

10/04/2018

NAT 006/18

### SUMMARY

There are currently three reviews of Australia's work-related health and safety laws and performance underway:

- The Independent Review of WHS Laws approved by WHS Ministers, which commenced in February 2018. Public comment closes 13 April 2018. The report is due by the end of 2018.
- A review by the Commonwealth Department of Jobs and Small Business was announced on 29 March 2018. It focuses on the construction industry, with two key areas for consideration: how to prevent the top three causes of fatalities; and an examination of the performance of companies accredited by the Federal Safety Commissioner. Public comment closes 27 April 2018. The report is due by mid-2018.
- A Senate Inquiry into Industrial Deaths was established on 26 March 2018. The terms of reference are very broad and include consideration of the "holes" in harmonisation of the laws, and the role of a safe-work culture. Public comment closes on 6 June 2018. The report is required by 20 September 2018.

Ai Group will be making submissions on behalf of members. If you wish to contribute to the development of the Ai Group positions, contact [Tracey Browne](#) or [Mark Goodsell](#).

### AUSTRALIA'S WORK-RELATED HEALTH AND SAFETY LAWS AND PERFORMANCE - CONCURRENT REVIEWS UNDERWAY

There are currently three reviews underway to consider Australia's work-related health and safety laws and performance.

The first of these reviews, announced in February 2018, is the independent review of the Model WHS Laws, which is due to report by the end of 2018.

The latter two of these reviews commenced in late March 2018, with completion dates of mid 2018 (the Review of WHS Laws in Construction), and 20 September 2018 (Senate Inquiry into Industrial Deaths).

The fact that these reviews are all being undertaken at the same time will mean that:

- There may be confusion in relation to what is happening;
- There will be multiple avenues for people to raise the same issues and potential solutions; and
- There is the potential for multiple, and possibly conflicting, responses to the reports which will be considered by different bodies.

Ai Group will be recommending that the outcomes of all three reviews are considered collectively, with WHS Ministers determining the next steps to be taken, if there is seen to be a need to enhance Australia's approach to managing work-related health and safety.

## **Independent review approved by Commonwealth, State and Territory WHS Ministers**

Members have previously been advised of the Review of Model WHS Laws that is underway. [See Compliance Advice NAT 004/18](#).

The [Review Webpage](#) provides access to the Discussion Paper and other information about the review.

The webpage also enables interested parties to participate in online discussions and see what others are saying about operation of the laws. These forums will continue to be open after public comment has closed.

Ai Group will be making a written submission on behalf of members; submissions are due by 13 April 2018.

The final report of the review is due by the end of 2018.

## **Review of WHS Laws in the Construction Sector undertaken by the Commonwealth Department of Jobs and Small Business**

The Department of Jobs and Small Business has commissioned a review to examine the effectiveness of WHS laws in preventing the top three causes of fatalities in the industry: falls from heights and being hit by falling objects (40%), vehicle incidents (16%) and contact with electricity (12%).

Seyfarth Shaw Australia have been appointed to undertake the review on their behalf.

The Review will also examine the performance of companies accredited by the Office of the Federal Safety Commissioner, including any aspects of the Australian Government Building and Construction WHS Accreditation Scheme, that could inform options to improve outcomes across the building and construction industry.

The review is being guided by the following principles:

- a. that the needs of all sectors within the building and construction industry are appropriately considered, particularly noting the high number of small businesses within the industry;

- b. any recommended amendments to existing laws, regulations, codes or guidance material are to be supported by substantial evidence of their effectiveness in improving safety, enabling the development of any required Regulation Impact Statements; and
- c. that recommendations do not undermine the model WHS legislation and a harmonised approach to WHS.

Information about the review, including an issues paper, can be accessed [here](#).

Ai Group will be making a written submission on behalf of members; public comment closes on 27 April 2018.

The final report is due by mid-2018.

## **Senate Inquiry into Industrial Deaths**

On 26 March 2018, at the initiative of Labor senator Gavin Marshall, an Inquiry into Industrial Deaths was established.

The Senate Inquiry is to consider the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia, with particular reference to:

- a. the effectiveness and extent of the harmonisation of workplace safety legislation between the states, territories and Commonwealth;
- b. jurisdictional issues surrounding workplace investigations which cross state and territory boundaries;
- c. issues relating to reporting, monitoring and chains of responsibility between states, territories and the Commonwealth;
- d. safety implications relating to the increased use of temporary and labour hire workers;
- e. the role of employers and unions in creating a safe-work culture;
- f. the effectiveness of penalties in situations where an employer has been convicted of an offence relating to a serious incident or death;
- g. any other related matters.

Information about the Inquiry can be found [here](#).

Ai Group will be making a submission on behalf of members. Public comment closes on 6 June 2018.

The Senate Committee is required to report by 20 September 2018.

### Having your say

Ai Group has recently hosted a round of meetings between members and Marie Boland who has been appointed to undertake the independent review of the WHS laws.

The key issues identified by members in this process can be categorised into the following themes:

- general support for harmonisation, but continued frustration that: not all states have adopted the Model WHS Laws; some states/territories have made changes to the Model; and every change of government at a state level inevitably brings pressure to make further amendments away from the Model;
- due diligence obligations in the Model have helped to define and focus the responsibility of senior management, but there is concern about not being able to clearly identify who is an officer;
- some confusion about the meaning of the term “person conducting a business or undertaking” (PCBU);
- the obligation to consult, co-operate and co-ordinate with other duty holders causes problems for some businesses, especially smaller ones;
- inconsistent application of the laws by regulators in different states, which then undermines national consistency;
- smaller businesses are not always in a position to understand the complex detail of the laws, but they do want to know what needs to be done to make their workplaces safe;
- lack of understanding about what would warrant a category 1 offence (the highest level), but recognition that work-related deaths can be prosecuted under general criminal laws; leading to a view that specific industrial manslaughter legislation is not necessary.

We hope that this has identified most of the issues that would also be relevant to the other two reviews.

However, if you have any further specific input of relevance to any of these reviews, please contact [Tracey Browne](#), 0438 207 799 or [Mark Goodsell](#), 0418 408 871.

### DO YOU REQUIRE ASSISTANCE?

**For further information or assistance to manage safety and workers’ compensation issues, 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:

[David Tiller](#) – 0499 193 307



#### Tracey Browne

Manager – National Safety & Workers’ Compensation Policy and Membership Services