

What development or trends are we seeing?

Links for your further reading

Food for thought

1. Harsher punishments for breaches of health and safety laws

Regulators are also more willing to join officers to prosecutions

In response to major safety incidents, including Dreamworld:

- Industrial manslaughter laws [enacted in the ACT](#);
- Similar offence in Qld in the [Work Health and Safety and Other Legislation Amendment Bill 2017](#), and significantly increased penalties in Qld's mining safety laws [Mines Legislation \(Resources Safety\) Amendment Bill 2017](#);
- The Greens have introduced a [Bill](#) seeking to introduce industrial manslaughter laws in SA.

- Query the practical impact? Unions have been pushing for this type of offence for some time, but will regulators be more inclined to prosecute?
- Check - is the individual actually an officer? The regulators have sometimes taken a wider view than the legislation actually provides.

2. Increased damages awarded in common law claims against employers for failing to provide a safe workplace, including related to bullying allegations

- *Robinson v State of Queensland* [\[2017\] QSC 165](#) ~\$1.5 million.
- *Beven v Brisbane Youth Service Inc* [\[2016\] QSC 163](#) ~\$1.5 million.
- *Wearne v State of Victoria* [\[2017\] VSC 25](#) ~\$600,000.

- Courts may be receptive to such claims.
- Attractive to employees if it appears large amounts of compensation may be available.

3. WA update

- A government has [approved](#) a single *Work Health and Safety Bill* to replace the *Occupational Safety and Health Act 1984*, *Mines Safety and Inspection Act 1994* and *Petroleum and Geothermal Energy Safety Levies Act 2011*.
- Significant proposed increases of penalties under the [OSH Act \(Bill\)](#) and the [MSI Act \(Bill\)](#) have been [announced](#), to be consistent with the Model WHS Act.

- Departure from the plan to have a separate safety regime in the resources sector.
- Arises from the recent amalgamation of WA departments. The approach of the new Department of Mines, Industry Regulation and Safety is yet to be seen.
- Aligns WA with penalties in the harmonised jurisdictions.

4. The Government is grappling with how to regulate the gig economy

- [Senate Education and Employment Reference Committee into Corporate Avoidance of the Fair Work Act](#) has recommended the federal government work with State and territory safety regulators to review health and safety and workers' compensation legislation to ensure that companies operating in the gig economy are responsible for safety.

- Watch this space – this might be one of the few recommendations from the Senate Inquiry that the government is prepared to consider.

5. Managing fatigue on the radar of NSW Resources Regulator

- NSW Resources Regulator has [found](#) that some employers in the mining sector are breaching their own fatigue management plans by allowing supervisors to work excessive hours and failing to implement control measures consistently across sites.

- There is a tendency to apply fatigue management plans to employees onsite in operational roles. It has long been foreshadowed that regulators may become interested in the fatigue management of other roles, including supervisors, office based roles and management.

6. Clarification of the meaning of 'injury'

- Decision of the [Full Federal Court](#) rejected a worker's claim that her psychiatric condition was an 'injury' rather than a (non-compensable) disease for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

- A useful example of the relevant considerations when determining whether an employee is entitled to workers' compensation for a long suffered mental condition. While the suddenness of the injury / disease is not determinative, it may be relevant.