

Australian Industry Group

# Review of Work Health and Safety Regulatory Framework in the Building and Construction Industry

**Submission to**  
Seyfarth Shaw  
Department of  
Jobs and Small Business

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**Ai**  
GROUP

# **REVIEW OF WORK HEALTH AND SAFETY REGULATORY FRAMEWORK IN THE BUILDING AND CONSTRUCTION INDUSTRY**

## **SUBMISSION TO SEYFARTH SHAW, DEPARTMENT OF JOBS AND SMALL BUSINESS**

### **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 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 (WHS) 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 ongoing contact and engagement with employers in all Australian jurisdictions 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.

We have a number of members in the construction sector, including: large prime contractors; installers of metal structural and other components (windows, doors etc); specialist technology based installers of building services (lifts, air conditioning, commercial kitchens, security etc.); and installers of industrial plant and equipment.

Ai Group welcomes the opportunity to make a submission in relation to the Review of the Work Health and Safety Regulatory Framework in the Building and Construction Industry.

## **OUR SUBMISSION**

The issues paper identifies that there were 354 fatalities in the building and construction industry in the 10-year period 2007-2016, with the majority of these fatalities being attributed to three mechanisms: fall from a height or being hit by a falling object; vehicle incidents; and contact with electricity.

The building and construction industry is now a relatively large employer. Ai Group acknowledges that the industry represents a significant proportion of workplace fatalities, although there are at least three other sectors with higher rates of fatality per 100,000 workers.

Regardless of numbers, every work-related death is a story of deep loss and trauma for families, friends and work colleagues.

Without considering every one of those fatalities individually, it is not possible to pinpoint changes to specific parts of the regulatory framework that may have prevented one or more of those fatalities.

Ai Group hopes that this review will provide some practical solutions to reduce the level of fatalities in the industry. We trust that it will be more than reflexive calls for merely increased regulation and higher penalties (both of which have been tried previously), but rather a holistic and evidence-based package of interventions going to the problems of perceiving and managing key risks of a complex and dynamic work environment, as well as interfacing intelligently with the complex commercial structures and the culture of the sector.

Generally, workplaces are best assisted to improve their health and safety performance by having access to clear and concise guidance to assist them to identify hazards and implement risk controls.

It is also important that: (1) workplace parties understand there are significant legal consequences for not taking all reasonably practicable measures to avoid exposing people to the risk of injury; and (2) there is a strong and fair compliance and enforcement mechanism behind such laws.

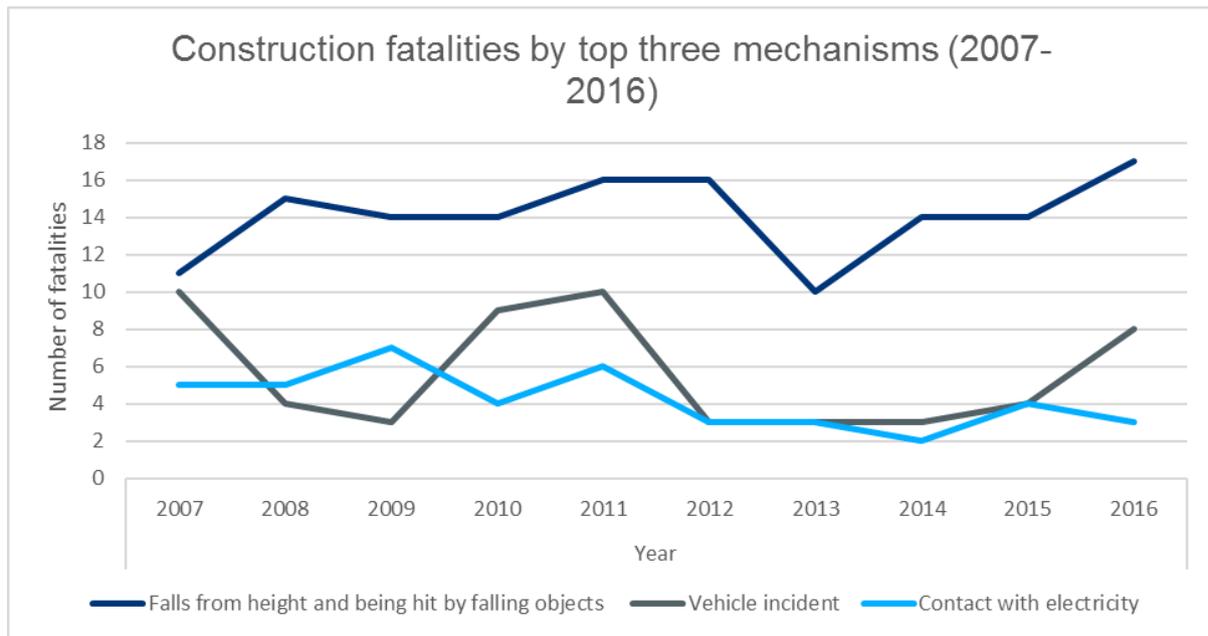
There is no evidence that the significant legal consequences implicit in the regime of duties and penalties in the harmonised WHS regime (five years imprisonment and \$600,000 fines for individuals and \$3 million for corporations), and in the legislation of the two non-harmonised jurisdictions is inadequate, if well publicised and properly enforced, to attract the attention of the relevant workplace parties.

Whether responsibilities are well understood as they cascade down contract chains is another matter. The PCBU concept (and the related duties to consult, co-operate and co-ordinate between PCBUs) suits the industry well, being flexible enough to distribute responsibility in multi-employer workplaces, but it may not yet be fully understood. It varies significantly from the previous construct of primary legal responsibility based on direct employment.

It may be appropriate to undertake a review of the findings related to the fatalities that resulted from these three mechanisms, with a view to identifying any recurring themes that might need attention. This information could then be utilised to identify where there is a need for improved guidance material, increased workplace awareness and/or targeted enforcement activity.

To assist, we offer the following observations to contribute to the analysis of the underlying issues behind the statistics.

Of the three mechanisms in focus, electrical incidents have fallen in the period referenced by the Issues Paper (see graph below, reproduced from the Issues paper) and are at low absolute levels given the number of workers in the industry (at 1.2 million workers it is currently among the top three employing sectors<sup>1</sup>). This may have something to do with the nature of the risk and the ability to implement and confirm the installation of engineering solutions such as safety switches at the site electrical source.



However, we note that in 2016 for example, 3 of 7 electrical workplace fatalities in all industries were in construction<sup>2</sup>. It may be valuable to look at the incidence of *non-fatal* electrical incidents to assess whether the incidence of fatalities is the tip of an iceberg of underlying poorly managed risk, or not, and if so determine the nature of the risk.

<sup>1</sup> Commonwealth Department of Jobs and Small Business  
<http://mip.gov.au/default.aspx?LMP/GainInsights/IndustryInformation/Construction>

<sup>2</sup> Safe Work Australia: Work-related Traumatic Injury Fatalities, Australia – 2016  
<https://www.safeworkaustralia.gov.au/system/files/documents/1710/work-related-traumatic-injury-fatalities-report-2016.pdf>

For example, is there a difference between electrical safety on greenfield sites (where the power source is set up specifically for the project and live working can be minimised by design) and brownfield sites (such as domestic housing renovation) where existing electrical systems may be less than optimum and there is a need for ongoing live power to parts of the site?

The other two risks highlighted traditionally rely, at least in part, on lower level mitigation methods such as safe working procedures, wearing PPE and training/employee awareness. These are not preferred methodologies unless it is not reasonably practicable to engineer risks out or physically separate workers from risks.

Over the reference period, incidents involving vehicles have tracked differently to those involving falls from heights and falling objects. The mix of work in the construction sector over the last ten years may offer some explanation. Civil engineering projects (tunnels, roads, rail, mining projects) are likely to have a higher ratio of mobile equipment and vehicles for each worker than traditional high rise commercial building or domestic housing projects. The track of vehicle incidents, on its face, follows the trend of the mining construction boom (interrupted by the GFC) being replaced in more recent years by a boom in public infrastructure projects. Both have involved a preponderance of civil/mechanical engineering construction (where many large vehicles and plant can be across the site). This compares to high rise or commercial or domestic building work (where large mobile plant is rarer, and vehicles are usually confined to dedicated access areas on the ground levels). However, we do note that the presence of mobile plant on building construction may have increased with the broader use of plant such as elevated work platforms, largely to minimise use of ladders.

Clearly the most significant risk lies with falls and heights, although both these and vehicle incidents escalated in the three years to 2016.

We note that over the past five years, employment in building and construction has increased by over 20%.<sup>3</sup> This suggests many people have entered the industry in that period, probably for the first time. We know from broader statistics across all industries that those who are new to a workplace are at a higher risk of injury than others. It may be that the process of making new entrants conscious of the nature of risks in construction needs to be reviewed. More than most other workplaces, the risks from gravity induced vertical movement (falling and being hit by falling objects) are significant, as are the risks from the workplace physically changing from day to day and the risks of being around moveable plant and vehicles in such a dynamic environment. A closer examination of the incidents may reveal whether there is any new worker effect of this nature.

The industry's induction processes have been the subject of much debate in recent years. This has revolved principally around questions of the interaction between common industry induction processes and company/project specific inductions, and the quantum of training time they take up. There is an assumption that more training must be better than less. On the other hand, there are plausible suggestions of induction fatigue which may reduce its effectiveness. In some cases, the period of induction for certain employees exceeds the time spent engaged in work on the site.

It may be that the induction processes should be assessed as to how well they effectively address the specific risk consciousness required for the construction environment (but bearing in mind the risk of induction fatigue), especially on projects where falls/falling objects and vehicles are a heightened risk.

In summary, the construction industry is made up of several subsectors which may not share all the same risk characteristics. They certainly do not share the same commercial structures. For example, in commercial construction the funding client is usually a PCBU, in domestic renovation, they usually are not.

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<sup>3</sup> Commonwealth Department of Jobs and Small Business  
<http://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/Construction>

Secondly, it is worth looking at total injuries in the three highlighted methods of causation, rather than merely fatalities, to appreciate the risks that are in play.

Thirdly, efforts to better understand the cognitive processes of risk assessment in construction may reveal issues that need a different approach to other sectors.