

Australian Industry Group

Work Health and Safety  
(Notification of Next of Kin)  
Amendment Bill 2017

**Submission in response to**  
Tabling of the Bill in the  
Parliament of South Australia

**AUGUST 2017**

**Ai**  
GROUP

**WORK HEALTH AND SAFETY (NOTIFICATION OF NEXT OF KIN)  
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**SUBMISSION IN RESPONSE TO  
TABLING OF BILL IN THE  
PARLIAMENT OF SOUTH AUSTRALIA**

**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 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.

Ai Group is a member of Safe Work Australia (SWA) 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 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 been actively engaged in supporting the effective implementation of the WHS laws in most states and territories of Australia, including South Australia, and now New Zealand.

We have ongoing contact and engagement with employers on workplace 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 them about their success, issues and concerns related to workplace health and safety.

It is in this context that we make our submission in relation to the *Work Health and Safety (Notification of Next of Kin) Amendment Bill 2017 (the Bill)*.

Ai Group is aware of the tragic circumstances that have led to the development of this Bill. In circumstances where a worker is seriously injured at work it is extremely important that relevant family members are advised so that they can support the injured worker. In circumstances where the injury leads to death, there is an imperative to achieve early contact.

Ai Group acknowledges that a Person Conducting a Business or Undertaking (PCBU) has a moral obligation to initiate actions to ensure that the family of an injured worker is contacted if that worker is not in a condition to make their own decisions about notification. This obligation is to ensure that the contact occurs, not necessarily to do it themselves. In many circumstances this would be best done by police or other emergency services who are trained in this work, rather than a PCBU who may be distraught and have no skills to make the notification in an appropriate manner.

What the community would expect is that notification take place in a timely and appropriate way, not that it occurs merely because an employer feels they have to do something, anything, to meet a legal obligation. It is very easy to foresee circumstances where a notification made pursuant to this proposed law attracts public criticism because of its inappropriate and insensitive delivery, rather than non-delivery.

We believe that this Bill will place a significant and unfair burden on employers, in relation to injuries which are not life-threatening or serious, without achieving the outcome of quicker notification in the case of serious injuries. At the same time, we believe that if the Bill were to proceed in its current form, it would create unintended negative outcomes for PCBUs and injured workers and their families.

It is Ai Group's overarching view that a PCBU would not have the right to share information about a person's status with other people, except in circumstances where the worker was not capable of doing so, unless the worker had provided their express permission to do so.

## **The bar is set too low**

The Bill states that the PCBU must take all reasonable steps to notify next of kin if there is ***prescribed medical treatment***, which is defined at 39A(6) as:

- (a) the death, serious injury or illness of the person; or
- (b) any other incident that results in the person requiring –
  - i. Medical treatment (other than superficial or minor medical treatment); or
  - ii. Medical attention from ambulance or other emergency services

The circumstances in (b) are very broad and would capture a range of relatively minor injury types, which could result in the following negative outcomes:

- A PCBU may breach the privacy of a worker by advising their next of kin about a situation that the worker does not want to share.
- A PCBU may unnecessarily panic the next of kin by making such a call; these calls would normally not be made unless the person was seriously injured and unable to make a phone call for themselves.

A related concern is that *incident* is not defined in the Act, although it is linked to the words “arising out of the conduct of the business or undertaking”. If a PCBU calls an ambulance because a person is experiencing heart pain, it would be unlikely that the PCBU could immediately ascertain whether this arose out of the work. PCBUs wishing to ensure they meet their obligations may find themselves in conflict with the person if they do not want their next of kin to be contacted.

## **PCBUs maintain information about emergency contacts, not next of kin**

PCBUs ask workers to provide emergency contact details; workers expect this to be used in an emergency, not for the purposes of notifying another person that they have received medical treatment or attention.

Whilst these details would generally be the next of kin, there are several circumstances where this would not be the case: a person whose family lives overseas may nominate their flatmate; a single mother may nominate a friend who would be able to pick children up from school; a person estranged from their next of kin may nominate a neighbour. Previous nominations that have not been updated may no longer be appropriate.

If the obligation to notify next of kin was enshrined in law, PCBU's may put additional requirements on workers to advise whether their emergency contact is also their next of kin and oblige workers to ensure it is kept up to date at all times. This could be seen as invading the person's privacy and the information obtained may lead to a worker believing that information may be used for discriminatory reasons.

### **The obligation is too broad**

The obligation to notify, as currently written in the Bill, would require a PCBU to notify the next of kin of any person injured arising out of the conduct of the business or undertaking. This would include direct employees, labour hire staff, contractors, clients, customers, visitors etc. A PCBU would be expected to have emergency contact details for some of these people, but not for all of them. It would be inappropriate to create an environment in which a PCBU felt that they needed to interrogate a seriously injured person about their next of kin, or to go through their belongings trying to find details to fulfil their obligation to notify.

### **The mode of contact is inappropriate**

The Bill states that the notification must be given by the fastest possible means (whether that is in person or by telephone, fax, email or other electronic means).

These provisions mirror the requirements for notifying the regulator of a notifiable incident; a regulator which has systems in place to monitor these notifications and respond.

In the situation of notifying next of kin of a serious, life-threatening injury it would be totally inappropriate to rely on any form of contact other than by person or by telephone. Other methods listed are uncaring and may also result in major delays.

### **The information to be provided is inappropriate**

The Bill requires that the notification to the next of kin “must include as many details of the incident as are within the person’s knowledge.” This is not the purpose of the notification. The purpose should be to provide information about the extent of injury, where the person is currently located, and any known information about transportation to hospital. Additional information about the incident can be provided at a later time. Again we would question whether this provision of the Bill aligns with the practice that would be used by emergency services personnel who are experienced in notifying next of kin.

### **The Bill should not progress**

For all the reasons outlined above, Ai Group does not believe that the Bill should progress.

Some problems are not best resolved by legislation. We believe this is one such case where attempting to solve one problem creates others, with no net benefit.

This issue would be better resolved by building notification protocols into the various training modules and management principles of stakeholders involved in WHS, or by amending emergency service / hospital protocols to ensure gaps in notification are identified and addressed.

## **If the Bill does progress**

It is Ai Group's view that, if the Bill was to progress, the following amendments would need to be made:

- The obligation to notify should be limited to death or serious injury, as defined for the incident notification requirements in the WHS Act.
- The PCBU obligation should be to ensure that steps are being taken to notify, particularly in circumstances where the injured person did not have a direct employment-type relationship with the PCBU, e.g. a client, supplier or visitor to the site. This could be done by advising attending emergency services that the PCBU does not have contact details to enable notification to occur.
- The PCBU should only be required to notify if the injured person is incapable of doing so, or the person has given express permission to the PCBU to do so.
- Where the injured person is an employee, labour hire worker, or contractor the obligation should be to notify the last known emergency contact provided by the worker, or information provided by the worker at the time of the injury.
- Any requirement to notify should be in person or by telephone.