise in the workplace.
- Amendments to the Queensland Work Health and Safety Regulations, including new on the spot fines.
- Progress of the Industrial Manslaughter Bill in South Australia.
- The development of nationally consistent legislative provisions for explosives.
- New Safe Work Australia documents about Australian and Other Standards and Stevedoring.

Noise in the Workplace

Audiometric testing

The Model Work Health and Safety (WHS) Regulations include a requirement for audiometric testing (to identify hearing loss as an indicator of failure of noise controls) to be undertaken if:

“a worker is frequently required ... to use personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard for noise ... the testing is to occur within 3 months of the worker commencing work; and at least every 2 years.”

SafeWork NSW has recently announced a further extension to their transitional arrangements that were to expire on 31 December 2016. Employers in NSW will not be required to undertake audiometric testing, as specified in the Regulations, until at least 1 January 2018.

With the exception of Queensland, all other jurisdictions with WHS laws have adopted the requirements of the Model WHS Regulations.

Although QLD does not have audiometric testing mandated through regulations, the Code of Practice still recommends, at section 5.7, the adoption of the same testing regime.

The jurisdictions that have not adopted the WHS laws also have requirements in place for audiometric testing.

In Victoria the Occupational Health and Safety regulations state that audiometric testing must be organised if the employer is required to provide hearing protection to protect against noise above the exposure standard.

In Western Australia, the Occupational Safety and Health legislation does not specify any requirement for audiometric testing. However, the *Workers' Compensation and Injury Management Act 1981* requires audiometric testing to be undertaken if a worker is employed in a *prescribed workplace*. Information about *prescribed workplaces* can be found [here](#).

Eliminating or minimising noise exposure in the workplace

All Australian jurisdictions require employers to ensure that workers are not exposed to excessive noise levels. These are defined as more than 85dBA_{8h} (decibels averaged over an 8 hour period); or a peak noise level of 140dBC (decibels).

When managing the risk of noise in the workplace employers are required to do all that is reasonably practicable to eliminate or reduce noise by applying the following control measures in the order they appear below:

- Eliminating the noise producing equipment or task;
- Substituting quieter plant or equipment, isolating people from the source of the noise, or providing engineering controls;
- Implementing administrative controls;
- Providing personal protection equipment and ensuring that the protection is used correctly and maintained to ensure its effectiveness.

Administrative controls (e.g. job rotation) and personal protective equipment (i.e. hearing protection) can only be utilised as control measures if higher level controls have been implemented so far as is reasonably practicable and noise levels continue to be above the exposure standard.

If there is a need in your workplace for voices to be raised in order to have a conversation at a distance of one metre your noise levels are probably above the legislated noise levels.

If noise might be an issue in your workplace, Ai Group's specialist consultants are well equipped to assist you identify and understand your noise levels and help you to develop appropriate control measures.

If you would like to discuss your needs in this area contact our consultants at safety.services@aigroup.com.au.

Queensland Amendments to WHS Regulations

In December 2016 [amendments](#) were made to the Queensland Work Health and Safety (WHS) Regulations.

The amendment with the potential to have the most impact on members is the introduction of 18 new **infringement notice offences** for existing work health and safety obligations in risk areas such as asbestos, hazardous chemicals and construction work.

A full list of the WHS provisions that can attract an infringement notice, and related fine, can be found in Schedule 1 of the [State Penalties Enforcement Regulation](#).

The amendments also implemented the changes to **labelling requirements for hazardous chemicals** that were advised to members in Compliance Advice [NAT 025/16](#), dated 9 December. End users do not have to relabel hazardous chemicals that were in the workplace at 31 December 2016, as long as they are compliant with previous labeling requirements.

A list of Acts has been prescribed to provide certainty as to when **disclosure of confidential information** is considered necessary for the administration or enforcement of another Act. The list has been inserted into the WHS Regulations, the Electrical Safety Regulations and the Safety in Recreational Water Activity regulations.

Minor technical amendments were also made to the **Electrical Safety Regulations**.

South Australia Industrial Manslaughter Bill

Members have previously been advised that a private member's Bill was introduced into the South Australian parliament by Greens Member, Tammy Franks, in July 2015 to amend the *Work Health and Safety Act 2012* (WHS Act) to create a specific offence of industrial manslaughter. See Compliance Advice [NAT 06/16](#).

In 2016 the Bill was referred to the SA Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation.

Ai Group made a [submission](#) on behalf of members, objecting to the Bill, and appeared at the public hearings.

The [Report of the Parliamentary Inquiry](#) was released late in 2016.

The recommendations of the Committee are:

Recommendation 1

- The Director of Public Prosecutions and the Crown Solicitor establish a protocol for ensuring that due consideration is given to prosecuting under the *Criminal law Consolidation Act* where it is appropriate to do so.
- Any such protocol should not result in prosecution delays for breaches of the *Work Health and Safety Act*.

Recommendation 2

- If an individual is charged under the *Criminal law Consolidation Act* following an industrial fatality, the Crown Solicitor should still give due consideration to charging the PCBU [person conducting a business or undertaking / employer] under the provisions of the *Work Health and Safety Act*.

Recommendation 3

- Based on evidence presented to the Committee, Members maintain that there are adequate legal systems in place to deal with industrial deaths. On this basis the Committee does not support the proposed amendment to the *Work Health and Safety Act*.

Tammy Franks MLC has since stated on her webpage "... we understand that at this point we have exhausted our current options to push for this particular legislative reform ... The Greens will write to the Minister for Industrial Relations and ask his office to act on these particular recommendations."

During the course of the Committee's considerations a South Australian owner of a trucking company was prosecuted for manslaughter, and jailed (originally for 12 years, reduced on appeal to 10 ½ years, with a non-parole period of 7 years, 5 months).

In this case a truck driver died in an accident caused by faulty brakes; evidence indicated that the business owner had previously been advised of the faulty brakes and had taken no action to fix them.

This prosecution illustrates that specific industrial manslaughter provisions are not required to be inserted into WHS laws. News reports about this case can be found [here](#).

Safe Work Australia

Explosives

Ministers have recently approved the [Decision Regulation Impact Statement for Explosives Regulation in Australia](#) (DRIS).

The focus of the DRIS was to take action on four key areas where it was identified that national consistency would be of benefit:

- Definition explosives
- Licensing
- Authorisations
- Notifications

Safe Work Australia has commenced work to progress these outcomes. The current work plan would see draft provisions approved by Safe Work Australia members in June 2017, after which they would be presented to Ministers in mid 2017, for agreement and local implementation.

Australian and Other Standards

Safe Work Australia has recently released an [Information Sheet](#) which explains the status of Australian and Other Standards within Work Health and Safety (WHS) Laws.

The Information Sheet includes a list of all the Standards that are referenced in the Model WHS Regulations (there are no references in the Act).

Whilst the Information Sheet refers specifically to the WHS laws, it is also a useful reference document for Victoria and Western Australia where the Model WHS Laws have not been adopted.

Stevedoring

The [Code of Practice for Stevedoring](#) and the supporting Decision Regulation Impact Statement has now been published on the Safe Work Australia website.

Do you require further assistance?

For information or assistance, please contact **Ai Group's Workplace Advice Line** on 1300 55 66 77.

For information about our safety and workers' compensation consulting and training services, contact:

Consulting Services

Trinette Jaeschke
0400 282 477

Training and Events

Seema Khatri
0428 907 838



Tracey Browne

**Manager – National Safety & Workers'
Compensation Policy and Membership
Services**