



Safety snapshot

February 2018

What developments or trends are we seeing?

Links for your further reading

Food for thought

1. Safe Work Australia review of model WHS laws

- The [2018 major review](#) of the national Model WHS laws is now underway, and the [terms of reference of the review](#) have been released. The review includes an assessment of whether WHS laws are achieving their original objectives. The review will also examine whether compliance and enforcement provisions, including penalties and enforceable undertakings, "are effective and sufficient to deter non-compliance with the legislation".
- In the meantime, the [mid-term review](#) of Safe Work Australia's [Australian Work Health and Safety Strategy 2012-2022](#) was published in October 2017.

- The national review may prompt changes to the Model WHS Act. We are monitoring it closely.

2. Change on the horizon in WA

- The Ministerial Advisory Panel (**MAP**) continues to consider and consult on the content of the proposed WHS Bill.
- Penalties under the OSH Act and the MSI Act are set to significantly increase to be consistent with those under the Model WHS Act (see the [OSH Act \(Bill\)](#) and the [MSI Act \(Bill\)](#) introduced in November 2017).
- Workers' compensation laws are to be reviewed and modernised. Proposed changes include lifetime care and support arrangements for catastrophically injured workers. See the Hon Bill Johnston MLA's [media release](#) for details.
- In the meantime, changes are proposed to the existing regime, with the [Workers' Compensation and Injury Management Amendment Bill 2017](#) proposing to significantly increase lump sum death benefits and more than double the weekly allowance of each child of a workplace fatality.
- The WA Government has gazetted [Occupational Safety and Health and Electricity Licensing Amendment \(Live Work\) Regulations 2017](#) to amend OSH and electricity licensing regulations prohibiting electrical work on or near live electrical installations. The amendments will commence in May 2018. A related [Code of Practice](#) has also been released.

- There is a high level of activity in WHS regulation in WA.
- Harmonised WHS laws and modernised workers' compensation laws would represent major changes for business.



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3. Continued focus on mental health

- The WA Department of Mines, Industry Regulation and Safety has accelerated the development of a Code of Practice on Mental Health for FIFO Workers in the Resources and Construction Sectors (**Code**). The revised [Draft Code](#) was released on 16 February 2018.
- Safe Work Australia released the [4th Annual Statement on Psychosocial Health and Safety and Bullying in Australian Workplaces](#). Interestingly, the data shows a downward trend in mental stress claims and harassment and/or bullying claims, but higher lost time and direct cost associated with such claims relative to other workers' compensation claims.
- SafeWork NSW released its [benchmarking tool](#) on mentally healthy workplaces in NSW. The report identifies that only 8.8 per cent of 2,000 surveyed workplaces have an approach to mental health that is embedded across the business in an integrated and sustained way.

- WHS regulators continue their focus on mental health.
- The WA FIFO Code is of particular interest for all businesses with a FIFO workforce.

4. Use of enforceable undertakings

- Safe Work Australia's latest [Comparative Performance Monitoring Report on Compliance and Enforcement Activities](#) shows a 35% reduction in legal proceedings and a 250% increase in enforceable undertakings (**EU**) from 2011/12 to 2015/16.
- SafeWork NSW has released new [Prosecution Guidelines](#) and [Enforceable Undertakings Guidelines](#).
- The [Independent Review of Occupational Health and Safety Compliance and Enforcement](#) in Victoria has recommended that "WorkSafe undertakes more strategic prosecutions".

- We note with interest the recent decision of the NZ Supreme Court in the long-running Pike River Mine appeal ([\[2017\] NZSC 175](#)), where it was stated: "It is contrary to the public interest and unlawful for an arrangement to be made that a prosecution will not be brought or maintained on the condition that a sum of money is paid."
- Some regulatory authorities have indicated a preference for prosecutions over EUs, although EUs are often regarded as supporting improved WHS outcomes and being more workable for business.



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5. Aluminium composite cladding – review and regulation

- Governments are reviewing the use of aluminium composite cladding. In NSW, the [Building Products \(Safety\) Act 2017 \(NSW\)](#) has been passed and related [environmental Regulations](#) has been introduced. In Victoria, a Government [Taskforce](#) has published an [Advisory Note](#) and an [Interim Report](#). The [Interim Report](#) of a Federal Senate Committee proposed a ban, and prompted the [Customs Amendment \(Safer Cladding\) Bill 2017](#), which has stalled in the Senate. Audits by the SA and WA Governments are underway.

- The WA Building Commission is expected to begin ordering the removal of highly flammable cladding from a number of buildings in the coming weeks

6. Firefighting foams (PFAS, PFOS, PFOA) – regulation and concerns

- The Federal Government and all state and territory governments developed the [PFAS National Environmental Management Plan](#) in January 2018. This supplements existing Commonwealth [Guidance](#).
- The relevant WA Minister released a [position statement on PFAS](#) on 19 December 2017. Relevant Departments in other States have previously released guidance (see position in [Queensland](#) and [SA](#)).
- Other jurisdictions, particularly the USA and European Union, have moved to regulate the use of firefighting foams.

- At this stage, it appears that the environmental regulators have been more active than WHS regulators on this issue. The [Commonwealth](#) and [NSW](#) health departments have released information for the public on this issue.
- There have been a number of class actions in the USA regarding the use of firefighting foams. Query whether similar claims will be brought in Australia.

7. New OHS Management Standard (ISO 45001) – expected to be released in Q1 2018

- While new ISO Standard [ISO 45001](#) is expected to be released shortly, and is stated to provide a framework to improve safety and reduce risks, the Australian Chamber of Commerce and Industry has [warned employers](#) against adopting SO 45001, stating that some elements of the draft are highly prescriptive and incompatible with Australian legislation.
- Standards Australia has stressed in a [recent statement](#) that AS/NZS 4801:2001 remains the current standard.

- While the new ISO standard may be of interest, Australian businesses are urged to carefully consider its adoption/incorporation in WHS management frameworks.