

05 October 2017

NAT 021/17

SUMMARY

- **VIC:** Legislative changes are now in place, including higher penalties for failing to report notifiable incidents and preserve those sites;
- **QLD:** Ai Group made a submission and appeared as a witness before the committee considering a Bill which includes industrial manslaughter provisions and reintroduction of WHSOs, and the Government has introduced legislation to amend Mine Safety Laws.
- **NSW:** WHS Regulations have been amended to include additional offences that attract on the spot fines; the opposition have introduced a Bill to amend the Workers' Compensation Act 1987;
- **SA:** The Bill to amend the HSR assistance provisions of the WHS Act has been amended and has been passed in the Legislative Council; and
- **WA:** OHS penalties to increase to closely align with Model WHS Laws.

Additional items of interest: October is Safe Work Month across Australia - we provide information about how your business can get involved and how to win \$5000 in recognition of participation; Asbestos Safety and Eradication Summit in Canberra in November 2017; and Ai Group's workers' compensation training.

VIC: LEGISLATIVE AMENDMENTS EFFECTIVE 27 SEPTEMBER 2017

In April 2017 Ai Group advised members of legislative amendments being considered in the Victorian Parliament (see [NAT 006/17](#)). These amendments have now been passed and became effective on 27 September 2017.

In summary, they include:

- Increasing penalties for failing to advise WorkSafe Victoria of a notifiable incident and/or failing to preserve the site of a notifiable incident; penalties will be \$186,552 for a body corporate.
- Changing the definition of medical treatment within the incident notification requirements to include nursing and midwifery treatment related to exposure to a substance and a range of serious injuries.

With changed definitions and increased penalties, it is now even more crucial that organisations have robust systems in place to identify and respond to incidents.

Organisations must be able to identify whether there is a requirement to notify WorkSafe of the incident and preserve the site.

Ai Group can assist you to set up the necessary systems. If you do have a notifiable incident you may also want to seek advice from Ai Group Workplace lawyers, as this provides an opportunity to establish legal professional privilege for investigations undertaken by your organisation in relation to the incident.

Other changes to the OHS Act relate to:

- The requirement to answer questions during an investigation;
- Introduction of offences and penalties for contravening an enforceable undertaking;
- Establishing that it is an indictable offence to provide false or misleading information; and
- Changing limitation periods for prosecution to consider coronial inquiries and the discovery of new evidence that could not reasonably have been discovered within the required timeframes.

The legislation also amends the *Workplace Injury Compensation and Rehabilitation Act* to clarify that casual loadings are included in pre-injury average weekly earnings (PIAWE) for the purposes of calculating weekly compensation entitlements.

QLD: WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL

Ai Group recently provided members with a detailed outline of amendments proposed by the *Work Health and Safety and Other Legislation Amendment Bill 2017* ([QLD WHS Bill](#)) which was introduced into Parliament on 22 August. See [Member Advice NAT 017/17](#), dated 28 August 2017.

The Bill includes the introduction of industrial manslaughter provisions which would attract penalties of up to \$10m and 20 years' imprisonment.

Ai Group has now made a detailed [submission](#) to the Finance and Administration Committee that has been given the task of inquiring into the Bill. Mark Goodsell also appeared at public [hearings](#) held on 25 September 2017.

Ai Group also published a [media release](#) after the hearings.

QLD: AMENDMENTS TO MINE SAFETY LAWS

In September the Government introduced into Parliament the *Mines Legislation (Resources Safety) Amendment Bill 2017* to amend the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA).

The explanatory note states that:

The Bill addresses 15 matters identified for immediate improvement in the resources safety and health regulatory framework that will increase worker safety and health.

The Bill provides for greater transparency and accountability; improvements to safety and health management systems; and stronger enforcement and compliance powers by implementing amendments to the CMSHA and MQSHA in relation to:

- ventilation officer competencies;
- inspector powers including inspector workplace entry;
- manufacturer, supplier, designer and importer notification requirements;

- contractor and service provider management;
- advisory committees and Board of Examiners membership;
- safety and health management system (SHMS) requirements;
- register to be kept by board of examiners;
- health surveillance;
- notification of diseases;
- release of information;
- penalties;
- officer obligations;
- continuing professional development;
- suspension or cancellation of certificates of competency and site senior executive (SSE) notices; and
- civil penalties.

Of particular note, are new obligations placed on officers to exercise due diligence and increasing penalties to closely align with those under WHS laws.

Ai Group will keep members informed of progress of the Bill.

NSW: NEW "ON-THE-SPOT" FINES INTRODUCED

Section 243 of the WHS Act establishes a penalty notice regime. If a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

[Schedule 18A](#) of WHS Regulation 2017 lists the range of offences that can attract a Penalty Notice.

Effective 1 November 2017, The Work Health and Safety (Penalty Notices) Regulation 2017 has prescribed the following additional offences as ones for which a penalty notice may be issued:

- the offence of carrying out work at a workplace (or directing or allowing a worker to carry out work at a workplace) when not authorised in accordance with the regulations, i.e. without a required licence; and
- the offences relating to the management and minimisation of the risk of falls at workplaces and emergency and rescue procedures relating to fall arrest systems.

NSW: OPPOSITION BILL PROPOSES CHANGES TO WORKERS' COMPENSATION

The opposition recently introduced a [Bill](#) into the NSW Parliament to make changes to the *Workers Compensation Act 1987*. The objects of the Bill are:

- (a) to remove restrictions on the entitlement of a worker to make a "journey claim" (that is, a claim to receive compensation for a personal injury received on a journey between the worker's home or other place of abode and his or her place of employment),
- (b) to remove restrictions on what constitutes suitable employment for the purposes of a worker's entitlement to weekly compensation by way of income support,
- (c) to remove the 5-year cut-off period for weekly payments of compensation to injured workers,
- (d) to remove a provision that limits the payment of an injured worker's expenses for medical, hospital and rehabilitation treatment and services to treatment and services provided within 12 months after a claim for compensation is made or within 12 months after weekly payments cease,
- (e) to make it an offence for an employer to dismiss, at any time, an injured worker because the worker is not fit for employment as a result of the injury.

Ai Group does not support the proposed changes and will be communicating this to the opposition and to other members of parliament.

SA: WORK HEALTH AND SAFETY (REPRESENTATIVE ASSISTANCE) AMENDMENT BILL

The Model WHS Laws allow a Health and Safety Representative (HSR) to seek the assistance of any person, and creates an obligation on the employer to allow that person to enter a workplace to provide that assistance.

When the Model WHS Laws were adopted in SA, the provisions were amended to maintain the previous arrangements that allowed a HSR to only seek the assistance of an approved consultant.

Ai Group previously advised members of the Greens Bill that was introduced into Parliament in April 2017, to amend the provisions. See [Member Advice NAT 008/17](#), dated May 2017.

The original amending Bill would have adopted the current provisions of the Model WHS Laws, by:

- Removing the provisions that limited the HSR to seek assistance from an approved consultant, which would effectively allow them to seek assistance from any person, including a union organiser; and
- Adopting provisions that were incorporated into the Model WHS Laws in March 2016, requiring that the HSR give the PCBU at least 24 hours' notice if there was a need for the assistant to enter the workplace.

Ai Group has always argued that the union right to enter the workplace to consult and advise workers means that the HSR right to seek assistance is unnecessary.

In the original Model WHS Laws the lack of a notice period when assisting an HSR allows the provision to be utilised to bypass obligations under workplace relations and WHS laws to give 24 hours' notice prior to entry.

Although Ai Group does not believe the power to "seek assistance" is necessary, the inclusion of a 24-hour notice requirement would significantly reduce the ability for the assistance provisions to be utilised to override union right of entry restrictions.

However, Ms Franks subsequently proposed amendments to her Bill which would remove the 24-hour notice provisions, effectively adopting the original provisions of the Model WHS Laws.

On this basis, Ai Group has expressed concerns that an older version of the Model WHS Laws would be adopted in SA, when there has been agreement to the inclusion of a 24-hour notice period. We note that no other jurisdiction has adopted these provisions, but this should occur over time.

The [Bill](#) has now passed the Legislative Council with the subsequent amendments; it is expected to be considered by the Legislative Assembly before the end of the year.

WA: PENALTIES TO INCREASE UNDER CURRENT OSH LAWS

Earlier this year the WA Government announced that it would initiate a new process to adopt the Model WHS Laws; this process is expected to be completed by 2019.

There has since been a further [announcement](#) that amendments will be made to the current *Occupational Safety and Health Act 1984* to bring penalties closely in line with those in the Model WHS Laws.

Changes will include:

- Increasing the maximum term of imprisonment from two years to five years;
- Maximum fines will increase:
 - Level 4 first time offences from \$500,000 to \$2.7m
 - Level 1 offences will increase from \$50,000 to \$546,000

OCTOBER IS SAFE WORK MONTH - GET INVOLVED

Safe Work Month is designed to provide a focus for organisations and individuals to take time out to think about doing something more, or different, about work health and safety.

Activities/focus might include:

- participating in external events to learn what's new;
- attending events to understand the current approach taken by the regulators to achieve compliance;
- running an event or activity in your own workplace to raise awareness about work health and safety;
- committing to extra training for officers, managers or supervisors; or
- making changes to how things are done in your workplace.

Safe Work Australia takes a lead in promoting the month; but all Australian jurisdictions have events scheduled during October

[Read the media release and see a message from the Chair of Safe Work Australia](#)

[Access the Safe Work Australia Safe Work Month website](#), for national and local events.

If you would like to win \$5000 in recognition of your participation in Safe Work Month, click [here](#) for more information. Some state/territory jurisdictions are also offering prizes.

ASBESTOS SAFETY AND ERADICATION SUMMIT – 26-28 NOVEMBER 2017

The Summit will take place in Canberra between 26th-28th November 2017. During the two-day Summit, delegates will be provided with a real opportunity to be a part of developing Australia's next National Strategic Plan to manage asbestos. [Register now](#)

WORKERS' COMPENSATION TRAINING

Ai Group offers a suite of training to assist businesses to manage their workers' compensation obligations. Remaining course for 2017:

Multi-state workers' compensation

A one day program covering arrangements in New South Wales, Queensland, South Australia, Victoria and (NEW IN 2017) Western Australia.

Victoria:	22 November
New South Wales:	14 November
Queensland:	30 November

For further information on our workers' compensation training go to [Ai Group's Training Information](#), or contact [Rebecca Hayward](#).

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 Services:

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