



**REPORT INTO THE REFERRAL OF THE WORK HEALTH
AND SAFETY (INDUSTRIAL MANSLAUGHTER)
AMENDMENT BILL**

25TH REPORT
OF THE

**PARLIAMENTARY COMMITTEE ON
OCCUPATIONAL SAFETY, REHABILITATION
AND COMPENSATION**

Fifty Third Parliament Second Session

Presiding Member's Foreword

On 6 May 2015, the Hon Tammy Franks MLC moved to introduce the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* (the Bill) to provide stronger penalties for employers and corporations whose work practices result in the death of a worker. On the motion of the Hon Tung Ngo, the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* was referred to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation on 11 November 2016 for exploration and consideration.

In the last 12 years there have been three previous attempts to introduce a Bill to prosecute individual employers who recklessly disregard health and safety resulting in the death of a worker. The first attempt was in 2004 when the Hon Nick Xenophon introduced a Private Members Bill into the Legislative Council. The Bill lapsed due to prorogation following which the Committee itself investigated the possibility of such an approach to reducing work related fatalities. While the Committee noted the difficulty of holding businesses accountable for such a crime because of the need to identify the 'directing mind' of the organisation, which can be difficult in large complex organisations, it did recommend that industrial manslaughter be introduced into the then *Occupational Health, Safety and Welfare Act*. However, the concept was not accepted by government on the basis that there were already adequate legal systems in place to deal with the consequences of a workplace death. In 2010, the Hon Ms Franks introduced a Bill to amend the former *Occupational Health, Safety and Welfare Act 1986* but this also lapsed due to prorogation. Since this last attempt, South Australia adopted the national model *Work Health and Safety Act*, which was based on an *Intergovernmental Agreement and Operational Reform in Occupational Health and Safety* which included a commitment that a national policy be adopted for a consistent approach to compliance and enforcement. The National Compliance and Enforcement Policy developed by the Heads of Workplace Safety was endorsed by the Workplace Relations Ministers Council in 2011 and sets out the approach to be adopted to monitor and enforce compliance of the *Work Health and Safety Act* and Regulations.

Submissions from legal and policy interest groups including the Law Society, the Director of Public Prosecutions and the Flinders University Centre for Crime, Policy and Research all outlined several points of conflict between the Bill compared to the *Criminal Law Consolidation Act* and the *Work Health and Safety Act*. Conflicting language, definitions and adoption of some aspects of the Australian Capital Territory's (ACT) Code as well as the UK's *Corporate Manslaughter and Corporate Homicide Act* were raised as issues of concern. Flinders University made the point that unlike the ACT, South Australia is not a Code jurisdiction which makes it difficult to translate their legal principles into our legal framework. Also the UK legislation has managed to address the common law issue of the 'directing mind', which has not been addressed by this Bill. It was claimed that the Bill creates another species of offence and will create procedural confusion.

A major difficulty with the Bill is that it focuses on the employer and employee relationship rather than the more complex work arrangements in place on many large industrial sites where contractors, labour hire


personnel and subcontractors work from time to time often under very differing and complex supervision arrangements.

All organisations representing employers expressed their concerns about the intent of the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* and were of the opinion that current statutory and case law exists to address the failure to provide a duty owed to workers. There was a common view that the focus should be on prevention of injuries and illness rather than prosecution following the death of a worker. SA Unions said that the Bill demonstrated a deterrence value and that the community accepts that offences that create a risk of death or serious injury are appropriately punished. The union recognised the conceptual difficulties that would be created with the *Criminal Law Consolidation Act* and recommended alternative language. However, this alone will not address other shortcomings that were raised by the legal and policy groups.

The impact of workplace death and injury on individuals, families and the community is unacceptable. While one workplace fatality is one too many, nationally there has been a continued downward trend in work related fatalities. Prevention of workplace incidents, injuries and fatalities is the responsibility of everyone. On the basis of all the evidence presented to the Committee, Members are of the view that adequate legal systems are in place to address work related fatalities arising from reckless disregard by a person who owes a duty of care to a worker.

The Committee makes three recommendations and thanks all those who contributed to this inquiry by making submissions and giving their time to appear before the committee.

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Hon Steph Key

Presiding Member

Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation

Date: 21/10/2016

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RECOMMENDATIONS

Recommendation 1 (page 25)

The Committee recommends that:

- the Director of Public Prosecutions and the Crown Solicitor establish a protocol for ensuring that due consideration be given to prosecuting under the *Criminal law Consolidation Act* where it is appropriate to do so.
- Any such protocol should not result in prosecution delays for breaches of the *Work Health and Safety Act*.

Recommendation 2 (26)

The Committee recommends that if an individual is charged under the *Criminal law Consolidation Act* following an industrial fatality, the Crown Solicitor should still give due consideration to charging the PCBU under the provisions of the *Work Health and Safety Act*.

Recommendation 3 (28)

Based on evidence presented to the Committee, Members maintain that there are adequate legal systems in place to deal with industrial deaths. On this basis the Committee does not support the proposed amendment to the *Work Health and Safety Act*.

1. PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

1.1 Preamble

This is the 25th report of the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation.

On 6 May 2015, the Hon Tammy Franks MLC moved to introduce a Bill to amend the *Work Health and Safety Act 2012* to include stronger penalties for employers and corporations whose work practices result in the death of a worker. Ms Franks said the Bill is designed to improve safety 'through the principle of criminal responsibility'¹. She said that:

The primary objective of this bill is to ensure that culpable employers are held responsible for their actions. This bill seeks to introduce industrial manslaughter. The offence covers the situation where an individual or corporation's conduct causes the death of a worker, where that individual or corporation's recklessness or negligence caused serious harm and, obviously, death to that worker. Within the bill an employer is guilty of an offence if:

- the employer breaches their duty of care;
- the employer knew or was recklessly indifferent that the act or omission constituting the breach would create a substantial risk of serious harm to a person; and
- the breach causes the death of a person.

The Hon Ms Franks argued that an unacceptable and high number of workers die each year with far reaching consequences for families who have lost a loved one whether it be a child, a partner or parent. Workplace deaths cause much emotional turmoil and have far reaching implications for co-workers, communities and witnesses who discover the tragic deaths as well as emergency workers who attend the scene. She said that the main goal of the Bill is to ensure that culpable employers are held responsible for workers' deaths and to ensure that all employers are taking their duty of care to their employees seriously².

Referral of the Bill to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation was carried with the support of the Hon Rob Lucas and the Hon John Darley as well as the Hon Tammy Franks.

¹ South Australian Parliament, *Parliamentary Debates*, Legislative Council, 6 May 2016, 584, Hon Tammy Franks MLC.

² Ibid.

2. COMMITTEE MEMBERSHIP

2.1 Members of the Committee

Following the March 2014 State election, the Sixth Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation was constituted with the following Membership:

Hon Steph Key, MP (Presiding Member)

Hon John Darley, MLC

Hon Gerry Kandelaars, MLC

Hon John Dawkins, MLC

Mr Stephan Knoll, MP

Ms Nat Cook MP* (appointed on 10 February 2015)

Ms Katrine Hildyard MP (May 2014 — February 2015).

*Ms Cook was appointed to the Committee on 10 February 2015, in place of Ms Katrine Hildyard who resigned.

Executive Officer: Ms Sue Sedivy (5 November 2012 —)

2.3 Functions of the Committee

Section 15F of the *Parliamentary Committees Act 1991* defines the functions of the Occupational Safety, Rehabilitation and Compensation Committee as:

- (a) to keep the administration and operation of the *Occupational Health, Safety and Welfare Act 1986*, the *Workers Rehabilitation and Compensation Act 1986*, and other legislation affecting occupational health, safety or welfare, or occupational rehabilitation or compensation under continuous review; and
- (b) to examine and make recommendations to the Executive and Parliament about proposed regulations under any of the legislation mentioned in paragraph (a), and in particular regulations that may allow for the performance of statutory functions by private bodies or persons; and

(c) to perform other functions assigned to the Committee by this or any other Act or by resolution of either House of Parliament.

2.4 Referral Process

Pursuant to Section 16(1) of the *Parliamentary Committees Act 1991*, any matter that is relevant to the functions of the Committee may be referred to the Committee —

- (a) by resolution of the Committee's appointing House or Houses, or either of the Committee's appointing Houses

- (b) by the Governor, by notice published in the *Gazette*;

- (c) of the Committee's own motion.

2.5 References

Pursuant to Section 16 subsection (1) of the *Parliamentary Committees Act 1991*, any matter that is relevant to the functions of the Committee may be referred to the Committee:

- by resolution of the House of Assembly;
- by the Governor, by notice published in the *Gazette*;
- of the Committee's own motion.

2.6 Ministerial Responses

Pursuant to Section 19 of the *Parliamentary Committees Act 1991*, any recommendations directed to a Minister of the Crown require a response from that Minister within four months. This response must include statements as to:

which (if any) recommendations of the Committee will be carried out and the manner in which they will be carried out;

and

which (if any) recommendations will not be carried out and the reasons for not carrying them out.

The Minister must cause a copy of the response to the Committee's report to be laid before the Committee's appointing House within six sitting days after it is made.

3. MOTION

Pursuant to section 16 (1) of the *Parliamentary Committees Act* 1991 the Legislative Council adopted the following resolution on 25 November 2015:

That the Work Health and Safety (Industrial Manslaughter) Amendment Bill be withdrawn and referred to the Occupational Safety, Rehabilitation and Compensation Committee.

4. TERMS OF REFERENCE

Ms Nat Cook MP moved that:

The Terms of Reference for the Inquiry into the WHS (Industrial Manslaughter) Amendment Bill be as follows:

1. Examine the potential penalties in Criminal Law and Work Health and Safety Law applicable to workplace fatalities
2. Explore how culpable employers in other jurisdictions are held accountable for industrial deaths.
3. Identify the range of penalties that may be applied to employers where a workplace accident results in the death of a worker.
4. Report and recommend a response to the Work Health and Safety (Industrial Manslaughter) Amendment Bill.

The motion was seconded by Mr Stephan Knoll MP and was carried unanimously.

5. HISTORY OF THE BILL AND RELATED DEBATES

5.1 The Work Health and Safety (Industrial Manslaughter) Amendment Bill 2015.

On 6 May 2015, the Hon Tammy Franks MLC introduced a Bill to amend the *Work Health and Safety Act* 2012 (the Act) to include a provision for industrial manslaughter. *The Work Health and Safety (Industrial Manslaughter) Amendment Bill* proposes to insert the following provisions into the Act:

268A—Industrial manslaughter

(1) An employer is guilty of an offence if—

(a) the employer breaches a duty imposed under Part 2 Division 2; and

(b) the employer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and

(c) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty:

(a) in the case of an employer who is a natural person—20 years imprisonment;

(b) in any other case—\$1 000 000.

(2) An officer of an employer that is a body corporate is guilty of an offence if—

(a) the officer engages in conduct that, had the officer been acting within the scope of his or her actual or apparent authority, would be imputed to the employer pursuant to section 244; and

(b) the conduct would, if so imputed, constitute a breach by the employer of a duty imposed under Part 2 Division 2; and

(c) the officer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and

(d) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty: Imprisonment for 20 years.

(3) It is a defence to a charge of an offence against this section for the defendant to prove that the act or omission alleged to constitute the breach—

(a) occurred in the course of an emergency; or

(b) was authorised under this or any other Act or law of the State or the Commonwealth.

(4) Nothing in this section prevents an employer and an officer of the employer from both being guilty of an offence against this section in respect of a particular death.

(5) For the purposes of this section—

(a) the way in which the activities of the employer were managed or organised causes a breach of a duty if it substantially contributes to the breach;

(b) a breach of a duty causes the death of a person if it substantially contributes to the death.

(6) An offence against this section is a major indictable offence.

(7) Section 267 of the *Criminal Law Consolidation Act 1935* does not apply in respect of an offence against this section.

(8) If at the trial of a person for an offence against this section the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under Part 2 Division 5, the jury may bring a verdict that the accused is guilty of that offence.

5.2 Previous debates and inquiries

On 8 December 2004, the Hon Nick Xenophon introduced a Private Members Bill into the Legislative Council. The Bill, which was based on the Australian Capital Territory's *Crimes (Industrial Manslaughter) Amendment Act 2003*, sought to amend the South Australian *Occupational Health, Safety and Welfare Act 1986* to include a provision for industrial manslaughter. The catalyst for the Bill, according to the Honourable Member was asbestos related diseases and liabilities. Mr Xenophon argued that the 'common law of manslaughter is woefully inadequate to deal with deaths in the workplace':

The common law of manslaughter is woefully inadequate to deal with deaths in the workplace that have been caused by gross negligence or a corporate culture of reckless indifference. The fallout from the Esso Longford gas plant explosion on 25 September 1998 in which two workers died and eight others were injured provoked a widespread reflection and debate of Victoria's laws in dealing with corporate liability for workplace deaths and injuries³.

Debate on the Bill was deferred until 2 June 2005 at which time, the Honourable Member referred to the case of *Tesco v Nattrass* which was decided by the House of Lords who considered how to identify the directing mind of a company and whether employees remained liable when proper instructions had been given to those in charge of a local store.

Lord Reid said:

A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the

³ South Australian Parliament, *Parliamentary Debates*, Legislative Council, 8 December 2004, 801, Hon Nick Xenophon MLC.

mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability⁴.

The House of Lords held that there needs to be a close connection between the acts or omissions of any particular employee and the company itself and noted that in many cases, successful prosecutions of companies had only been successful where a criminal offence had been committed by a managing director/sole or majority shareholder in a small company.

The Private Member's Bill lapsed due to prorogation.

The Committee itself considered the question of industrial manslaughter in 2007 when inquiring into the *Law and Processes Relating to Workplace Injuries and Death in South Australia*. The Committee found that there is great difficulty in proving negligent manslaughter in relation to health and safety breaches resulting in the death or serious injury of workers with persons in charge of a business. Where prosecutions have been successful they have been of small companies where the directors took an active part in the day-to-day operations of the business⁵. The Committee made two recommendations, as follows:

- That an offence of industrial manslaughter should be introduced
- That changes should be made to existing legislation to allow a Court to impose higher penalties.

At the time the Government did not support either of the recommendations and contended that there were adequate legal systems in place within the *Occupational Health, Safety and Welfare Act 1986*, the *Criminal Law (Sentencing) Act 1988* and Court processes to address the circumstances of each case⁶.

On 27 October 2010, the Hon Tammy Franks MLC introduced a Bill to amend the *Occupational Health, Safety and Welfare Act 1986* by including a provision for industrial manslaughter. The Hon Ms Franks said:

If an employer is reckless or negligent about exposing workers to serious risks to their safety and an employee dies as a consequence, this should be recognised as a criminal offence⁷.

⁴ *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 170.

⁵ Inquiry into the Law and Processes Relating to Workplace Injuries and Death in South Australia, 25 September 2007.

⁶ Wright M, Government Response to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, 12 February 2008.

⁷ South Australian Parliament, *Parliamentary Debates*, Legislative Council, 27 October 2010, 1196, Hon Tammy Franks MLC.

Once again the Bill lapsed due to prorogation.

6. FATALITIES AND SERIOUS INJURY DATA

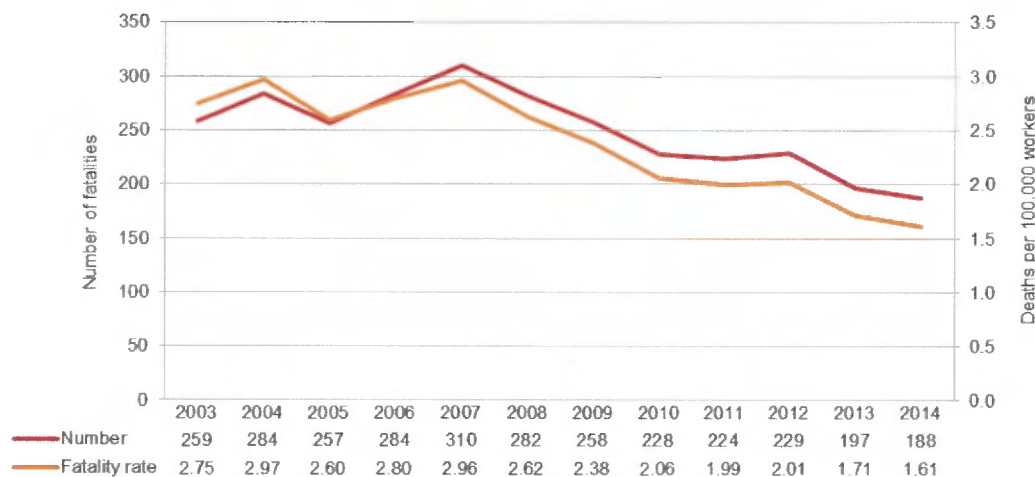
The national fatality incidence rate has been falling steadily over the past seven years and decreased by 46% from 2.96 per 100,000 workers in 2007 to 1.61 per 100,000 in 2014. The South Australian fatality rate is 1.37 per 100,000 workers which is below the national fatality rate of 1.61 per 100,000 workers. A SafeWork Australia study of work related fatalities which occurred between 2006-2011 found that 36% of fatalities (188) arose from unsafe design of machinery, plant, and powered tools⁸.

The most common circumstances were categorised as follows:

- Inadequate guarding — 21% of design-related fatalities
- Lack of roll-over protection structures / seat belts — 15% (eg tractors and quad bikes)
- Lack of residual current device — 12%
- Lack of interlock — 8%, and
- Driver obstructed vision — 8%.

During the study period there were seven fatalities involving the users of elevated work platforms being crushed against roofing and beams⁹.

Between 2003 to 2014 3,000 workers lost their lives in work related accidents with almost half occurring within the transport, postal and warehousing and agriculture, forestry and fishing industries.



Source: Work Related Traumatic Injury Fatalities, Australia 2014.

Fatalities that arise from work related activity can result in someone else being fatally injured (a bystander) or a commuter but data on these fatalities are not always easy to distinguish from other road fatalities.

⁸ SafeWork Australia, *Work Related Fatalities Associated with Unsafe Design of Machinery, Plant and Powered Tools, 2006-2011*, 2014

⁹ Ibid.

The fatality rate of male workers is 10 times higher than for female workers. In 2014, 176 of the 188 fatalities (94%) involved male workers and 38% of those fatalities were due to a vehicle collision while 'falls from height' and 'being hit by moving object' each accounted for 11% of fatalities. Workers in the 45-54 year age group recorded the highest number of fatalities in the past three years¹⁰.

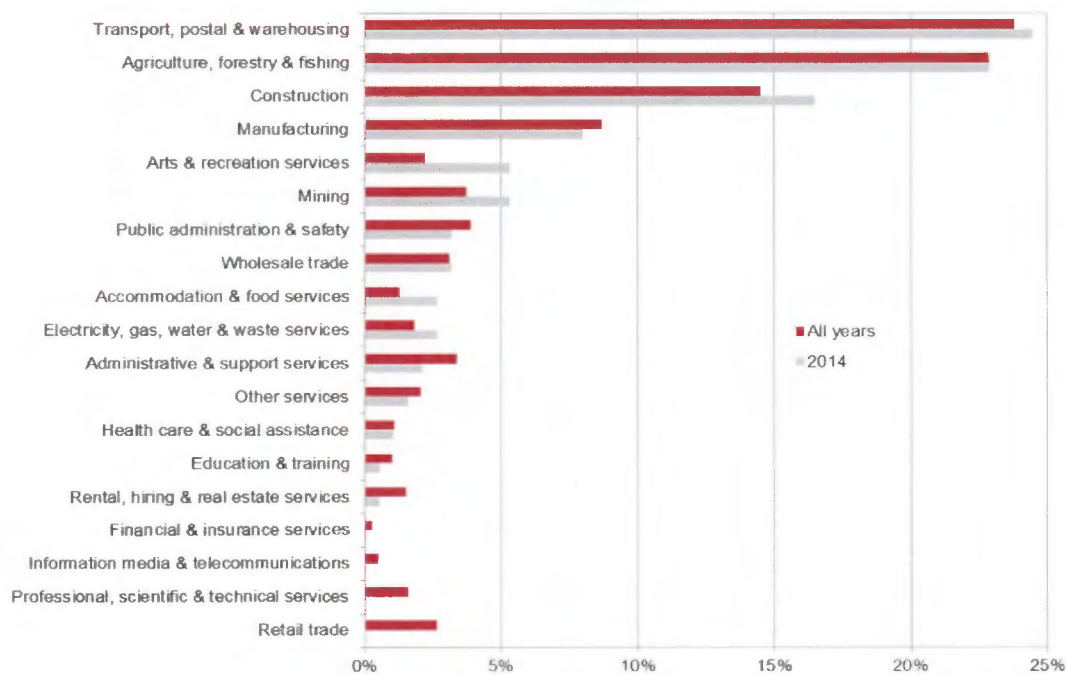
Worker fatalities: number by mechanism of incident, by selected years.

Mechanism of incident	2003	2005	2007	2009	2011	2013	2014	% of 2014 fatalities
Vehicle incident	108	103	129	112	78	69	71	38%
Being hit by moving objects	40	29	38	31	19	22	21	11%
Falls from a height	27	26	32	29	22	24	20	11%
Being hit by falling objects	15	25	24	15	27	25	17	9%
Being trapped between stationary and moving objects	9	12	11	7	13	7	12	6%
Being trapped by moving machinery	6	11	11	11	13	10	10	5%
Rollover of non-road vehicle	9	11	12	12	11	14	7	4%
Explosion	3	2	1	1	5	1	6	3%
Contact with electricity	13	13	13	13	10	8	5	3%
Slide or cave-in	1	4	1	1	2		5	3%
Contact with hot objects	1	2	7		3	1	4	2%
Being assaulted by a person or persons	12	7	8	4	3	6	2	1%
Other mechanisms	15	12	23	22	18	10	8	4%
Total	259	257	310	258	224	197	188	100%

Source: Work Related Traumatic Injury Fatalities, Australia, 2014, Oct 2015 9.

The transport, postal and warehousing industry recorded the highest proportion of fatalities in 2014 with the construction industry accounting for 15% of all worker fatalities.

¹⁰ SafeWork Australia, *Work Related Traumatic Injury Fatalities, Australia 2014*, Oct 2015.



Source: Work Related Traumatic Injury Fatalities, Australia, 2014, Oct 2015 16.

The agriculture, forestry and fishing industry recorded 13.25 fatalities per 100,000 workers which is almost nine times the national fatality rate.

Fatalities by Jurisdiction 2003-2014

State	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of worker fatalities												
New South Wales	85	75	91	95	86	83	63	67	58	82	54	53
Queensland	57	58	70	61	78	76	69	49	61	57	50	49
Victoria	54	67	42	67	69	47	51	47	46	35	32	42
Western Australia	28	36	23	23	45	43	33	31	24	24	33	22
South Australia	13	19	18	20	10	15	19	20	18	13	15	11
Tasmania	17	13	8	10	11	9	15	7	9	6	8	8
Northern Territory	4	13	4	6	10	9	6	6	7	9	4	3
Australian Capital Territory	1	3	1	2	1		2	1	1	3	1	
Total	259	284	257	284	310	282	258	228	224	229	197	188

Source: Work Related Traumatic Injury Fatalities, Australia, 2014, Oct 2015 23.

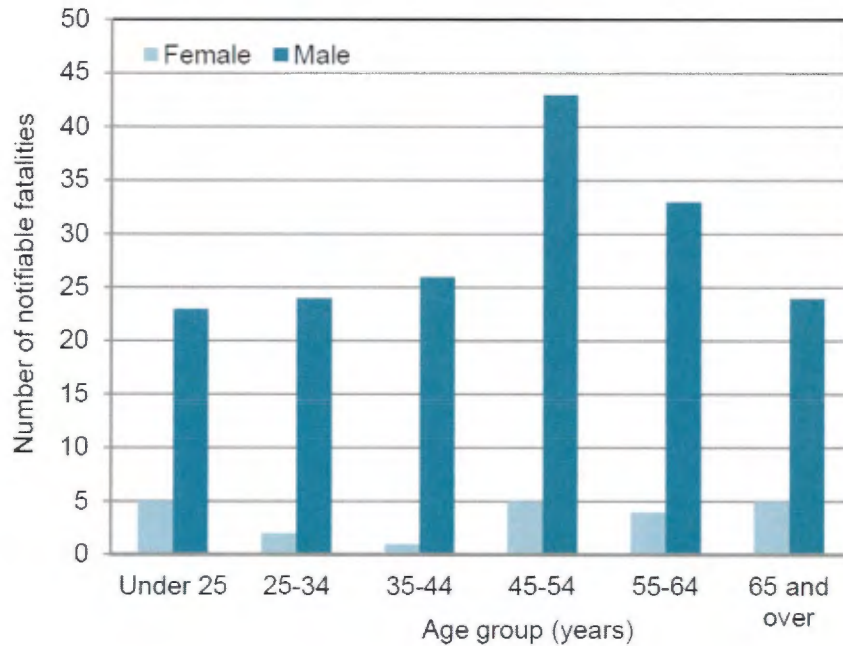
In 2015, there were a total of 163 worker fatalities for the calendar year, a reduction of 13%. Nine of those fatalities were recorded in South Australia, which is a reduction of 2 since 2014¹¹. However, South

¹¹ SafeWork Australia, *Notifiable Fatalities December 2015 Monthly Report*.

Australia has recorded its 17th fatality so far this calendar year, which is more than a 50% increase on the total number of fatalities recorded in the previous year.

Males are over represented in fatality statistics as can be seen from the chart below. Men in the mid-career age group are more likely to be fatally injured at work. Data reveals that females under 25, in the mid-career age group and over 65, are more likely to be fatally injured than females in other age groups.

Notifiable fatalities by age and sex (1 January – 31 December 2015)



Source: SafeWork Australia, Notifiable Fatalities December 2015 Monthly Report,

7. JURISDICTIONAL COMPARISONS

7.1 The Work Health and Safety Act 2012 (SA)

Since the last attempt to introduce a provision of industrial manslaughter into legislation, national model *Work Health and Safety* (WHS) legislation has been adopted by almost all Australian jurisdictions, with the exception of Victoria and Western Australia. The *Work Health and Safety Act 2012* strengthens penalties for a breach of health and safety and includes a term of imprisonment of up to five years for a category one offence, where a risk of death or serious injury without reasonable excuse is evident.

The WHS Act provides for three categories of criminal offences for breach of health and safety duties. The maximum penalties are different depending on the category of the offence and whether the offender is an individual - a worker, or a Person Conducting a Business or Undertaking (PCBU), an officer (as defined) or a body corporate.

Category 1 – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

Category 3 – a duty holder fails to comply with a health and safety duty.

Penalties

	Corporation	Individual as PCBU or officer	Individual as worker or other
Category 1	\$3million	\$600,000, five years in prison or both	\$300,000, five years in prison or both
Category 2	\$1.5million	\$300,000	\$150,000
Category 3	\$500,000	\$100,000	\$50,000

The harmonised Work Health and Safety legislation also introduced new offences for contraventions by a Person Conducting a Business or Undertaking (PCBU) that result in serious injury or death and/or involve criminal negligence or recklessness. The move to holding a PCBU accountable recognises that the employment relationship is a changing one, particularly on large projects where multiple contractors may be engaged or on smaller projects where a worker may not be employed by the business but is contracted from an employment firm. The changing dynamics reflects the importance of the duty of care owed to each other and to anyone on a worksite.

Senior officers can now be held criminally liable and face the prospect of imprisonment for up to five years for failing to ensure that the corporation of which they were an officer failed to comply with their health and safety duties¹². There is also a wider range of penalties available such as Enforceable Undertakings and infringement notices.

An Enforceable Undertaking is a legally binding agreement in which a person or organisation agrees to rectify a contravention or alleged contravention of the Act to improve work health and safety outcomes and performance. It is an alternative to prosecution.

Enforceable Undertakings enable on-site remedies to safety breaches following agreement between the regulator, an individual or the organisation¹³.

Two Australian jurisdictions have not adopted the national model Work Health and Safety legislation, these States are Victoria and Western Australia which retain their own unique Occupational Health and Safety legislation.

¹² Ibid.

¹³ *Enforceable Undertakings*, SafeWork SA website 26/11/15. Downloaded 9 March 2016.

7.2 Victoria

Victoria is one jurisdiction that has not adopted the national model Work Health and Safety legislation. It's *Occupational Health and Safety Act 2004* includes a duty not to recklessly endanger persons at workplaces. The penalty for doing so may result in a term of imprisonment not exceeding 5 years or a fine not exceeding 1800 penalty units (\$151.67 per penalty unit).¹⁴ The maximum fine to be applied would therefore be \$273,006.00.

7.3 Western Australia

The WorkSafe Division of the Western Australian Department of Commerce is responsible for the enforcement and administration of the *Occupational Safety and Health Act 1984* and the accompanying regulations. Section 18A of the Act defines gross negligence which occurs when a person who owes a duty to others breaches that duty:

A contravention of a provision mentioned in subsection (1) is committed in circumstances of gross negligence if —

(a) the offender —

(i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but

(ii) acted or failed to act in disregard of that likelihood;

and

(b) the contravention did in fact cause the death of, or serious harm to, such a person.

The Western Australian legislation details four penalty levels that can be applied for breaching health and safety obligations:

¹⁴ Victoria Government Gazette S86, 17 April 2015.

Category	Description	Penalty
Level one	First offence	Fine - \$5,000 /employee Fine - \$25,000 / employer
	Subsequent offence	Fine - \$6,250 / employee Fine - \$31,250 / employer
Level two	First offence	Fine - \$100,00 / individual Fine - \$200,000 / body corporate
	Subsequent offence	Fine - \$125,000 / individual Fine - \$250,000 / body corporate
Level three	First offence	Fine - \$200,000 / individual Fine - \$400,000 / body corporate
	Subsequent offence	Fine - \$250,000 / individual Fine - \$500,000 / body corporate
Level four (gross negligence – section 19A)	First offence	Fine - \$250,000 / individual + 2 years imprisonment Fine - \$500,000 / body corporate
	Subsequent offence	Fine - \$312,500 / individual + 2 years imprisonment Fine - \$625,000 / body corporate

The maximum penalty for gross negligence is \$625,000 which is considerably less than the maximum penalty for a Category 1 offence under the *Work Health and Safety Act*, which is \$3million for a Corporation.

7.4 ACT Work Health and Safety Act

The Australian Capital Territory (ACT) enacted the national model *Work Health and Safety Act* in 2011 which is administered by WorksafeACT. The Criminal Code is also applied to the Work Health and Safety Act.

Section 31 of the Act prescribes the offences and penalties, which are the same as those applied in all other jurisdictions that have adopted the national model legislation.

On 3 June 2015, a Magistrate applied a penalty of \$270,000 on Corporate Ventures (Aust) Pty Ltd who failed to comply with a safety duty and exposed a worker to a risk of death or serious injury. The worker sustained serious injuries when he fell more than 5 metres into a void while cutting penetrations in construction panels. Chief Magistrate Walker held that:

“This case classically illustrates the fact that paperwork, without practical implementation by those on site is not enough to keep workers safe.”

Regarding the injured worker’s age and relative inexperience: “I am satisfied that there was a somewhat greater level of responsibility required of the employer to ensure his safety than might have been the case had the employer been dealing with a very experienced construction worker.”¹⁵

Chief Magistrate Walker assessed the offence ‘toward the mid-range of seriousness of this type’ and took into account a combination of the objective seriousness of the offence and the need for general deterrence¹⁶.

In a different matter, a corporation that caused the death of a truck driver when his truck came into arcing range of live overhead power lines at a civil construction site was fined \$1,100,000 by Chief Magistrate Walker in the ACT Industrial Court. The employer had a poor safety culture and had been issued with a Prohibition Notice a few years earlier for a similar incident. However, the more serious offence of Reckless Conduct was not prosecuted and therefore the Chief Magistrate did not have the ability to impose a term of imprisonment¹⁷.

7.4.1 ACT Crimes Act 1900

Industrial Manslaughter was introduced into the ACT *Crimes Act* 1900 in 2004. The Act stipulates that a person who engages another to provide a service (worker, contractor etc) and that person dies as a result of the employers reckless or negligent conduct or both is subject to a penalty of 2,000 penalty units, 20 years imprisonment or both. The value of one penalty unit is \$140 for an individual (2,000 x 140 = \$280,000) and \$700 for a corporation (2,000 x \$700 = \$1.4m)¹⁸. However, the legislation permits that if the Court finds a Corporation guilty of the offence of manslaughter it may impose other sanctions as well as or instead of the financial penalty. Other sanctions may include publication of the offence in newspapers or on television, in annual reports and to develop and operate a community service. These other penalties are similar to enforceable undertakings within the national model *Work Health and Safety Act*.

¹⁵ Joseph Bartlett v Corporate Ventures (Aust) Pty Ltd (3 June 2015) CC 41162 of 2014.

¹⁶ WorkSafeACT: <http://worksafe.act.gov.au/page/view/3956/title/joseph-bartlett-v-corporate-ventures>

¹⁷ Brett McKie v Kenoss Contractors Pty Ltd (in liquidation) (19 August 2015), CC 40210 of 2014

¹⁸ Legislation (Penalty Units) Amendment Bill 2013.

7.4.2 ACT Criminal Code 2002

Sections 49-55 of the ACT *Criminal Code 2002* refers to an offence of Corporate Criminal Responsibility. The elements of the offence of Corporate Criminal Responsibility are summarised below:

Physical elements If an employee, agent or officer of the corporation acts within the actual or apparent scope of his or her employment or apparent authority.

Fault elements

- The Board of Directors or high managerial agent knew or recklessly engaged in conduct or expressly, tacitly or impliedly authorised or permitted the commission of an offence
- Corporate culture existed that encouraged, tolerated or led to noncompliance with the law
- The corporation failed to create and maintain a corporate culture requiring legal compliance

Negligence

- If negligence is a fault element to a physical element when viewed as a whole.

Section 21 of the Act states that a person is negligent if the person's conduct merits criminal punishment for the offence because it involves:

- Such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- Such a high risk that the physical element exists or will exist.

Mistake of fact is a defence to the charge of Corporate Criminal Responsibility. If the corporation can establish that the employee, agent or officer had a mistaken reasonable belief about the facts that would have meant the conduct was not an offence, and the corporation proved that it exercised appropriate due diligence to prevent the conduct, it may successfully defend the charge of Corporate Criminal Responsibility.

However, a failure by the Corporation to exercise appropriate due diligence in relation to the conduct may be evidence that the conduct was due to:

- Inadequate corporate management, control or supervision by its employees, officers or agents; or
- Failure to provide adequate systems for giving relevant information to relevant people in the corporation.

7.5 International Jurisdictions

7.5.1 New Zealand – Health and Safety at Work Act

The New Zealand *Health and Safety at Work Act 2015*, which is modelled on the Australian Work Health and Safety legislation, came into force on 4 April 2016 and strengthens the ability to hold individuals and

entities accountable for breaches of the Act. Where corporations and / or individuals recklessly expose workers to the risk of death or serious injury high fines can be applied.

Section 47 of the New Zealand legislation refers to the offence of 'reckless conduct in respect of duty' and prescribes fines of up to \$3million for a person who commits the offence without reasonable excuse.

7.5.2 New Zealand Crimes Act 1961

The *Crimes Act 1961* (NZ) provides for individuals to be held accountable for manslaughter where their gross negligence results in the death of workers or members of the public.

7.6 Corporate Manslaughter and Corporate Homicide Act 2007 (UK)

Corporate manslaughter was introduced in the United Kingdom (UK) in April 2008 following a series of disasters such as the Herald of Free Enterprise, the Kings Cross Fire and the Clapham and Southall rail crashes. Companies involved were responsible for serious injuries and death of employees and the public, but were not held to account which resulted in calls for their prosecution. This resulted in the introduction of the *Corporate Manslaughter and Corporate Homicide Act 2007*, which builds on key aspects of the common law offence of gross negligence and is not dependent on the guilt of one or more individuals.

Prior to the enactment of the *Corporate Manslaughter and Corporate Homicide Act*, an organisation could only be convicted of manslaughter if a person who was the 'directing mind' of the organisation such as a senior individual was also guilty of an offence (the identification principle), which meant that smaller companies were most likely to be charged.

The UK *Corporate Manslaughter and Corporate Homicide Act 2007* applies to corporations, departments, partnerships and employer as well as employee associations that cause the death of a person resulting from a gross breach of a duty of care below that reasonably expected in the circumstances. The Criminal and Civil Law Policy Unit of the UK Ministry of Justice provided a list of cases where there had been a conviction and some where there had been an acquittal of the charge of corporate manslaughter (refer Appendix 2 for details).

Penalties for convictions appear to be less than those currently available for a category one offence under the *Work Health and Safety Act*. Employers found guilty may be given time to pay due to Sentencing guidelines which require the Court to consider the following matters:

- The seriousness of the offence and foreseeable nature of the injury
- How far short of the applicable standard the defendants fell
- How common the breach of the particular kind was.

Following consideration of the above, the Court must also consider the aggravating and mitigating factors. When deciding the financial penalty the Court is required to consider the financial circumstances of the company and the effect the fine will have on the employment of the innocent, the effect upon provision of

services to the public and whether the fine would have the effect of putting the company out of business. Business can be given several years to pay any fine that is applied¹⁹.

8. COLBERT CASE

An Adelaide trucking boss, Peter Francis Colbert was charged by unanimous jury verdict for the offences of endanger life and manslaughter by gross negligence following the death of his employee, Robert Brimson, who was driving a truck with defective brakes. The Supreme Court jury heard that Colbert had been repeatedly warned by several current and former employees about faulty brakes before the accident, which caused the truck to slam into a pole in Happy Valley when Brimson attempted to apply the brakes²⁰.

Colbert was sentenced to 13 ½ years in prison (reduced to 12 ½ years on account of time served in custody). In sentencing, the Judge labelled Colbert a risk-taker and a narcissist with misplaced arrogance. Following an appeal against the Judge's summing up, Colbert was detained on home detention while awaiting a retrial²¹. In September, Mr Colbert was again found guilty of manslaughter and endangering life at retrial in the Supreme Court²².

9. EVIDENCE

The Committee received a total of 18 submissions. Eleven from organisations representing employer groups, one from SA Unions, two from Government agencies, (SafeWork SA and SafeWork Australia) a submission from the Law Society of South Australia and Flinders University Centre for Crime Policy & Research. Two submissions were received from overseas – one from the United Kingdom Ministry of Justice and one from New Zealand's Ministry of Justice. For a full list of submissions and details of hearings, refer to Appendix 1.

9.1 Legal and Policy Considerations

SafeWork Australia submitted that the Work Health and Safety legislation in place across most Australian jurisdictions is the result of *Intergovernmental Agreement and Operational Reform in Occupational Health and Safety* which included a commitment that Commonwealth, state and territory governments would harmonise their legislation to provide a consistent protection for Australian workers and reduce regulatory burden²³.

¹⁹ Houston A, 'Court sets out sentencing guidance for the offence of corporate manslaughter: Summary Judgement', Lord Chief Justice's Office, Belfast, 8 May 2012.

²⁰ *R v Colbert* [2016] SASFC 12 (24 February 2016).

²¹ *Ibid.*

²² The Advertiser, 'Guilty at Retrial', 14 September 2016 14.

²³ Baxter M, *SafeWork Australia submission*, 6 April 2016.

State and territory governments also recognised the need for a consistent approach to compliance and enforcement, which saw the creation of the National Compliance and Enforcement Policy, which was developed collaboratively by the Heads of Workplace Safety and endorsed by the Workplace Ministers Council in July 2011. Common principles, frameworks and operational protocols support the enforcement and administration of the model WHS laws²⁴. Ms Baxter submitted that:

The absence of an offence of industrial manslaughter under the model WHS Act reflects a decision of the WRMC to prevent excessive overlap with local criminal laws, under which offences of manslaughter are available²⁵.

SafeWork Australia outlined some key differences between the proposed Bill and the Work Health and Safety Act.

The Law Society submitted that there is 'no need to introduce a new and serious criminal offence law in this State and that difficulties could arise in relation to its application.' The Law Society also submitted that the *Work Health and Safety Act 2012* includes a category 1 offence which is used when an employer has been recklessly indifferent. The Society went on to note that the defence to manslaughter in the *Criminal Law Consolidation Act* is not referred to in the Bill. Mr Caruso submitted that:

There are difficulties of principle associated with singling out an employer where the "cause" of an industrial accident, particularly on an industrial site, can be multifactorial and where the principal cause could be the actions of a third party²⁶.

In evidence, the President of the Law Society, Mr Caruso, said that the Society has some concerns about the Bill, which he said provided for a situation already covered by existing common law with respect to the general offence of manslaughter.

With respect to the existing offence of manslaughter, we consider that that offence is specifically wide in scope and permits of application to a diversity of situations, as it properly should, to account for the different ways in which potential offending may come about²⁷.

Mr Caruso said that the proposed Bill provides for a lessening of the standards currently in existence in the common law. He said:

Manslaughter is a very serious criminal offence and we in the society would be concerned that anyone convicted of such an offence have available to them every defence known to the law as well as an obligation on the prosecution to meet the high standards that the common law has developed for that offence²⁸.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Caruso D, Submission no 1, The Law Society of South Australia, 10 February 2016.

²⁷ Caruso D, *Committee Hansard*, Parliament of South Australia, Q1, 11 February 2016 1.

²⁸ Ibid.

In response to a question from Mr Knoll about the difference between the Bill and a charge of manslaughter against an employer, Mr Caruso said that the Bill is 'not on all fours with the common law and in a way that diminishes the standard that the prosecution has to reach in order to convict ...'²⁹

Mr Rossi who is Chair of the Law Society's Accident and Compensation Committee said that the recent case of Colbert demonstrated the effectiveness of current legal arrangements. He said:

In the Colbert case, for those who are not familiar with the facts, Mr Colbert leased a series of trucks from another person. He then operated the business whereby he was using these trucks to deliver items for other people. In the course of that business he employed a number of drivers and in the course of that business some of the drivers complained that the brakes were defective, needed maintenance and were dangerous.

The jury appears to have accepted the evidence of the drivers. One of the drivers, on an occasion of using one of the vehicles, found that the brakes were not working; in order to avoid colliding with another vehicle, he veered off the road, hit a Stobie pole and died. The jury convicted Mr Colbert of the common law crime of manslaughter³⁰.

Mr Rossi said that it is not clear what the Bill is trying to do and what is not being achieved within the current laws? He said that the current *Work Health and Safety Act* does not confine the relationship between employer and employee:

The only other matter that I would add is that we do also have a concern that, in one sense, in the matter referred to by the president, this proposed bill is broader in its scope to the common law manslaughter, but in other respects it's actually more narrow because it seeks to confine itself to the relationship between employer and employee, whereas, in many instances of industrial worksites where there are substantial risks of serious injury or death, one finds multiple parties, for example, the Royal Adelaide Hospital industrial site³¹.

Mr Rossi said that there are many employers at the Royal Adelaide site at the same time as there are on any large industrial site. He said that the existing common law which deals with the crime of manslaughter is not restricted to an employer-employee relationship:

So someone on a construction site who engages in a dangerous activity in contravention of the law, where a jury could conclude that the person was recklessly indifferent as to whether that could cause grievous bodily harm or death, for example, and death ensues, there is no confining of a charge of manslaughter to an employee; it can relate broadly³².

Mr Caruso and Mr Rossi both stated that the existing work health and safety laws and the common law can effectively deal with problems of unsafe work environments in industrial settings.

²⁹ Ibid.

³⁰ Rossi T, *Committee Hansard*, Parliament of South Australia, Q1, 11 February 2016 2.

³¹ Ibid.

³² Rossi T, *Committee Hansard*, Parliament of South Australia, Q5, 11 February 2016 4.

Ms Cook asked if the tests for the application of manslaughter charges and convictions would be equal under the common law and with the Bill as proposed, but Mr Rossi said it would not.

No, what we are saying is that in certain circumstances it would be easier to secure a conviction under the proposed industrial manslaughter bill because of the different tests of causation, for example, to which that precedent referred. What we are saying is that we can't envisage why you would want to draw that distinction. We are having difficulty thinking about a scenario where, under the existing common law, an employer would not be charged and convicted of the crime of manslaughter, but would under this industrial manslaughter bill, and why as a matter of principle that should be so. That's one of our primary concerns³³.

The Hon Mr Kandelaars asked why more cases of manslaughter haven't been brought against employers who appear to have acted with reckless disregard:

There has been many a grizzly industrial death where people would say that the employer acted with reckless disregard for the safety of their employee. So, you need to understand what is driving the desire. The real question is: why are not more cases taken up through the Criminal Law Consolidation Act?³⁴

Mr Rossi responded to this question:

I can assure you that we well understand. I have been practising for more than 30 years in this area of the law and I predominantly represent injured people, injured families. With one tragic recent death involving Mr Salvemini the parents came to our firm for advice. I well understand the matters you are referring to. Having said that, the Colbert case demonstrates that the current common law can deal effectively with an appropriate case where there should be a charge of manslaughter. I think what you have raised is a question of why there has not been more such prosecutions; we and the society are not the appropriate legal body to comment on that³⁵.

Mr Caruso said that the Law Society understands the community's concern for justice and the need to create safe work environments but these things will not be addressed by the *Work Health and Safety (Industrial Manslaughter) Amendment Bill*. He said:

What the Society would suggest to this committee is that the way to ensure that appropriate cases are brought before the court is to look at, where appropriate, legislative regimes that make it easier for reporting to be carried out, whereby prosecuting authorities can be made aware of what is happening on industrial sites so that they can properly make decisions as to whether there is the basis for a charge to be laid. The current provisions of manslaughter give wide discretion as to what circumstances are appropriate for a reasonable prosecution to be laid³⁶.

³³ Rossi T, *Committee Hansard*, Parliament of South Australia, Q6, 11 February 2016 4.

³⁴ Kandelaars G, *Committee Hansard*, Parliament of South Australia, Q8, 11 February 2016 5.

³⁵ Rossi T, *Committee Hansard*, Parliament of South Australia, Q8, 11 February 2016 5.

³⁶ Caruso D, *Committee Hansard*, Parliament of South Australia, Q9, 11 February 2016 5.

The Hon G Kandelaars asked if a charge of murder could have been brought against Colbert to which Mr Caruso said that it could. Mr Caruso explained that:

The circumstances in which a murder charge can be laid are both for intention to cause death or grievous bodily harm, or with respect to recklessness as to causing death or grievous bodily harm. Recklessness, within the general law of murder, is awareness of the probability—not the possibility, but the probability—that death will be occasioned, and yet proceeding nonetheless.

Following further explanation Mr Caruso said that it illustrates the point that there is sufficient scope in the common law to provide the prosecuting authority to consider matters on a case by case basis. He said that the Bill will confuse and limit the discretion of the prosecution³⁷.

In response to a question on responsibilities of a Body Corporate or Board of Directors who fail in their duty to adhere to WHS guidelines, Mr Caruso said that the *Criminal Law Consolidation Act* provides for accessorial derivative liability with respect to accessories to the principal charges, which does not exist within the Bill and would therefore limit the scope of a prosecution.³⁸

The Director of Public Prosecutions (DPP), Mr Adam Kimber SC, said that there are two possible charges of manslaughter – manslaughter by criminal negligence and manslaughter by unlawful and dangerous act. He said that it is up to the prosecutor to decide the preferred charge for prosecution but in both cases there is no maximum penalty established by Parliament. He said:

It is the mens rea or intention offence so, while of course there needs to be a conscious and voluntary act committed by the accused which has been a substantial cause of the relevant death, there is no necessity to prove an intention to cause death, to cause serious injury or, indeed, to cause any harm at all. Each involves in its own way an objective assessment of the degree of risk³⁹.

The Presiding Member asked Mr Kimber to explain the process for deciding the choice of charge. He said that the DPP's office firstly receives brief of evidence from which they assess the available evidence, its admissibility and work out whether or not there is a reasonable prospect of conviction. The DPP has published guidelines with respect to the process which he said:

My office has published prosecution guidelines with respect to these issues: the reasonable prospect of conviction test and the public interest test, and it's those guidelines which will then be applied to the available evidence. One of the key guidelines is that in the ordinary course the most serious charge available will be the one chosen to be prosecuted. As a general proposition, if the available evidence reveals that there's a reasonable prospect of establishing a charge of

³⁷ Ibid.

³⁸ Ibid.

³⁹ Kimber A, *Committee Hansard Question 124*, 20 July 2016 47.

manslaughter then the advice of my office would be expected to be that that charge should proceed rather than any potential charge only under the Work Health and Safety Act⁴⁰.

When asked about prosecutions for manslaughter under the *Criminal Law Consolidation Act* for workplace deaths, Mr Kimber said that he could not provide an answer.

I can't comment, I don't think, on the numbers because of course I am not cognisant of how many workplace deaths there are, I am only cognisant of the matters that actually make their way to my office for my office to give an opinion or because the police have already gone out and charged and therefore the matter will come to my office as a manslaughter in any event. The same process that I described earlier will be undertaken. So I don't think I can comment on numbers because I am not cognisant of how many workplace deaths there are compared to how many potential manslaughters or manslaughters come to my office. I find that difficult for me to comment on⁴¹.

Mr Kimber went on to say that the *Criminal law Consolidation Act* is about individual offenders, not about corporations or body corporates. He said the relevant issue would be whether or not the potential accused committed the offence themselves or had some direct responsibility.

Mr Knoll asked Mr Kimber about the investigation of workplace deaths and whether SafeWork SA would bring a charge to the DPP's office.

Mr KNOLL: Our understanding is very much that SafeWork would attend, but would the police attend? I would assume, then, if there is police involvement and police collect evidence and build a case, they bring that to your office.

Mr KIMBER: Unless they form the view, after their investigation that they didn't feel there was any potential offence that had been committed. There's always the possibility, in any criminal offence—or investigation, I should say—that the police will investigate and decide there's not enough here and choose not to lay a charge themselves or bring it to my office for an opinion.

Mr KNOLL: When SafeWork investigates, does it ever bring charges to your office for prosecution?

Mr KIMBER: Not directly, but there might be certain instances in which they have conducted an investigation where they may be engaged with the Crown Solicitor and that the Crown Solicitor may seek advice from my office about whether it should be a manslaughter or it should be a prosecution under the Work, Health and Safety Act.

Mr KNOLL: So, potentially, if SafeWork comes in and does an investigation on their own and they then make the decision to prosecute under the Work, Health and Safety Act, then you may not have any visibility that that may happen external to your office?

Mr Kimber agreed that his office may not be aware of the prosecution of workplace fatalities, because the Crown Solicitor's Office takes responsibility for those prosecutions. Although he went on to say that he is

⁴⁰ Ibid.

⁴¹ Ibid.

currently exploring a protocol with the Crown Solicitor's Office where the DPP would be formally advised, because they might be preparing an opinion on the same matter⁴². Any such protocols should not result in delayed prosecutions of workplace fatalities.

Following questions from the Hon Gerry Kandelaars on whether the Industrial Court is able to undertake criminal prosecutions, Mr Kimber said that the Industrial Court deals with work health and safety matters, it does not undertake criminal prosecutions. In relation to the proposed Bill, Mr Kimber said that in his view there is not much utility in having the same offence elsewhere as already exists, either under the Criminal Law Consolidation Act or at common law. He said:

The normal place to put criminal offences, particularly major indictable criminal offences, in in the Criminal law Consolidation Act⁴³.

The Committee asked Mr Kimber to advise how the Colbert prosecution brief was referred to the DPP, which he took on notice. Mr Kimber reported that a brief of evidence was received from SAPOL who were the primary investigators in the case. The DPP did not receive a brief from SafeWork SA but Mr Kimber understands that the South Australian Police (SAPOL) liaised with SafeWork SA about the case⁴⁴.

The Committee then followed up this question with the South Australian Police Commissioner, who advised that:

The vast majority of prosecution briefs of evidence are compiled by SafeWork SA, who are responsible for investigating workplace incidents where people have been fatally injured.

SAPOL are typically the lead agency where there is a need to prosecute for a criminal offence such as manslaughter arising from serious criminal negligence pursuant to Section 13 (1) of the Criminal law Consolidation Act.

Both SAPOL and SafeWork SA are required to prepare a report for the coroner regardless of any prosecution for offences against the relevant Acts⁴⁵.

The Police Commissioner advised that SAPOL conducts investigations on behalf of the State Coroner which means that they are involved in some level into all workplace fatalities.

SafeWork SA confirmed that as the regulator of the Work Health and Safety Act, they are responsible for providing a brief of evidence for consideration of the Crown Solicitor's Office and advice on whether a prosecution is warranted. Ms Boland said that police are often the first responders to an incident and are required to attend all deaths, including work related deaths⁴⁶.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Kimber A, *Response to Question on Notice*, 1 August 2016.

⁴⁵ Stevens G, *Minute to the Minister for Police MLO 0922/16*, 29 August 2016.

⁴⁶ Boland M, *Response to Question on Notice*, 4 August 2016.

The Hon Gerry Kandelaars asked Ms Boland if prosecution of a Category 1 offence involves a trial before the Supreme Court or the Industrial Court?

In response to the question which Ms Boland took on notice, advised that Category 1 offences are minor indictable offences and all prosecutions commence in the Magistrates Court. A trial for a prosecution will also be finalised there unless the defendant elects to a trial in the District Court or upon conviction, the Industrial magistrate considers that a penalty in excess of \$300,000 should be imposed. In that case the matter of sentencing will be referred to the District Court⁴⁷. SafeWork SA advised that:

As per section 105 of the *Summary Procedure Act 1921 (SA)*, at the preliminary examination the prosecution must present to the court what evidence they have to indicate that the defendant is guilty of the charge. The prosecution must persuade the magistrate that there is a sufficiently strong case against the defendant to put the defendant on trial. If the matter proceeds to trial in the District Court, it will be heard before a Judge and Jury – section 7 (2) *Juries Act 1927 (SA)*.

SafeWork SA advised that there is no time limit in which to lay a charge for an indictable offence, therefore a charge of manslaughter can be brought at any time after the event. However, time limitations are specified in section 232 of the *Work Health and Safety Act*:

- Within 2 years of the offence first coming to the notice of the regulator
- Within 1 year after a coronial report was made of a coronial inquiry or inquest ended
- Within 6 months after WHS undertaking is contravened.

Recommendation 1

The Committee recommends that:

- the Director of Public Prosecutions and the Crown Solicitor establish a protocol for ensuring that due consideration be given to prosecuting under the *Criminal law Consolidation Act* where it is appropriate to do so.
- Any such protocol should not result in prosecution delays for breaches of the *Work Health and Safety Act*.

⁴⁷ SafeWork SA, *Questions on Notice*, 19 May 2016.

Recommendation 2

The Committee recommends that an individual is charged under the *Criminal law Consolidation Act* following an industrial fatality, the Crown Solicitor should still give due consideration to charging the PCBU under the provisions of the *Work Health and Safety Act*.

The Presiding Member asked Ms Boland about employers who take out insurance against prosecution.

The PRESIDING MEMBER: One of the questions we want to ask is: in previous evidence that we have had in previous inquiries there has been an opportunity for a PCB to take out insurance to protect them from being prosecuted. Do you have any comment about that?

Ms BOLAND: Yes, we have absolutely opposed that idea. I think legally we consider that those contracts are probably void anyway, that you can't enter a contract to indemnify yourself against criminal charges. We think they are invalid but insurance companies still offer them because it makes commercial sense for them to do that, so that's what we are finding. On that point, I might draw the committee's attention to a recent OHS alert which only came out on 10 May this year, and that's a very interesting commentary on the insurance matter.

The OHS Alert referred to the case of *Hillman v Ferro Con (SA) Pty Ltd (in liquidation) and Anor* [2013] SAIRC 22. The case involved a company and director who were prosecuted for a breach of the now repealed *Occupational Health, Safety and Welfare Act 1986* following the death of a worker at the Adelaide desalination plant. The company was fined \$300,000 but they had taken out indemnity insurance for criminal negligence, which was not made unlawful in the repealed Act and is not proscribed in the current *Work Health and Safety Act*.

The OHS Alert, quoted managing partner John Edmond of Clyde & Co Lawyers who said that:

As a result of *Hillman v Ferro Con*, judges seeking to mete out meaningful penalties – for the category 1 offence of reckless conduct in the WHS Act – are more likely to consider a custodial sentence where D&O policies are in place⁴⁸.

Ms Alena Titterton, partner with Clyde & Co also commented and said that the issue comes into play before the matter gets to court. She said that:

regulators will be asking companies about insurance policies and exclusions during incident investigations and when making decisions around the discretion to prosecute in the officer liability space they are likely to enter the 'jail zone'⁴⁹.

⁴⁸ OHS Alert, *Insurance and WHS Management: Part 1*, 10 May 2016.

⁴⁹ Ibid.

The Flinders University Centre for Crime Policy & Research submitted that the proposed offence of industrial manslaughter varies significantly from existing common law manslaughter. In their submission, Ms Richards submitted that:

The standard of proof for work health and safety offences is beyond reasonable doubt given that they are all criminal offences, despite the regulatory nature of some of them and the preventative or regulatory purposes of the Work Health and Safety Act itself. Industrial manslaughter would be classified as a major indictable offence due to its penalty⁵⁰.

Ms Richards said that the proposed industrial manslaughter Bill introduces another species of offence, which is distinct from existing provisions, despite several areas of overlap. She also submitted that the term 'grievous bodily harm' is referred to as 'serious harm' in the *Criminal Law Consolidation Act* and has a precise statutory meaning but it is not defined in the proposed Bill.

According to Flinders University's submission, the elements of liability deviate from the language used in elements of manslaughter by criminal negligence and unlawful and dangerous act, which leaves open questions of meaning and intended scope and operation of the proposed Bill. Five key points of potential conflict were raised by the University in relation to the proposed Bill and its relationship with the *Criminal Law Consolidation Act*, which are summarised below:

WHS Industrial Manslaughter Amendment Bill	Criminal Law Consolidation Act	Issues
268A Serious harm – not defined	Really serious harm substituted for grievous bodily harm in CLCA.	268A differs from both common law and CLCA in relation to risk Serious harm has precise statutory meaning in CLCA. Serious injury defined at common law.
Substantial risk	Appreciable risk	The level of risk is partly due to engaging in the act with the attendant risk (CLCA)
Ought reasonably to have known	No need for defendant to be aware of the level of risk or dangerousness	WHS Bill takes approach of Code jurisdictions. Similar wording to ACT offence. SA is not a Code jurisdiction.
Substantial contribution	Substantial and operating	SA not a Code jurisdiction, therefore 'substantial contribution' does not replace the common law test of causation for manslaughter
Excludes s267 CLCA		No person will be able to be convicted for an offence of

⁵⁰ Richards J, *Centre for Crime Policy & Research*, Flinders University, 11 July 2016.

WHS Industrial Manslaughter Amendment Bill	Criminal Law Consolidation Act	Issues
		aiding, abetting, counselling or procuring the offence of manslaughter.
Authorised by another law or emergency	Common law defence against a major indictable offence	Existing defences to a major indictable offence may not apply.

Flinders University submitted that parts of the proposed industrial manslaughter Bill had taken a similar approach to the UK *Corporate Manslaughter and Corporate Homicide Act 2007*, but noted a point of difference. The South Australian Bill proposes to cover natural employers and officers as well as corporate employers. The last requirement in the UK's *Corporate Manslaughter and Corporate Homicide Act* for corporate manslaughter to be established is 'the way in which the organisation's activities are managed or organised by its senior management was a substantial element in the gross breach of the relevant duty of care', which is similarly replicated in the proposed Bill.

Ms Richards submitted that:

A notable point of difference between the usages of this concept in the two offences is that in the proposed s268A, the faulty management/organisational practices are one way of establishing a breach of duty. However, the UK offence goes further. These practices must always be present as an additional element of the UK corporate manslaughter offence⁵¹.

Additionally the requirement for an employer or officer, who knows or ought reasonably have known or is recklessly indifferent to the level of risk being created by the breach is not found in the UK legislation. Flinders University questions whether the proposed *WHS Industrial Manslaughter Bill* alters the common law 'guiding mind' principle, as opposed to the UK legislation which replaced it.

Recommendation 3

Based on evidence presented to the Committee, Members maintain that there are adequate legal systems in place to deal with industrial deaths. On this basis the Committee does not support the proposed amendment to the *Work Health and Safety Act*.

⁵¹ Ibid.

9.2 Employer and Employee Representatives

All employer representatives strongly advocated against the introduction of the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* because in their various opinions the current national model *Work Health and Safety Act* with its increased penalties and enforcement options (eg fines and enforceable undertakings) is adequate. They submitted that the Bill would do nothing to improve safety and would detract businesses from implementing an improved safety culture. Employer representatives also saw the Bill as punitive and shared a view that introduction of industrial manslaughter will act to duplicate existing laws that are working well.

The Motor Traders Association (MTA) said that the current 'Statutory and Case law already provides for an offence whereby a person who has a health and safety obligation fails to provide that duty to the person to whom it is owed'. The MTA submitted that introduction of an offence of industrial manslaughter would place South Australia at a competitive disadvantage⁵².

The National Electrical and Communications Association (NECA) agreed with MTA and submitted that the 'Bill does nothing to restore the lives of those affected by tragic workplace events'⁵³.

The South Australian Wine Industry Association (SAWIA) submitted that its members represent approximately 96% of grapes crushed in South Australia and about 36% of land under viticulture. SAWIA submitted that the 'penalty provisions of the WHS Act are the same as those of other States and Territories that adopted the model WHS legislation, including the Commonwealth'. They submitted that the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* should be rejected because current penalties are adequate⁵⁴.

The Housing Industry Association (HIA) is a national industry association with some 40,000 members. It represents the interests of home builders, new home builders, renovators, trade contractors, land developers, and a wide range of other professionals engaged in the residential building industry. HIA outlined current Work Health and Safety laws in Australian jurisdictions and previous attempts to introduce industrial manslaughter into law. HIA submitted that where industrial manslaughter laws are in place, there are very few prosecutions, if any, which indicates that there is little need for the offence. They also submit that introduction of the law would be an unnecessary duplication of existing protections⁵⁵.

⁵² Unerkov P, Submission no 2, Motor Traders Association, 18 February 2016.

⁵³ Moore L, Submission no 5, National Electrical and Communications Association, 18 March 2016.

⁵⁴ Smedley B, Submission no 6 South Australian Wine Industry Association Incorporated, 30 March 2016.

⁵⁵ Huan Do, Submission no 7 Housing Industry Association, 31 March 2016.

Business SA submitted that:

safety at work is one of the most important assurances an employer can provide and appropriate prevention and enforcement mechanisms should encourage all employers to minimise or eliminate risks in the work environment⁵⁶.

Ms van der Linden, Senior Policy Advisor with Business SA submitted that the proposed amendment to the *Work Health and Safety Act* would create an unnecessary overlap between that legislation and the *Criminal Law Consolidation Act*, which she submitted should operate independently. She further submitted that the industrial manslaughter law of the Australian Capital Territory (ACT) has not been utilised since its enactment and the *Corporate Manslaughter and Corporate Homicide Act* of the United Kingdom (UK) has a different focus, so neither should be considered in support of this Bill⁵⁷.

Ms van der Linden further submitted that the *Work Health and Safety Act* should remain preventative rather than punitive⁵⁸.

In evidence, Ms van der Linden said:

The current criminal law of manslaughter has higher penalties than the proposed bill, such as life imprisonment, and the proposed bill is also limited to the employer-employee relationship. Whilst our understanding is that the intent behind this bill was for greater penalties, we don't know that it necessarily achieves this and that the current Criminal Law Consolidation Act, married in with the workplace relations act, actually provides substantial deterrence within the workplace and hopefully makes South Australia a safer state⁵⁹.

Ms van der Linden said that Business SA is concerned that the Bill deals with the relationship between employer and employee rather than the broader complex working relationships that are reflected in the current Work Health and Safety legislation. She said that while one workplace death is one too many, the data reflects that workplace deaths are decreasing.

That would indicate that the current workplace legislation that we have got, along with the efforts of SafeWork SA, the business community and the unions, is actually reducing the number of deaths around South Australia and that this current legislation is not required⁶⁰.

The Master Builders Association (MBA) represents the South Australian building and construction industry and directly employs more than 55,000 across the State in sectors such as commercial, residential, civil engineering, land development and building completion services. Mr Ian Markos, Chief Executive

⁵⁶ Van der Linden E, Submission no 8, Business SA, 31 March 2016.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Van de Linden E, *Committee Hansard Transcript Question 115*, 18 July 2015.

⁶⁰ Ibid.

submitted that the industry undertakes about \$15 billion of work each year and contributes substantially to the economic activity of the State. He submitted that the construction industry can be a dangerous industry but it is one of the best performers when it comes to fatality levels. He submitted that further improvements can be made through 'safety education for those most at risk', rather than punishing employers, which appears to be the purpose of the Bill⁶¹. Mr Markos submitted that:

In the opinion of the industry, the Bill will punish employers who are linked to a death – but not necessarily those who have the power to control the circumstances leading to that death. Moreover, it is proposing a paradigm shift in terms of risk assessment at a time when the current system is showing credible signs of success in reducing fatalities without its penalties being fully tested⁶².

In his submission, Mr Markos raised concern about unintended consequences of the Bill in its current form, which risks introducing another layer of bureaucracy when employers should be focused on building a culture of safety⁶³.

The Civil Contractors Federation (CCF) represents the views of 600 companies and organisations with business interests in the civil construction industry, which employs up to 20,000 South Australians. Civil construction projects and activities involve development and maintenance of roads, bridges, sewers, water and drainage pipelines, dams, wharves and other infrastructure, upon which South Australia is dependent for its prosperity⁶⁴.

According to Mr Sutherland, Chief Executive of CCF:

The Bill is based on the false premise that the small minority who ignore (or who are ignorant of) the current WHS regulations will change their practices by reason of severe penalties⁶⁵.

The CCF submitted that road traffic accidents account for at least 10 times more deaths than do accidental workplace fatalities. Mr Sutherland submitted that there are substantial flaws in the rationale behind the Bill, which he said would provide a disincentive for people to own and operate a business if implemented⁶⁶. He submitted that:

The Bill could very well be the 'last straw' and result in an exodus of company managers and directors from their various roles, across the full spectrum of business in South Australia⁶⁷.

The Australian Constructors Association (ACA) represents leading construction and infrastructure contracting companies operating in Australia. The ACA member companies have a combined annual

⁶¹ Markos I, Submission no 9, Master Builders Association, 31 March 2016.

⁶² Ibid 13.

⁶³ Ibid 14.

⁶⁴ Sutherland P, Submission no 10, Civil Contractors Federation, 1 April 2016 1.

⁶⁵ Ibid 3.

⁶⁶ Ibid 4.

⁶⁷ Ibid.

turnover exceeding \$50billion and employ over 100,000 workers with many more employed through subcontractors providing services to ACA members. According to their submission, ACA members operate in a number of public and private market sectors including:

- Engineering and construction
- Commercial and residential building
- Contract mining
- Oil and gas operations
- Telecommunications
- Environmental services
- Maintenance and related services.

Mr Lindsay Le Compte, Executive Director of ACA submitted that ACA regards safety as the most important aspect of the operations of any business and while ACA understands the policy intent behind the Bill, he submitted that it is not the appropriate vehicle to achieve improvements in safety⁶⁸.

Mr Le Compte submitted that ACA commissioned the Centre for Construction Work Health and Safety Research at RMIT to undertake a study of safety culture. He said:

RMIT researchers developed a Health and Safety Culture Framework, a Culture Maturity Model and Safety Culture Climate Assessment Tool to assist organisations to assess the level of safety culture in their organisation and then address gaps in that culture. The Model and the Tool have now been evaluated for appropriateness to the Australian market and the results of the evaluation will shortly be released⁶⁹.

He submitted that a robust safety culture is not the only essential element to achieve reductions in fatal workplace incidents and serious injuries. He submitted that more emphasis should be placed on safe design, adopting lead indicators to identify potential problems or near misses and development of safety awareness for school age children so that they enter the workforce with a regard for safety.

The earlier development of safety awareness for school age children so that when they enter the workforce they will regard workplace safety as second nature and be less likely to be influenced by any person or organisation seeking them to take unacceptable risks⁷⁰.

The Hon Gerry Kandelaars asked Mr Le Compte about safety culture.

Piecework is a classic example of where, if there is not appropriate monitoring, people cut corners. You could say that corporates allow piecework to occur in order to gain what they consider to be productivity, but sometimes the consequences are that people cut corners in terms of safety and people turn blind eyes to those issues. You can't have it all ways. You can't drive

⁶⁸ Le Compte L, Submission no 13, Australian Constructors Association, 5 April 2016 1-2.

⁶⁹ Ibid 5.

⁷⁰ Ibid.

subbies to the lowest common denominator without taking some corporate responsibility for what may be the net outcome⁷¹.

Mr Le Compte agreed that this does occur but principal and head contractors are still responsible for what happens on sites they are managing.

In evidence, Mr Le Compte said that work health and safety is a much wider issue for the Association's members because they are now involved in more than just building infrastructure. They are also involved significantly in downstream management of facilities and maintenance. He said that:

So workplace health and safety becomes a much wider issue for those organisations than it might otherwise have been in the pure construction context, because they are head contractors in so many other relationships. The reason why there are, at this stage, 19 members of the association goes back to the memorandum and articles of association of the entity. At this point in time, the key aspect is that to be a member of the association the organisation, when it applies, must be able to demonstrate an annual turnover exceeding \$1 billion in Australia or, if it is an international business which is operating in Australia, it must demonstrate, through its local and international turnover, that that amount exceeds \$5 billion. So I guess the articles of association necessarily limit the width of the membership in that sense⁷²

Mr Le Compte said that the ACA members feel that they have a responsibility to lead the industry.

The ACA does not support the Bill because while it might impact a small number of people, the association questions whether it will impact the industry as a whole.

Mr Le Compte said that rather than adding further legislation, it may be worth looking at strategic issues around compliance:

Obviously, the more people who operate appropriately, the fewer fatalities we're going to have, and of course while it may well be appropriate for somebody in that situation to be convicted of a criminal offence, it doesn't bring back the person, but we would want to see greater emphasis put on pre-emptive work to reduce the capacity or propensity for people to do or not to do the right thing before something like that takes place⁷³.

He said that the ACA would like to see more work done to make people in industry more aware of their responsibilities. He said that safety culture is about issues relating to gender, diversity and different ethnic groups who are involved in various industries. People from different countries or ethnic groups may perceive safety differently.

⁷¹ Kandelaars G, *Committee Hansard Transcript Question 179*, 20 July 2016 50.

⁷² Le Compte L, *Committee Hansard Transcript Question 168*, 20 July 2016.

⁷³ Ibid.

one of the big issues is starting young and inculcating into young people who are going to go into any industry what the expectation is for them, not just on safety but how they behave in the workplace is a critical factor to the end product⁷⁴.

Ms Cook said that there's a great opportunity for VET programs starting in schools. In his response, Mr Le Compte spoke about the website created by ACA called "Build your career" which is about getting information to young people, their parents and school careers advisors about the construction industry. The industry is a good place to work, it can be dangerous 'but it shouldn't mean that you would not want to look at being involved.' He said that there is a risk that Australia will run out of skilled trade contractors in the next five to ten years so it's important for the industry to support apprenticeships and skills development.

The Presiding Member thanked Mr Le Compte for his evidence and said:

I was very pleased to see in the executive summary that we received that you identified that the Australian construction industry is characterised by a predominantly male workforce, a multi-level system of contracting and subcontracting and the associated economic pressures, long work hours and poor work-life balance, and also that these factors contribute to cultural context in challenging health and safety. I think it is really pleasing that your organisation has actually acknowledged those issues. In your submission this morning, you have also talked about the cultural context of work. I think that's an important addition to our consideration, so thank you for that⁷⁵.

Mr Shaw, Manager of Self Insurers of South Australia submitted that the Bill seeks to inflict even harsher punishment and ceases to be a deterrence and more closely resembles revenge. He submitted that the penalties are manifestly excessive and more closely equate to a charge of murder. Mr Shaw submitted that all States, other than Victoria and Western Australia have adopted the national *Work Health and Safety Act* and the penalties in those two States are less than those prescribed within the *Work Health and Safety Act*.

Mr Shaw submitted that the *Work Health and Safety Act* does not discern conduct resulting in death:

It contemplates conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury or illness. To this extent, the Act permits the maximum penalty to be applied even if a person does not die as a result of a breach of duty. The trigger for a category 1 offence is reckless indifference to a safety duty. To this extent the WHSA casts a wider net than the scheme proposed by the Bill, notwithstanding the severity of the penalties set out in the Bill⁷⁶.

⁷⁴ Ibid.

⁷⁵ Key S, *Committee Hansard Transcript Question 180*, 20 July 2016.

⁷⁶ Shaw R, Submission no 3, Self Insurers of South Australia, 24 February 2016.

SISA recommends that the Committee reject the Bill in its entirety.

In evidence, Mr Shaw said:

We are certainly of the view that health and safety legislation, to be effective, should remain bound to the notion of duties, and that sanctions should be based on breaches of those duties rather than actually requiring that somebody die before they become active. To that extent, we see that there is almost a vengeful overtone to this bill. It takes away the notion of preventing death and injury⁷⁷.

Mr Shaw went on to say that the recent case of Colbert demonstrates that the *Criminal Law Consolidation Act* is available and adequate for dealing with criminal acts such as manslaughter. He also said:

There is no evidence that we have ever seen that imposing more and more complex laws and stiffer and stiffer penalties has any effect at all on the behaviour of that tiny minority that will show reckless indifference to a duty regardless of the so-called deterrents that they face⁷⁸.

He said it is pointless making someone safety conscious after they have died.

The Hon G Kandelaars referred to SISA's submission and took issue with the claim that the Bill was vengeful. He said that Mr Shaw was naïve to assume that some people who are directly affected by a workplace death would not look for revenge if they see the employer has acted recklessly. He said that some family members may not think a law of this type unreasonable⁷⁹.

Mr Shaw responded by saying that a small number of employers in the transport industry may take note of the Colbert case but those who have a tendency towards risk taking behaviour do not have penalties at front of mind. He gave an example of youths who race cars at dangerous speeds on Port Wakefield Road⁸⁰. Mr Shaw said that:

'Reckless disregard' is a term used in both the Criminal Law Consolidation Act and Work Health and Safety Act. There is no difference whatsoever in the burden. Its criminal law and the courts hold to a standard of proof for those things. I can't see that there is anything wrong with suggesting that for certain cases it would be appropriate to launch a prosecution under the Criminal Law Consolidation Act rather than under the Work Health and Safety Act⁸¹.

Ai Group is a peak industry association and has been acting for business for more than 140 years. They represent the interests of 60,000 businesses employing more than 1million staff in manufacturing, construction, transport, labour hire, mining, defence, airlines and ICT. In their submission, the Ai Group stated that they promote the importance of providing high standards of health and safety at work.

⁷⁷ Shaw R, *Committee Hansard*, Parliament of South Australia, Q68, 26 May 2016 19.

⁷⁸ Ibid.

⁷⁹ Kandelaars G, *Committee Hansard*, Parliament of South Australia, Q70, 26 May 2016 20.

⁸⁰ Shaw R, *Committee Hansard*, Parliament of South Australia, Q68, 26 May 2016 20.

⁸¹ Ibid.

They submitted that:

Clearly, one fatality is one too many. However, the data published by SafeWork Australia in July 2014 *Work Related Injury Fatalities Australia 2013* indicates a steady and continuing decline in fatality rates over recent years. In this environment, it is not clear to us what would be achieved by the introduction of Industrial Manslaughter legislation, when the Work Health and Safety legislation already allows for significant penalties including terms of imprisonment⁸².

On behalf of Ai Group, Mr Myatt submitted that a new penalty of potentially 20 years imprisonment may see many current officers resign from their positions, particularly Board members without direct involvement in day to day business activities. Senior managers may make elaborate arrangements to distance themselves from responsibilities for health and safety and there may be unintended consequences such as a reduction in health and safety standards⁸³.

In evidence, Mr Myatt noted that previous witnesses had commented on the disparity of the terminology used in the Bill.

I note the previous witnesses have commented on the disparity of the terminology used in the bill: 'employers', compared to that utilised in the Work Health and Safety Act, being 'persons conducting a business or undertaking'. Let me say, firstly, that we did not address that in our submission, but we do agree that it would create a major disturbance to the legislation to insert the proposed words into the current act⁸⁴.

Mr Myatt said that the reckless conduct offence, which carries a maximum penalty of \$3million for a corporation and lesser amounts for individuals, can be applied to any person who has a duty under the *Work Health and Safety Act*. Mr Myatt said that:

We are concerned that the natural abhorrence felt towards work related deaths should not lead to an inappropriate response. The seriousness of offences and sanctions should relate to the culpability of the offender and solely to the outcome of the non-compliance. Otherwise, egregious, systemic failures to eliminate or control hazards and risks might not be adequately addressed⁸⁵.

Mr Myatt expressed concern at the apparent singling out of officers for special attention when reckless conduct is involved. He said that Ai Group consistently advises organisations to pay attention to due diligence provisions of the WHS laws to drive a strong organisational focus on improving health and safety. He expressed concern that more paperwork may be created to protect officers and senior managers from potential prosecution rather than improve health and safety⁸⁶.

⁸² Myatt S, *Australian Industry Group submission*, April 2016.

⁸³ Ibid.

⁸⁴ Myatt S, *Committee Hansard Transcript Question 186*, 20 July 2016 53.

⁸⁵ Ibid.

⁸⁶ Ibid.

In response to a question from Mr Knoll about PCBUs, AiGroups' National Safety and Workers Compensation Policy and Membership Manager, Ms Browne said that:

A person conducting a business or undertaking is the actual legal entity that is the business, so it could be an organisation. It was unfortunate terminology, I think. It would have been better if it was just a business, or conducting a business or undertaking, rather than them putting in the person. So, a person conducting a business or undertaking is the organisational entity. It may be an individual in a small business sense, but, in a large business sense, it would be the company, and the officers are the individuals who have the responsibility from a personal perspective⁸⁷.

Ms Browne said that the PCBU can be prosecuted as can the officers within the company for not exercising due diligence. She clarified the prosecution of a category 1 offence for the Committee following a question from Mr Knoll.

Mr KNOLL: In terms of being convicted under a category 1 offence, as we were saying before, if a fine was involved, that could be delivered against the business, but, for instance, if gaol terms were administered, that would have to be against an individual?

Ms BROWNE: Yes and no. The business could be an individual. It could be Bill Smith Carpentry, and he would be the person conducting the business or undertaking as well as being the officer. He could only be prosecuted once. If that was a company, then it would be a maximum \$3 million fine and five years gaol. If he was unincorporated, then it would be the \$600,000 as an officer plus the five year gaol term.

Mr KNOLL: Who does the gaol time?

Ms BROWNE: The individual. If it is a large corporation it would have a maximum fine of \$3 million, and then they could separately prosecute any officers for either not exercising due diligence or for reckless conduct⁸⁸.

Ms Browne said that each person would be prosecuted separately because they would have different levels of culpability. She said that many of their members wanted to work out who their officers were, which she said was not the right approach. She said:

We think that actually creates a process where you are getting people focusing on whether or not they have to exercise due diligence, rather than a focus on: in my role as a senior manager what can I do to improve health and safety in the organisation? It is never, or very rarely, a clear cut line between at this point someone being an officer and at this point they are not. So, there are a whole lot of factors that need to be taken into account to determine that⁸⁹.

Ms Browne said that the major focus in health and safety is about preventing incidents from occurring in the first place. Taking all reasonably practicable measures to eliminate or minimise risks.

⁸⁷ Browne T, *Committee Hansard Transcript Question 187*, 20 July 2016 55.

⁸⁸ Ibid.

⁸⁹ Ibid.

The Hon John Dawkins took the opportunity to ask about mental health programs in place with Ai Group members, Ms Browne said that the *Work Health and Safety Act* is clearly focused on both physical and psychological health and safety. She said that:

In the more general mental health area, it's not an area that we have particular expertise in within our organisation, but we are focused on that as something that employers should be doing as well. We promote the organisations that assist with that, and we are part of the Mentally Healthy Workplace Alliance, which is a national organisation that is looking at how we can, through workplaces, improve the mental health of employees⁹⁰.

Ms Browne said that work with the Alliance is focused on reducing work related psychological impacts. She said that Beyond Blue and SuperFriend are also part of the Alliance.

In relation to due diligence and responsibilities of officers, Ms Brown said:

One of the really important things in relation to due diligence is that it's not about having a due diligence system, it's about individual officers taking the time and attention to make themselves aware of what's going on in the organisation, and particularly for the most significant risks in the organisation being assured that those things are being addressed and that there are processes in place to make sure that it happens. So, the due diligence obligation on officers is a very personal one, and they can tap into organisational systems to get that information, but they actually have to be actively engaged in that⁹¹.

Ms Browne said that there is very good guidance from SafeWork Australia on due diligence, which the AiGroup adjusts for particular industries. She said:

There is very good guidance from Safe Work Australia from a general perspective and then, if we were talking to a particular employer in a particular industry, we would adjust that to what that meant in their industry. In the transport industry, it means more because it links in with the chain of responsibility obligations. It's not just about your business. It's about consigning and receiving and all those activities. We would have that broader discussion there, and really channel it into what it means for this particular employer or this particular group of employers⁹².

In relation to labour hire organisations, Ms Browne said that AiGroup would be clearly identifying their WHS obligations which are to consult, cooperate and coordinate with other duty holders such as the host employer.

The Small Business Commissioner, Mr John Chapman submitted that:

both the Criminal Law Consolidation Act and the Work Health and Safety Act both work effectively to deter, and where necessary, to punish unlawful and culpable conduct. That being the case,

⁹⁰ Ibid.

⁹¹ Browne T, *Committee Hansard Transcript Question 205*, 20 July 2016 58.

⁹² Ibid.

there is no need for unnecessary duplication through the creation of a new offence of Industrial Manslaughter as is proposed under the Bill⁹³.

He further submitted that the primary objective of the WHS Act is to prevent harm by requiring all persons at a workplace to adopt appropriate levels of responsibility to eliminate risks to health and safety where reasonably practicable, and if this cannot be done then to actively minimise those risks. The Commissioner submitted that this is an entirely different focus to the CLCA. Mr Chapman submitted that he agreed with others who pointed out that the WHS Act does not proscribe any penalty for a workplace fatality.

Instead the WHS Act contemplates 'a workplace fatality' only to the extent that it is a notifiable incident and imposes requirements on that situation⁹⁴.

The Small Business Commissioner submitted that there is no 'lacuna' or gap in the law that needs to be filled by any new offence of Industrial Manslaughter. He submitted that creating a new offence would only 'cause legal confusion that could be exploited by the accused regarding the proper offence to be charged'.

SA Unions is the peak trade union council for South Australia and represents about 160,000 members in all industry sectors. It is a major training provider for health and safety in the State. Secretary of SA Unions, Mr Szakacs submitted that:

the proposed Work Health and Safety (Industrial Manslaughter) Amendment Bill has a deterrent value because it conveys the seriousness that Parliament places upon the protection of people going about their daily lives⁹⁵.

SA Unions submitted that the community accepts offences that create a risk of death or injury are rightly punished with in some cases a prison sentence. He gave the analogy of dangerous driving as a case in point. SA Unions submitted that there are some conceptual difficulties with applying the offence of manslaughter within the *Criminal Law Consolidation Act* to work health and safety legislation. The union suggested a different term might be used:

We would not be averse to using a different term that conveyed the enormity of the consequences of negligence, for example an offence of "Causing Death or harm by Workplace Negligence" or similar, if that were to overcome concerns about the use of "manslaughter"⁹⁶.

SA Unions submitted that while they acknowledge the significant penalties in the current *Work Health and Safety Act*, they are not convinced that a Category 1 offence 'carries the same deterrent impact or public odium that a manslaughter conviction would'.

Mr Szakacs, told the Committee that many workers feel that they are a 'statistic waiting to happen' and they have 'stopped believing that injury and death is preventable':

⁹³ Chapman J, *Small Business Commissioner's Submission* 21 July 2016.

⁹⁴ Ibid.

⁹⁵ Szakacs J, *SA Unions Submission*, March 2016.

⁹⁶ Ibid.

We know that on a statistics perspective, if you are a building and construction worker, you are far more likely to die at work than any other worker in this country, closely followed by those working in the transport industry, truckies. Mr Story has also reminded me of agriculture, which is an emerging risk, and certainly as policies of government shift towards food we will see that as an emerging risk⁹⁷.

Mr Szakacs said that the consequences for a workplace death or serious injury are the same for families and victims.

It has the same detrimental economic effect on business and workplaces, and it also has a tangible effect on the productivity of our state economy. So we think there is a multitude of reasons why the parliament should act to treat all death and all serious injury caused by reckless omissions or breaches of legislative duties in the same way⁹⁸.

He said there are cowboys in industries such as aged care:

We also think there is an emerging risks with the introduction of the NDIS and the delocalised and decentralised workforce that results in single person workplaces 24/7 care, highly manual—and the nature of the way that the NDIS is structured is such that we have concerns that the appropriate policies, procedures and structures that are now commonplace in the vast majority of industries simply will not permeate through to those smaller one-on-one, home-based services⁹⁹.

The Presiding Member asked Mr Szakacs about South Australia's workforce:

The PRESIDING MEMBER: I just wanted to ask you a question about looking at South Australia's workforce and looking at the profile of that workforce. We have a lot of small businesses, so that is one area, and we know that South Australia has a huge number of those. We also have a number of people who work for subcontractors and contractors. Do you have anything you would like to add to SA Unions' position with regard to that layer of the workforce?

Mr SZAKACS: Sure. In respect of the bill that the committee is currently considering, we would submit that there are problems with the shifting definition of an employer and PCBUs. We would submit that in the significant level of subcontracting that occurs in many worksites, projects and so on, the bill that is being considered would distil down what the current act, the 2012 act, has defined as a PCBU.

SA Unions is very concerned about the delegation of managing risk when it comes to subcontracting. Subcontracting is a very large part is part of the economy. We think it is entirely misused in very large part. We think that the government, as funders of major infrastructure projects, could and should do a lot better in the way they regulate labour hire and subcontracting.

⁹⁷ Szakacs J, *Committee Hansard*, Parliament of South Australia, Q79, 9 June 2016 25.

⁹⁸ Opcit Szakacs, Q78.

⁹⁹ Ibid.

But from the perspective simply of the way that risk is managed, we think that with the delegation of work there is also a delegation of risk. We are seeing very large companies and businesses with extensive internal frameworks around work health and safety delegating risk out to very small businesses, very small subcontracting enterprises with maybe one or two employees, or workers, which simply do not have the capacity nor should wear the risk that they do when it comes to the delegation of that work¹⁰⁰.

In response to a question by Mr Knoll about the disparity between offences under the proposed amendment to the *Work Health and Safety Act* and a Category 1 offence as it currently stands, Mr Szakacs said:

we would submit that within the newly categorised category 1 offence within section 31, reckless conduct causing death or serious harm, the appropriate imprisonment term would be 15 years. That would marry up with some other existing criminal law such as causing death or harm by the use of a motor vehicle¹⁰¹.

10. CONCLUSION

The introduction of the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* into Parliament by the Hon Tammy Franks is the fourth time in 12 years that the matter of industrial manslaughter has been raised. In 2004 the Hon Nick Xenophon introduced a Private Members Bill into the Legislative Council, which lapsed due to prorogation following which the Committee itself investigated the possibility of such an approach to reducing work related fatalities. While the Committee noted the difficulty of holding businesses accountable for industrial death because of the need to identify the 'directing mind' of the organisation, which can be difficult in large complex organisations, it did recommend that industrial manslaughter be introduced into the then *Occupational Health, Safety and Welfare Act*. The government did not accept that recommendation because sufficient and adequate legal systems were found to be in place to deal with the consequences of a workplace death.

Since the last attempt by the Hon Ms Franks to introduce an industrial manslaughter Bill, South Australia has enacted the national model *Work Health and Safety Act*, which was based on an *Intergovernmental Agreement and Operational Reform in Occupational Health and Safety* and included a commitment that a national policy be adopted for a consistent approach to compliance and enforcement. Under the *Work Health and Safety Act*, a Person Conducting a Business or Undertaking (PCBU) has a duty of care to workers under their control. The National Compliance and Enforcement Policy developed by the Heads of Workplace Safety was endorsed by the Workplace Relations Ministers Council in 2011 and sets out the approach to be adopted to monitor and enforce compliance of the *Work Health and Safety Act* and Regulations.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

Submissions to the Committee's inquiry from legal and policy interest groups including the Law Society, the Director of Public Prosecutions and the Flinders University Centre for Crime, Policy and Research raised concerns about conflicting language, definitions and other aspects of the proposed Bill compared to the *Criminal Law Consolidation Act* and the *Work Health and Safety Act*. A major difficulty with the Bill is that it focuses on the employer and employee relationship rather than the more complex work arrangements in place on many large industrial sites where contractors, labour hire personnel and subcontractors work from time to time often under very differing and complex supervision arrangements.

All organisations representing employers expressed their concerns about the intent of the *Work Health and Safety (Industrial Manslaughter) Amendment Bill* and argued that current statutory and case law exists to address the failure to provide a duty owed to workers. There was a common view that the focus should be on prevention of injuries and fatalities rather than prosecution following the death of a worker. However, SA Unions said that the Bill demonstrated a deterrence value and while they recognised the conceptual difficulties that would be created with the *Criminal Law Consolidation Act* they suggested an alternative definition. On its own, this will not address other shortcomings that were raised by the legal and policy groups.

On the basis of all the evidence presented to the Committee, Members are of the view that adequate legal systems are in place to address work related fatalities arising from reckless disregard by a person who owes a duty of care to a worker.

11. REFERENCES

- Brett McKie v Kenoss Contractors Pty Ltd (in liquidation)* (19 August 2015), CC 40210 of 2014
- Corporate Manslaughter and Corporate Homicide Act 2007* (UK)
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APPENDIX 1 – YEAR TO DATE WORKPLACE FATALITIES 2016

National data set

Industry of workplace	Preliminary worker deaths 2015	Preliminary worker deaths year-to-date 2015	Preliminary worker deaths year-to-date 2016
Agriculture, forestry & fishing	54	30	34
Transport, postal & warehousing	54	39	39
Construction	26	18	18
Mining ^a	12	10	4
Manufacturing	10	7	0
Arts & recreation services	7	5	6
Electricity, gas, water & waste services	7	5	6
Administrative & support services	6	5	2
Other services	4	3	4
Public administration & safety	3	1	1
Accommodation & food services	2	2	2
Health care & social assistance	2	2	2
Retail trade	2	2	2
Government administration & defence	1	1	0

Industry of workplace	Preliminary worker deaths 2015	Preliminary worker deaths year-to-date 2015	Preliminary worker deaths year-to-date 2016
Education & training	0	0	0
Financial & insurance services	0	0	0
Information media & telecommunications	0	0	2
Professional, scientific & technical services	0	0	2
Wholesale trade	0	0	1
Total worker deaths	190	130	125

Source: SafeWork Australia, Worker Fatalities as at 23 September 2016.

APPENDIX 2 – SAFEWORK SA WORK RELATED FATALITY DATA 2013-2015

FATALITY BREAKDOWN

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
2013	15	11	4
		<p>18/1/13</p> <p>CONSTRUCTION</p> <p>A self-employed person was making structural repairs on the roof of a shed when he stepped through an unprotected skylight and fell approximately 5.4 metres to his death.</p> <p>Location: Manoora</p>	<p>16/1/13</p> <p>TRANSPORT</p> <p>A motorcyclist died after his motorcycle collided with a truck.</p> <p>Location: Blakeview</p>
		<p>19/1/13</p> <p>CONSTRUCTION</p>	<p>18/6/13</p> <p>COMMUNITY</p> <p>A council vehicle was involved in an accident and struck a cyclist resulting in the cyclist's death.</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>A fourth year apprentice refrigeration mechanic received a fatal electrical shock while replacing a 240 volt damper motor in an air conditioning system at a private residence.</p> <p>Location: Hewett</p>	<p>Location: Fullarton</p>
		<p>15/2/13</p> <p>MANUFACTURING</p> <p>A production worker was found collapsed by a fellow worker. CPR was applied but the worker was pronounced dead at the scene. Autopsy identified preliminary cause of death was electrocution.</p> <p>Location: Marlestone</p>	<p>26/11/13</p> <p>STATE GOVERNMENT (WATER LICENSING)</p> <p>A worker was travelling in a departmental vehicle to a water monitoring site in Langhorne Creek when the vehicle left the road and hit a tree.</p> <p>Location: Highland Valley</p>
		<p>13/4/13</p> <p>HORTICULTURE</p> <p>A self-employed tree lopper was in the process of lopping a large branch from a gum tree which appears to have</p>	<p>12/12/13</p> <p>TRANSPORT</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>fallen onto and fractured the branch he was harnessed to, causing him to fall approximately 5 - 8 metres to the ground.</p> <p>Location: Morphettville</p>	<p>The driver of a heavy vehicle lost control, crashed into a dwelling and died at the scene.</p> <p>Location: Bordertown</p>
		<p>27/5/13</p> <p>SHIPPING</p> <p>On 16 May 2013, a friend of a business owner was in a shipping container after removing his contents when it appears some other contents fell on him.</p> <p>Location: Birkenhead</p>	
		<p>3/7/13</p> <p>TRANSPORT</p> <p>A worker died after falling while transferring between a pilot vessel and a bulk ore carrier.</p> <p>Location: Spencer Gulf</p>	

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>8/10/13</p> <p>TRANSPORT</p> <p>A worker was assisting with the removal and transport of a house when he was stung by a bee and subsequently died. He had a known allergy to bee stings and took an antihistamine tablet once he was stung.</p> <p>Location: Cape Jervis</p>	
		<p>18/11/13</p> <p>AGRICULTURE</p> <p>A farmer was directing another worker who was reversing a tractor and chaser bin, when the farmer became trapped between the chaser bin and the front of a truck. He sustained fatal crush injuries</p> <p>Location: Streaky Bay</p>	

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>18/11/13</p> <p>AGRICULTURE</p> <p>A pilot was mustering cattle when his plane struck the ground and he died.</p> <p>Location: Mungerannie Station</p>	
		<p>20/11/13</p> <p>AUTOMOTIVE</p> <p>The deceased was working in a heavy vehicle automotive repair shop when he was fitting a differential and it dislodged and struck him in the head.</p> <p>Location: Burton</p>	
		<p>26/11/13</p> <p>AGRICULTURE</p>	

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>A self-employed farmer died when he became trapped between the feeder house and the under-side frame of the harvester cabin during an uncontrolled raising of the header comb assembly</p> <p>Location: near Cockaleeche</p>	
2014	13	5	8
		<p>23/4/14</p> <p>CONSTRUCTION</p> <p>The deceased appears to have been electrocuted after a metal flashing that he was installing as part of the installation of a shed came into contact with overhead power lines.</p> <p>Location: Yahl</p>	<p>6/1/14</p> <p>HEALTH AND COMMUNITY</p> <p>The deceased was found under the rear of her own vehicle in a driveway of a client she was visiting as a part of her work as a home carer.</p> <p>Location: Fairview Park</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>22/5/14</p> <p>HEALTH AND COMMUNITY</p> <p>The deceased was found on the floor beside her bed in her assisted living unit with her head apparently crushed by the under carriage of the bed and the control unit for the bed was in her hand.</p> <p>Location: Fulham Gardens</p>	<p>18/1/14</p> <p>TRANSPORT</p> <p>The driver of a prime mover and a trailer collided with a wall and consequently died.</p> <p>Location: Glen Osmond</p>
		<p>12/9/14</p> <p>ENTERTAINMENT SERVICES</p> <p>An eight year old girl died at the Royal Adelaide Show following an incident on the Airmaxx 360 ride.</p> <p>Location: Wayville</p>	<p>7/3/14</p> <p>TRANSPORT</p> <p>The driver of a 14 tonne truck veered off the road and collided with a stobie pole and died at the scene.</p> <p>Location: Happy Valley</p>
		<p>15/10/14</p> <p>HORSE RACING</p>	<p>29/6/14</p> <p>TRANSPORT</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>An apprentice jockey riding in a horse racing event was thrown from her horse and sustained injuries that resulted in her death.</p> <p>Location: Murray Bridge</p>	<p>The deceased was driving en route from Western Australia to Melbourne when his truck left the road and rolled over fatally injuring the driver.</p> <p>Location: near Spalding</p>
		<p>28/11/14</p> <p>CONSTRUCTION</p> <p>A construction worker at the New Royal Adelaide Hospital construction site died after suffering crush injuries from being pinned between a horizontal concrete beam and the handrail of a scissor lift.</p> <p>Location: Adelaide</p>	<p>18/8/14</p> <p>TRANSPORT</p> <p>The driver of a tanker travelling on the downward track of Princes Highway near the tollgate at Glen Osmond collided with four other vehicles. The driver of one vehicle died at the scene, while a second died in hospital the next day.</p> <p>Location: Glen Osmond</p>
			<p>20/10/14</p> <p>CONSTRUCTION</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
			<p>A landscape worker died after being hit by a truck on a service road in the Costco car park.</p> <p>Location: Kilburn</p>
			<p>9/12/14</p> <p>COMMUNITY</p> <p>A CFS volunteer was carrying out firefighting duties when he was struck by a fire appliance vehicle and died.</p> <p>Location: Rendelsham</p>
2015	14	9	5
		<p>10/2/15</p> <p>MINING</p>	<p>24/1/15</p> <p>TRUCK</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>A worker was performing a full face development drilling in the rock face underground at the Olympic Dam mine, when a rock fall incident occurred resulting in his death.</p> <p>Location: Olympic Dam</p>	<p>Two members of the public were in a vehicle that was struck by a truck travelling on the wrong side of the road where they both died.</p> <p>Location: Cowell</p>
		<p>12/2/15</p> <p>AUTOMOTIVE</p> <p>A worker was working in an auto wrecking yard when he was hit by an excavator resulting in his death.</p> <p>Location: Whyalla Norrie</p>	<p>25/1/15</p> <p>TRANSPORT</p> <p>A truck driver died when the semi-trailer he was driving left the road and rolled over.</p> <p>Location: Marla</p>
		<p>27/3/15</p> <p>FISHING & AQUACULTURE</p> <p>A fisherman was working on a prawn trawler when he fell overboard from the rear of the vessel and died.</p> <p>Location: waters off shore of Corny Point</p>	<p>19/2/15</p> <p>TRANSPORT</p> <p>A member of the public was a passenger in a vehicle struck by a truck.</p> <p>Location: Royal Park</p>

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>21/8/15</p> <p>CONSTRUCTION</p> <p>An excavator operator was leaning outside of the excavator as the cabin was slewing in an anti-clockwise direction when his head struck a tree.</p> <p>Location: Beaumont</p>	<p>16/6/15</p> <p>TRANSPORT</p> <p>A member of the public was travelling west on the Princes Highway, Murray Bridge when her vehicle collided with a prime mover in B-Double formation that was travelling east and veered onto the incorrect side of the road.</p> <p>Location: Murray Bridge</p>
		<p>24/9/15</p> <p>TRANSPORT</p> <p>A worker was working beneath the raised cabin of a prime mover when the cabin dropped and crushed him.</p> <p>Location: Renmark North</p>	
		<p>29/9/15 (date of incident)</p>	

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		<p>EDUCATION</p> <p>A child in Out of School Hours Care jumped from a swing and fell flat on her front. On Wednesday, 30 September 2015, she was taken to the Women's and Children's Hospital where an MRI scan was conducted before she was discharged. By Thursday, 1 October 2015, her condition had deteriorated and she passed away in an ambulance en route to the Women's and Children's Hospital.</p> <p>Location: Strathalbyn</p>	
		<p>26/10/15</p> <p>HEALTH AND COMMUNITY</p> <p>A child with cerebral palsy, aged ten, and his sister, aged twelve, were staying overnight for respite care. The child was found in the morning with the top part of his body wedged between the wall and the bed. It appears that he suffocated in that position.</p>	

YEAR	TOTAL NOTIFIABLE FATALITIES	WORKPLACE FATALITIES	ROAD FATALITIES
		Location: Mount Gambier	
		<p>29/9/15 (date of incident)</p> <p>MINING</p> <p>While working at a quarry the deceased fell from the tray of a drop deck truck. He was found by his wife and business partner. He was hospitalised until he passed away on 12 November 2015.</p> <p>Location: Minnipa</p>	
		<p>1/12/15</p> <p>FARMING</p> <p>A farmer was run over by a tractor.</p> <p>Location: Brady Creek</p>	

APPENDIX 3– SUBMISSIONS AND HEARINGS

Submissions

The following submissions were received by the Committee:

Submission date	Organisation
10 February 2016	The Law Society of South Australia
18 February 2016	Motor Traders Association
24 February 2016	Self Insurers of SA
18 March 2016	New Zealand Ministry of Justice
18 March 2016	National Electrical and Communications Association – SA
30 March 2016	SA Wine Industry Association
31 March 2016	Housing Industry Association
31 March 2016	Business SA
31 March 2016	Master Builders Association
1 April 2016	Civil Contractors Federation
1 April 2016	SA Unions
5 April 2016	SafeWork SA
5 April 2016	Australian Constructors Association
6 April 2016	SafeWork Australia
6 April 2016	Ministry of Justice UK
7 April 2016	Australian Industry Group
11 July 2016	Flinders University – Centre for Crime Policy & Research
21 July 2016	Small Business Commissioner of South Australia

Hearings

Hearing date	Organisation	Witnesses
11 February 2016	Law Society of SA	Mr David Caruso Mr Toni Rossi
19 May 2016	SafeWork SA	Ms Marie Boland
26 May 2016	Self Insurers of SA	Mr Robin Shaw Mr Matthew Mann
9 June 2016	Unions SA	Mr Joe Szacaks Mr Angas Story
23 June 2016	Motor Traders Association	Mr Paul Eblen
18 July 2016	Business SA	Ms Estha van der Linden
20 July 2016	Australian Industry Group Director of Public Prosecutions Australian Constructors Association	Ms Tracey Browne Mr Stephen Myatt Ms Adam Kimber SC Ms Kate Hodder Mr Lindsay le Compte