

Australian Industry Group

South Australia

## Transforming Work Health and Safety Performance

**Response to**  
Discussion Paper issued by the  
Attorney General's Department

**30 APRIL 2015**

**Ai**  
GROUP

**GOVERNMENT OF SOUTH AUSTRALIA  
ATTORNEY GENERAL'S DEPARTMENT**

**DISCUSSION PAPER  
TRANSFORMING WORK HEALTH AND SAFE PERFORMANCE**

**INTRODUCTION**

The Australian Industry Group (Ai Group) is Australia's 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 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We intrinsically appreciate the challenges facing industry and Ai Group remains at the cutting edge of policy debate and legislative change, providing vocal advocacy for changes to workplace laws that will allow employers to run their businesses more effectively. Our deep experience of industrial relations and workplace law positions Ai Group as a leading advocate on behalf of enterprises large and small across Australia.

We employ more than 300 staff who passionately seek to keep members abreast of best practice and compliance. Our workplace lawyers work hard to protect the interests of Australian businesses every day, minimising the risks and costs associated with employing people. And when it comes to safety, we know the importance of an industry-led approach – not only are we a key player in the regulatory debate, we also offer practical support to help companies improve their safety performance.

Ai Group welcomes the opportunity to respond to the discussion paper issued by the Attorney General's Department *Transforming Work Health and Safety: How can we improve the effectiveness of our regulator?*

## FEEDBACK ON DISCUSSION PAPER

Ai Group supports the two key strategies for preventing work injuries: a strong enforcement and compliance regime; and a comprehensive education and support service.

The document outlines *What we know* about key stakeholders in the work health and safety context (page3). Ai Group agrees that employers want to be clear about their responsibilities; they do want clear guidance and access to work health and safety education and support services. However, along with unions, employers also want a strong and effective regulator which has the respect of both workers and employers.

A strong and fair regulator should result in employers who are compliant with the laws being confident that the businesses they are competing with are being held to the same standards as they are; thus ensuring that safety short-cuts do not lead to an unfair short term competitive advantage for those breaching the law.

However, we are not convinced that this can only be achieved by separating these two activities into separate organisations.

It is less than 12 months since the restructure of SafeWork SA resulted in the organisation having separate compliance and community engagement directorates.

It is Ai Group's view that the new approach established by this restructure should be allowed to further develop, with a formal evaluation of its effectiveness taking place in the future. This would allow the concept of separate compliance and education teams to be assessed before a major inter-organisational restructure occurs.

## **Areas of concern associated with the proposed further separation of activities**

### ***Utilisation of scarce resources***

SafeWork SA has limited resources to provide the range of education and enforcement activities required to achieve the key objective of reducing workplace injury and illness through reducing the risks that are present in work. Whilst the resources are contained within the one organisation it is relatively easy to share the specialist knowledge and skills between the education and compliance directorates. This will become more difficult if these skills are located in separate organisations.

### ***Consistency of education and compliance***

Within any organisation it is difficult to achieve consistent advice about a particular issue. Across separate organisations this becomes even more difficult.

Ai Group is concerned that employers may receive, and act on, advice from the education organisation which is later found to be inconsistent with the compliance organisation.

### ***There is no clear line between advice and compliance***

It is Ai Group's view that, when interacting directly with an individual employer, inspectors will generally find that there is not a clear line between advice and compliance.

From an employer's perspective, it would be unacceptable for an inspector to take compliance action (in the form of issuing an improvement notice) without providing advice about how the employer may be able to rectify the issue identified by the inspector.

In the context of scarce resources, considered also above, it would seem to be a lost opportunity if an inspector was not able to provide general advice about WHS (work health and safety) obligations during their visit.

### ***Response of an “educator” if there is a serious breach***

It would not be appropriate for a WHS educator employed by the government to not take action if they identified a serious breach of WHS laws and practice. If they do not have the powers of an inspector, to issue an improvement notice or prohibition notice, it is likely that they will respond by referring the issue to the compliance organisation.

This will lead to unnecessary delay in dealing with a serious issue. It will also damage the credibility of the educator who has attended the workplace to “help”, and ultimately refers the issue to the compliance organisation.

### ***Compliance activity should not be viewed as punishment***

On page 4 of the discussion paper it is stated that “... many employers fear asking SafeWork SA for help because a visit from an inspector may lead to compliance action against them”.

In most circumstances compliance activity involves the issuing of an improvement notice which identifies the issues that need to be rectified and, hopefully, provides some guidance on how to address the issue.

Whilst some employers view this as a punishment, it is actually “clearly documented advice” that also provides an opportunity for the employer to challenge that advice through internal review processes.

Separation of the roles of educator and regulator risk perpetuating the perception that inspectors should be feared, rather than respected and trusted.

### ***Specific feedback on the proposal***

The proposed structure, depicted on page 5 of the discussion paper, is accompanied by some specific questions that will be addressed in this section.

It is proposed that ReturntoWork SA could be the educator in all things work health and safety, workers’ compensation and recovery / return to work. The regulator would be involved in enforcing the requirements for that same range of activities.

It is Ai Group's view that there is some merit in an individual inspector being able to provide advice and ensure compliance with both the WHS and RTW legislation. However, as outlined above, it is our view that it is important for the expertise of educator and compliance (whether it be WHS or RTW) be contained within the one organisation.

Further, it is difficult to see how the proposed regulator's role in workers' compensation and RTW would interact with: ReturntoWork SA's role in managing the activities and performance of the Agents; and the Agents role in assisting employers and worker to comply with their obligations.

A question is asked as to whether the licensing functions could be transferred to Consumer and Business Services. This is a difficult question to consider.

In the first instance it can be argued that licensing is largely an administrative requirement that works within clear guidelines established by the regulations, and other internal policies and procedures.

However, there is a compliance aspect of licensing, which includes the ability of the regulator to cancel licences for breaches of requirements under the law; this is particularly important aspect in relation to activities such as asbestos removal. In addition, there are some very specific licenses that require regulator involvement through the assessment and oversight phases, such as major hazard facilities.

It may not be appropriate to transfer all licensing to Consumer and Business Services. If the administrative role is transferred, there would need to be very clear lines of interaction that took into account what can be a specialised activity of licensing.

## **In conclusion**

Ai Group supports the statement on page 6 of the discussion paper that outlines the need for a system in which "employers, workers and the community know who to turn to if they need help in relation to the prevention of workplace injuries; and who to turn to if they require access to strong enforcement of the laws and justice if the laws have been breached".

We also support the view (with modification), expressed on page 4, that there should be “a modern, flexible and responsive regulator that [supports workplace parties to prevent] workers getting injured and meets the needs of twenty first century workplaces and of those doing business and working in South Australia.

However, it is our view that this can be achieved through the ongoing development and enhancement of the current structures that exist for SafeWork SA and ReturntoWork SA.

### **Moving Forward**

Whichever approach the government decides to adopt, Ai Group will be keen to work with the government and the various directorates or organisations to make our contribution to achieving the best mix of WHS education and enforcement within South Australia, to make our workplaces safer and more productive.

### **Contacts:**

If you wish to discuss our submission please contact one of the following Ai Group personnel:

Stephen Myatt  
Director, SA

(08) 8394 0000  
0419 818 048  
[stephen.myatt@aigroup.asn.au](mailto:stephen.myatt@aigroup.asn.au)

Tracey Browne  
Manager, National Safety and Workers' Compensation  
Policy and Membership Services

(03) 9867 0255  
0438 207 799  
[tracey.browne@aigroup.asn.au](mailto:tracey.browne@aigroup.asn.au)