

Submission

March 31, 2016

PARLIAMENT
OF
SOUTH
AUSTRALIA

Parliamentary Committee on Occupational Safety Rehabilitation and Compensation

Work Health and Safety

(Industrial Manslaughter) Amendment Bill 2015



MASTER BUILDERS
SOUTH AUSTRALIA

Contents

1. Introduction.....	3
2. Purpose of submission.....	3
3. Current offences and penalties	4
4. Effectiveness of current provisions.....	5
5. Elements of the proposed legislation.....	6
6. Comparing current and proposed offences	7
7. Practical shortcomings of the Bill.....	8
Indefinite definition of employer.....	8
Ignoring employee contribution and error	9
No provision for interrupted chain of responsibility	10
Householders as jailed industrial criminals	10
Undefined classes deliver criminal liability	11
8. Additional considerations.....	11
Current penalties untested	12
Losing the focus on safe outcomes.....	12
A better focus: safety and lessons learned	12
9. Conclusions	13

1. Introduction

This submission is made on behalf of Master Builders Association of South Australia Inc (“Master Builders SA”), established in 1884 as the peak body representing South Australia’s building and construction industry.

Master Builders SA is committed to building a productive industry and a prosperous South Australian community and economy.

The South Australian building and construction industry directly employs more than 55,000 South Australians across all sectors, including residential, commercial, civil engineering, land development and building completion services. Indirectly, the industry supports tens of thousands more South Australian jobs.

The industry undertakes about \$15 billion of work every year, contributing more than \$1 for every \$7 of economic activity within the State. Indirectly, more than one-quarter of South Australia’s wealth is produced by the building and construction industry.

South Australia’s building and construction industry is focused on the development and transfer of skills into a life-long career. It is consistently among the leading sectors when it comes to training and apprentices and last year provided new apprentice places for more young workers than the Northern Territory, ACT and Tasmania combined.

Master Builders SA is proud of the industry it represents, the jobs it creates, the 11,000 homes it built and extended for families last year and the offices it has built for South Australian businesses.

2. Purpose of submission

In May 2015, the Hon. Tammy Franks MLC introduced the Work Health and Safety (Industrial Manslaughter) Amendment Bill 2015. The legislation mirrors Bills from 2010 and 2012 in its attempt to create a new crime of industrial manslaughter, applicable when a death results from a breach of a duty under the Work Health and Safety Act 2012 and there is an element of recklessness or objective knowledge pertaining to the underlying risk of harm.

Master Builders SA and its members have a high degree of interest in the proper functioning of South Australia’s safety systems. The construction industry relies upon heavy equipment on busy sites and is thus acknowledged as an industry with a high degree of risk¹. The industry is also subject to multiple safety requirements, each with its own forms and paperwork² that may at times paper over the need to focus on the workplace, and not the bureaucracy.

Master Builders SA is committed to the adoption of the highest safety standards as required to address underlying risks. As such, we believe in a balanced approach that best protects the lives of the 55,000 South Australians who directly work in our industry without the creation of additional

demands that might put those same lives at risk.

As such, we believe the best investment that can be made rests in the prevention and understanding of fatalities. The significant reduction in Australian road deaths is credited to the steady introduction of safety measures including mandatory wearing of fitted seatbelts and helmets, not reliance on heavy penalties³. Master Builders SA believes this provides the clearest lesson for the saving of lives that should be adopted when considering whether this legislation will deliver the benefits claimed.

3. Current offences and penalties

The current criminal offences and penalties⁴ relating to workplace injuries are largely contained within the same legislation that is the subject of this proposed amendment, the Work Health and Safety Act 2012. Offences are clearly matched to the severity of the breach in question and penalties reflect the degree of control and responsibility of the offender.

For example, a Category 1 breach contains three elements⁵:

- The alleged offender must have a health and safety duty under Divisions 2, 3 or 4 of the Act;
- The alleged offender must expose a person to whom the duty is owed to the risk of death, serious injury or illness without lawful excuse; and
- The alleged offender must be reckless as to that risk.

Recommendations

1. Master Builders SA recommends the Committee consider the success of safety improvements, not penalties, in reducing the road toll over decades while considering the effectiveness of the approach contained within this Bill.

The penalties are graded according to responsibility⁶:

- A body corporate found guilty of a Category 1 offence is subject to a maximum penalty of \$3 million;
- A person carrying on a business or undertaking – the term PCBU includes company officers as well as sole traders – found guilty of the same offence faces a maximum penalty of \$600,000, five years' imprisonment or both; and
- Other individuals found to have breached that duty are subject to a maximum penalty of \$300,000 or five years' imprisonment.

A Category 2 offence represents a similar breach but without the element of recklessness – for which penalties are halved and no provision made for imprisonment⁷ – and Category 3 offences relate solely to failure to comply with a duty with no element pertaining to risk of injury⁸. The maximum penalty for a Category 3 offence is \$500,000 for corporate offenders.

Assorted offences pertaining to mandatory incident notification⁹, required qualifications¹⁰ and employee consultation¹¹ provide a web of requirements that support the general health and safety duties outlined in the Act.

Taken together, these penalties recognise that people should be penalized for failing to do all they can do to prevent injuries or deaths. The legislation effectively identifies that there are things within

the control of those on worksites for which they should be held responsible, whether the controlling entity be a body corporate or person carrying on a business undertaking, an officer of a body corporate or an employee.

It also provides recognition that there are some elements of a construction site that are not within the control of the body corporate, the officers of that body corporate and the peers of workers on the site.

Recommendations

2. Master Builders SA recommends the Committee consider the clarity offered by the current penalties regime where businesses are penalized for failing to control things they can control rather than the severity of the outcome.

Where a worker suffers an injury because of their own carelessness or failure to heed lawful instructions as delivered by a body corporate or its officers, an offence presently only occurs where there is a reckless attitude toward that risk or where a breach can be identified. The current legislation does not introduce a penalty in a situation where all systems and practices are geared towards preventing an injury but those systems are circumvented because a worker has not paid professional attention to those systems. In other words, it attaches responsibility to those with control.

Conversely, the current legislation is not contingent upon an injury or fatality – instead, it provides a lower bar for prosecution by only requiring the breach be proven.

From a public policy perspective, the current legislation sends a very clear message: do not be reckless, do not in any way breach a health and safety duty, for even where there is no injury, you will be held liable.

Master Builders SA submits this is an appropriately strong message to send to industry, and one that is being well-heeded according to authoritative statistics.

4. Effectiveness of current provisions

The Hon. Tammy Franks MLC argues that the Bill under consideration is required to ensure “that culpable employers are held responsible for their actions” and that employers “take seriously the work health and safety of their employees”¹². The proposed laws are needed to provide a new balance, she told Parliament:

We have many carrots in our system, but we do need a few sticks.¹³

The amount the industry has invested in work health and safety systems and specialist employees proves false the assertion that the industry does not take its responsibilities seriously. Moreover, there is a rising concern that the presence of competing State and Federal safety regulators may be introducing additional risks for the industry as it forces a focus on compliance rather than a true understanding of risk and protection.¹⁴

Additionally, existing provisions penalise a breach of an underlying health and safety duty regardless of the outcome, backing it with a maximum penalty of \$3 million or five years’ imprisonment. Master Builders SA submits that the penalties attached to a breach without need to prove impact represents

a sufficiently pointy stick, to answer Mr Franks' call. Indeed, it might be argued that there is scope to consider additional incentives to offset the penalties already in existence.

Available evidence shows industry's focus on improving its work health and safety culture is having a significant impact. Statistics compiled by the national safety regulator, Safe Work Australia, show workplace fatalities have fallen 25 per cent between 2010 and 2014¹⁵. Deaths not on public roads fell 23 per cent over this same period, capturing a clear sign that industry is responding to existing provisions and that response is bearing significant results¹⁶.

Comparative figures from New Zealand show a 23 per cent increase in workplace fatalities and a 29 per cent of fatalities not on public roads¹⁷. Australia's approach is clearly successful and recording ongoing improvement.

The question must then be asked whether South Australia has a specific issue that demands legislative change. Available evidence from Safe Work Australia and State regulator SafeWork SA provides no such support.

South Australia recorded 14 traumatic workplace deaths not on public roads in 2010 and 16 in 2011. Since 2012, the year in which the current penalty and policing system was being debated and introduced, the number of deaths have fallen significantly: 7 in 2012, 11 in 2013 and 7 in 2014.¹⁸

Queensland is the only other state to record a similar step-change over this same period.

Although South Australia's incidence rate per 1000 employees over the past five years returns a result around the Australian average, our superior performance since 2012 now sees the State boasting the third-lowest rate of fatalities per 1000 employees across the nation¹⁹. This clearly reflects industry's improvement in adopting

the 2012 amendments and their very effectiveness.

In short, all available evidence shows South Australian industry is responding positively to the current provisions and fatalities are falling at a rate to be commended on both a national and international scale. Unless there is a clear benefit to be gained from the legislation as being considered by the Committee, Master Builders SA submits the Bill, if enacted, is more likely to halt the success currently being experienced at reducing workplace fatalities.

5. Elements of the proposed legislation

The Bill being considered by the Committee creates an offence of industrial manslaughter for employers with three elements:

Recommendations

3. Master Builders SA recommends the Committee note the 25 per cent fall in national workplace fatalities over the past five years as evidence of the success of the current regime.

4. The Committee should also bear in mind South Australia's rapidly improving safety record as a sign of the success of the current regime and question whether introducing a new regime as part of this Bill will reverse that trend.

- An employer breaching a duty imposed by Part 2 Division 2 pertaining to an employer's primary duty to provide a safe workplace under appropriate direction;
- An employer with actual or objective knowledge, or reckless, as to the substantial risk of serious harm to a person resulting from the breach; and
- The breach causing the death of a person, regardless of whether the person is an employee or the death occurred in a workplace.²⁰

Natural persons face 20 years' imprisonment and corporate entities face a maximum \$1 million penalty.

Under the provisions of the Bill, officers face a separate test requiring an assessment of whether they possess actual or an imputed authority with conduct that breaches a duty under Part 2 Division 2. The officer must also have actually or objectively known, or been reckless as to whether the behavior behind the breach would create a substantial risk. That risk must also have caused the death of a person, regardless of whether the death occurs in a workplace or is an employee. A maximum penalty of 20 years' imprisonment is provided.²¹

The offence is considered to be a major indictable offence and also implicates an employer if the way in which its activities are managed or organised causes the breach in question.

The causative link of the underlying breach is also expanded so that the breach is identified as a cause of the death if it is seen as substantially contributing to the death²².

6. Comparing current and proposed offences

The Bill under consideration proposes nothing less than a complete rewrite of how risk is assessed and managed in all workplaces, including building sites.

Recommendations

5. Given the best safety outcomes are based on clear understanding of obligations and risks, Master Builders SA recommends the Committee consider the likely impact of this Bill as it seeks to completely rewrite how risk is assessed on sites.

Unlike the existing offences which are created in Division 5 of the Act, this proposed amendment does not embrace the full scope of health and safety duties outlined throughout Divisions 2, 3 and 4 of the Act and instead appears to restrict itself to the duty imposed solely in Division 2.

The proposed amendment requires an assessment of risk and processes only after a fatality occurs, effectively importing an investigative technique into the judicial process, and giving rise to a hindsight view of processes and procedures not necessarily implied in the primary offences within Division 5.

It provides a narrower scope by limiting its attention to the primary duty of care – which is already covered by existing offences – whereas existing offences also include breaches of duties in specific workplaces under Division 3 and the duties of officers, workers and other persons under Division 4. Effectively, it sets a higher standard and penalty for a breach

after the fact without providing for an assessment of the systems or processes employed to mitigate the risk at the heart of the offence.

The proposed Bill also appears to extend liability far beyond current expectations. The offence is no

Recommendations

6. Master Builders SA recommends the Committee consider the likely injustice of penalizing businesses for a tragic incident where they may not have control over a space or is open to an unlimited class of people.

7. Master Builders SA recommends the Committee reject this Bill's introduction of new terminology for employers rather than embracing existing definitions utilised by legislation and case law.

longer limited to those spaces within the control of an employer, an officer of an employer or a worker; instead, it applies to all deaths resulting from a breach, regardless of whether employed or on a worksite controlled by the alleged offender.²³

The shift of liability in the Bill under consideration is deceptively subtle yet significant in terms of its likely impact. Current legislation requires the actions of an offender to expose a person to whom a duty is owed to a risk of death. It limits liability to those who can control and influence events in a direct fashion. The Bill under consideration rejects the concept of direct responsibility, instead only requiring objective knowledge or recklessness – which might be attributed to any person given sufficient imagination – and a link between the breach and a death.

In short, it represents a new penalty contingent upon a death that extends beyond workplaces, direct control and responsibility. An employer is required to provide a safe

workplace as part of its primary duty – but this Bill extends that duty beyond the workplace. This appears to be a form of over-reach that fails to acknowledge an employer's limits of control.

7. Practical shortcomings of the Bill

Expert and member feedback has outlined several shortcomings of this Bill in its present form.

Indefinite definition of employer

Only an employer or its officers can be found guilty of the crime of industrial manslaughter. This terminology is at odds with the remainder of the Bill and thus introduces the potential for greater uncertainty.

It is assumed that the Bill uses the term “employer” – which is not defined within the Bill or the broader Act – in place of the term “person conducting a business or undertaking”²⁴. Consistent usage would provide a better appreciation of rights and obligations, particularly when being considered by the judicial system.

Ignoring employee contribution and error

The Bill attaches consequences to a fatality arising from a breach of a workplace duty – but only for the body corporate and officers. It fails to recognize the role played by employees in a team environment or the contribution of employee error.

If, for example, a fatality occurred as a result of an employee ignoring employer advice and instruction while in a situation of shared responsibility, there is a possibility that a body corporate and its officers may be found guilty of this offence despite doing all they could to prevent that same event. There is also a distinct possibility that an employer might provide the best safety system available – and yet be held liable because he, she or it failed to account for an employee ignoring basic safety instructions and protections.

In the case of *Tillett Memorials*²⁵, the employer recognised employees were in physical danger when gravel was being moved around the worksite. The company had implemented specific procedures to

minimize the risk and had sacked employees for failing to follow those procedures. The company was prosecuted when a worker died after not following the company's procedures.

The Industrial Relations Court found *Tillett Memorials* not guilty. The company had followed their own procedures and policies, which were instituted to protect against their known risks, the Court found.

This Bill could result in a markedly different outcome.

The fact that the business had fired people in the past for failing to follow procedures could be taken as evidence that they were aware of the risk of those procedures not being followed – and therefore expose the company to a

charge of recklessness under this proposed amendment. Master Builders SA believes this outcome would penalise and imprison the very businesses that are seeking to do the right thing.

The vast majority of businesses proudly embrace both their legislative duties and moral duties. They have invested heavily in specialist services to respond to changing work health and safety legislation and to train employees to look after their fellow employees and be vigilant as to safety in that challenging environment:

We employ WHS Officers to maintain our presence onsite (and) to instruct workers on safe work practices and to react before an incident occurs. We employ 50 staff and several hundred subcontractors and suppliers every day.

I know that my fellow contractors have the same view on their responsibility and attempt to maintain injury-free workplaces on a daily, weekly and monthly basis while maintaining (our construction) programme and quality, but we all employ large subcontract workforces and the movement of those workforces across the industry every day is a huge challenge, which we address.

None of the injuries that occur on our sites occur as a result of ignorance, lack of care or intent.

Recommendations

8. Master Builders SA recommends the Committee reject this Bill for its obvious failure to recognise and penalize the role played by employee error and contributions to workplace fatalities, and to avoid the punishment of businesses committed to a proactive safety environment.

Human error, momentary lack of concentration, lack of awareness, poor communication, language barriers are all issues we face every day and, fortunately, we incur very few injuries.²⁶

There is a great concern that the Bill's silence on the contribution of other employees and employee error would in some cases lead to an injustice against the business and employees doing the right thing.

Employee errors occur. This Bill turns a blind eye to that reality.

No provision for interrupted chain of responsibility

Fair Work Building and Construction has identified its concerns that workplace policies required by the Building Code 2013 are not being implemented on the ground because site supervisors do not appreciate the need to translate policies to day-to-day operations.²⁷

This raises a very real concern as to where criminal liability may be imposed upon the body corporate and its officers for a failure of a site supervisor to implement essential policies designed to counter identified risks.

There is concern that this failure to translate to the site should have been contemplated by the employer, and therefore constitute objective knowledge or recklessness as to the substantial risk of serious harm to a person under the proposed Bill.

At present, this same set of circumstances is unlikely to trigger liability because the offender must expose a person to whom a duty is owed to a risk of death, therefore removing all those who are not in a position to recognize and repair the risk. In contrast, the Bill overlooks the role of direct responsibility, instead only requiring objective knowledge or recklessness – which might be attributed to any person given sufficient imagination – and a link between the breach and a death.

It penalizes bodies and corporate and officers of those companies because they trust their employees or fail to micromanage micro risks, an approach that risks destroying every employment relationship in the interests of second-guessing every risk.

It is a significant change that is likely to impact every sector and the financial analysis of projects and their risk.

Householders as jailed industrial criminals

The Bill provides that an employer is to be held liable and possibly imprisoned where a breach of a duty results in a death, regardless of whether that death is on site or whether it is that of an employee.

It does not limit the scope of the Bill to specific workplaces or employees – and thereby unintentionally opens a broad front.

As noted by a member responsible for a long-standing business with more than 50 employees:

So if I go home and find my ironing lady dead, electrocuted because the cord to the iron has frayed, I'm going to be locked up for 20 years?²⁸

The Bill does not distinguish domestic situations and thus opens all householders to liability for deaths caused by circumstances they may have been unaware of the risk of – but this Bill imputes that knowledge by reason of its objective imputation.

Similarly, Master Builders SA is concerned that it may capture those undertaking a hobby, Unincorporated Associations, and even Government bodies and the public officers that represent them.

Undefined classes deliver criminal liability

This Bill requires a link between a breach of a duty, recklessness or imputed knowledge that the breach could lead to a serious injury, and a death resulting from that same breach.

Recommendations

9. Master Builders SA recommends the Committee reject this Bill for the likely impact it will have on all households by extending new penalties to domestic employment settings.

10. Further, the Bill should be rejected given its reliance upon the introduction of unlimited liability relating to affected people and place of operation. Neither recognise the need for control as a key factor for determining liability.

There is then no limit to the liability that can be attached to this proposal.

The death can relate to someone not employed and therefore not under the control of the officers and bodies corporate being charged – therefore making them liable for an undefined class of people not subject to an employment agreement or the direction that flows from that agreement. An employer therefore gains an unlimited liability by virtue of their role as an employer.

The Bill also discards the need for a link to a worksite under control of a body corporate or officer. Employers need not control a site – instead they are responsible for anything that can be foreseen with a link to the employer.

This raises particular concerns in the building and construction industry where multiple employers and entities share the same worksite on a daily basis. Parties sharing the site should be made aware of their joint responsibility but may all be held liable under the

proposed provisions because their lack of knowledge of the breach in question is construed as reckless.

Generally the imposition of criminal penalties would be reserved for circumstances and legislative provisions that are clearly defined by a connection to the offender. Master Builders SA submits that this Bill ignores those conventions and imposes criminal liability for an undefined impact. We therefore recommend it not be passed by Parliament.

8. Additional considerations

Master Builders SA appreciates the existing legislative structure for its clear message: significant penalties attach to a breach of a legislative duty. Determination of those penalties will reflect the

severity and recklessness of the breach, and not the outcome. This has the effect of focusing bodies corporate, their officers and employees on managing risks and meeting their duties – not on trying to avoid an event likely out of their control.

In contrast, this Bill overlooks several practical elements so as to render it unworkable at present.

Current penalties untested

The current penalty regime imposes a maximum \$3 million fine or five years' imprisonment for those parties who have breached a duty and been reckless as to that breach.

Recommendations

11. Master Builders SA recommends the Committee recognise that introducing the proposed penalties regime is likely to dilute the effectiveness of the current approach that has contributed to significant falls in workplace fatalities.

12. Master Builders SA recommends the Committee consider the importance of maintaining a simple work health and safety system in which businesses and employees can clearly focus on avoiding injuries and fatalities.

13. Master Builders SA suggests the Committee note the importance of early safety education in developing a long-term safety culture.

The full extent of those penalties, introduced in the 2012 review, have not been tested. Nor have they been shown or identified as exhibiting shortcomings that require legislative repair. The provisions for imprisonment have not, to the knowledge of Master Builders SA, been relied upon in sentencing under the Act.

The current Act also provides for the imposition of enforceable undertakings – a powerful penalty that has only recently been relied upon by the Courts.

Master Builders SA recommends this Bill be revisited when the current provisions are found to have limited effect and impact – and the provisions of the Bill are identified as the appropriate response to those limitations.

Losing the focus on safe outcomes

Members have expressed frustration that they are now spending more time on the paperwork associated with risk and safety rather than assessing the actual risks likely to threaten safety.

The introduction of a crime of industrial manslaughter with jail terms for the death of an individual of an undefined class will likely accelerate this practice and, somewhat perversely, result in more attention on paperwork and less on safety.

Master Builders SA firmly believes these resources would be better spent focusing on better conditions and systems rather than investing in additional compliance activities.

A better focus: safety and lessons learned

Master Builders SA believes proponents of this Bill may point to recent South Australian industrial

deaths as a reason for the need for a crime of industrial manslaughter. Yet the very best solutions are reliant upon a thorough understanding of a matter rather than a prompt reaction.

It is instructive to note that the explanations for recent fatalities have not been publicly released. Employers have no way of assessing whether they are repeating the mistakes of the past even as a SafeWork SA investigation forms its conclusions as to whether workplace practices can be improved.

Master Builders SA therefore recommends consideration be given to the formation of a formal reporting or industry hazard warning system that can provide clear indications as to the reasons for industrial deaths and how they can be avoided, rather than finding employers liable for failing to guess what may have already happened in other incidents.

Senior industry representatives have also raised a need for an improved safety culture across the industry rather than reacting to one or two isolated – but tragic – events:

Much more can be achieved with a training programme that supports the young people entering the industry... It is at this entry level where workers are at the greatest risk and the critical need for that knowledge and acceptance of the need to act responsibly at all times and be aware of other workers around them and their safe work practices.

... If young people enter the industry as fully qualified tradespersons with WHS accreditation they will be aware of the requirements and they will work with that knowledge and be aware of the expectations and look after themselves and other workers around them.²⁹

Apprentices and trainees would benefit from a formal program as part of their training, and this requirement should form a licensing prerequisite.

This is likely to reduce the number of errors that might lead to deaths and serious injuries and have a significant state-wide impact on industry safety. Further, it is likely to change a culture – starting with the generation entering worksites today but most at risk, and not those to be imprisoned for failing to look at the state of their frayed electrical cable on the iron at home.

9. Conclusions

South Australia's construction industry can be dangerous and yet the State is now among the best performers when it comes to low levels of fatalities. This can be improved through improvements to

safety education for those most at risk, and Master Builders SA supports measures to improve the performance of the sector; more importantly, we support measures to reduce fatalities and injuries.

In the opinion of the industry, this 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 tested.

Recommendations

14. Master Builders SA recommends the Committee reject this Bill in its entirety to support the success of existing measures in reducing workplace fatalities in South Australia.

There are also significant concerns about the unintended consequences of the Bill in its current form, with a particular concern that it imposes a dangerous liability on householders, and opens all businesses to almost unlimited liability while not addressing the silence on employee contributions to breaches and fatalities.

Perhaps most importantly, Master Builders SA is concerned that this Bill fails to recognize alternative means of improving safety and reducing workplace deaths. This is a shift of culture that must start with those entering the workforce today, not the employers likely to be jailed for circumstances beyond their control for the next 20 years.

This Bill risks introducing a new layer of paper, distraction and bureaucracy when employers should be focused on building, building jobs, and building a culture of safety.

Master Builders SA is the peak body representing the State's building and construction sector and the 55,000 jobs it creates.

We would appreciate any opportunity to appear before the Committee to further outline practical ways in which workplace safety can be improved, and the likely impact of this Bill on that safety.

¹ SafeWork SA, Construction Industry Summary. Available at http://www.safework.sa.gov.au/show_page.jsp?id=113618#.VvvJMuJ97uo (accessed March 30, 2016).

² A project with State and Commonwealth Government funding will likely require a contractor to meet separate requirements for both Governments, be subject to inspection by both SafeWork SA and Safe Work Australia. Infrastructure departments of both tiers of Government are likely to possess their own powers of audit and inspection as part of the funding contracts.

³ Australian Bureau of Statistics, A History of Road Fatalities in Australia, Year Book Australia 2001, catalogue 1301.0. Available at <http://www.abs.gov.au/ausstats/abs@.nsf/featurearticlesbytitle/9AFD4E13D7DA281FCA2569DE0028B40C?OpenDocument> (accessed March 28, 2016).

⁴ Given the criminal nature of the amendment under consideration, Master Builders SA has limited this submission to criminal matters.

⁵ Work Health and Safety Act (SA) 2012, s 31.

⁶ Ibid.

⁷ Ibid, s 32.

⁸ Ibid, s 33.

⁹ Ibid, s 38.

¹⁰ Ibid, s 44.

¹¹ Ibid, s 47.

¹² Franks, Tammy, "Work Health and Safety (Industrial Manslaughter) Amendment Bill", Legislative Council Hansard, May 6, 2015.

¹³ Ibid.

¹⁴ These are the conclusions from a number of private conversations with senior industry figures with national exposure.

¹⁵ Safe Work Australia, Comparative Performance Monitoring Report, Seventeenth Edition, October 2015, 9. Available at <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/941/cpm-17-edition.pdf> (accessed March 30, 2016).

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Work Health and Safety (Industrial Manslaughter) Bill 2015, cl 268A(1).

²¹ Ibid, cl 268A(2).

²² Ibid, cl 268A(5)(b).

²³ Ibid, cl 268A(1)(c).

²⁴ Defined in Work Health and Safety Act (SA) 2012, s 5.

²⁵ *Moore v SD Tillett Memorials Pty Ltd* [2002] SAIRC 47. Available at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/sa/SAIRC/2002/47.html?stem=0&synonyms=0&query=tillett%20memorials> (accessed March 30, 2016).

²⁶ Comments from commercial contractor B during member consultation, March 2016.

²⁷ Fair Work Building Construction, Presentation to Master Builders SA's Subcontractor Committee, March 9, 2016.

²⁸ Comments from commercial contractor A during member consultation, March 2016.

²⁹ Comments from commercial contractor B during member consultation, March 2016.