Workplace Safety Australia

Safety Matters
OH&S NEWS ALERT

WORKPLACE SAFETY AUSTRALIA PTY LTD

Safety Alert: 07-2017
7 March 2017

In This Alert…

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Editorial

In this week's version of Workplace Safety Australia's regular weekly Alert, we take an in depth look into the recent announcement that Queensland will adopt the National Rail Safety Regulations. With the addition of Queensland the Office of the National Rail Safety Regulator now has jurisdiction in all Australian States and Territories.

Our 'Legislative Changes and Proposed Legislative Changes' also looks at the new industrial relations laws that restore fairness for Queensland public sector and local government workers, which commenced on 1 March 2017. One of the significant changes brought about by the new *Industrial Relations Act* is the introduction of new powers granted to the Queensland Industrial Relations Commission to deal with bullying in the workplace.

In our 'In the Court's' section in this week's WHS Alert we look at a successfully appealed case by Optus against a $3.9 million Judgment for a labour-hire worker, who developed chronic post-traumatic stress disorder after a co-worker attempted to murder him. The original decision was overturned on appeal after two out of three appellate Judges said Optus did not owe the victim a duty of care. We provided commentary on the original Judgement in our OHS Alert No. 10 of 2015.

The second story in our 'In the Court's' section covers a recent tragic incident in Queensland, in which a 62 year old roofer fell 6 meters to his death. Two Queensland businesses and their Directors have been committed to stand trial following a Workplace Health and Safety Queensland investigation. If found guilty of the alleged category 1 offences, the Directors can be fined up to $600,000.00 each and face maximum jail terms of five years. The companies can also be fined a maximum of $3 million.

In this Alert, we cover the main legal and regulatory changes that have occurred in the last week

Regards,

Kim Schekeloff
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Go back to 'In this alert'

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Lead Stories...

Queensland Joins Rail Safety National Law

Relevance: QLD
Industries: Rail Transport
Keywords: Keywords: Rail Safety; Harmonisation; National Rail Safety Regulator; Rail Operations - Safety

The *Rail Safety National Law (Queensland) Bill 2016* was assented to on 28 February 2017, and is set to commence on 30 June 2017. The main purpose of the Bill is to adopt *National Rail Safety Regulation* and investigation reforms by applying the Rail Safety National Law as a law of Queensland and establishing the Office of the National Rail Safety Regulator (ONRSR) as the rail safety regulator in Queensland.

The Rail Safety National Law was prepared and passed by South Australia, as the host jurisdiction, with the intention that all other States and Territories pass legislation to apply the Rail Safety National Law as a law of their own jurisdiction. The Rail Safety National Law, as applied, commenced in:

- South Australia, Tasmania, the Northern Territory and New South Wales in January 2013;
- Victoria in May 2014;
- Australian Capital Territory in November 2014; and
- Western Australia in November 2015.

As the remaining jurisdiction, applying the Rail Safety National Law in Queensland will ensure consistency across Australia. The Bill repeals the *State Transport (Rail Safety) Act 2010* and introduces a new workplace drug and alcohol testing regime for Queensland operators, however retains the State's recently strengthened fatigue laws for train drivers.

As of 30 June 2017 ONRSR will hold responsibility for rail safety regulation across all States and Territories of Australia, following the passage of legislation to establish its jurisdiction in Queensland.

It is the culmination of a comprehensive process to establish ONRSR's regulatory responsibility, currently held by Transport and Main Roads' Rail Regulation Unit, and follows the Queensland Government's announcement in December 2015 of its intention to join the national scheme.

With the addition of Queensland, ONRSR now has jurisdiction in all Australian States and Territories.

As with other transition processes, undertaken since the establishment of ONRSR in 2009, at the same time ONRSR begins operating in Queensland, the Australian Transport Safety Bureau will simultaneously take on the role of national investigator in the sunshine state.

Over the coming months ONRSR will work closely with Rail Regulation Unit staff to facilitate their smooth transition to roles within its Queensland Branch. It will also

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establish the branch headquarters in Brisbane and will undertake a national recruitment process to appoint a Branch Director.

While it remains business as usual for now, an industry information session will be held soon with all accredited operators in Queensland to be given further information as soon as arrangements are confirmed.

Please find an analysis of *Rail Safety National Law (Queensland) Bill 2016* below in the "Legislative Changes and Proposed Legislative Change" section of this alert.

Go back to 'In this alert'

Revision of ISO 31000 in Progress

Relevance: CTH; all States and Territories
Industries: All Industries
Keywords: International Standard; Risk Management; Occupational Health and Safety

The revision of ISO 31000:2009, Risk management- Principles and Guidelines, has moved one step further to the Draft International Standard (DIS) stage where the draft is now available for public comment.

ISO 31000:2009 is an international standard that provides principles and guidelines to assist businesses in understanding how to develop, implement and maintain an effective risk management framework within their organisation.

The purpose of the revision is to simplify the standard, making it clearer and more concise. The revision utilises simple language to express the fundamentals of risk management in a way that is coherent and understandable to users.

The standard provides guidelines on the benefits and values of effective and efficient risk management, and should help organisations better understand and deal with the uncertainties they face in the pursuit of their objectives.

Jason Brown, Chair of ISO technical committee ISO/TC 262, Risk management, that developed the standard, stated that:

> *'The message our group would like to pass on to the reader of the DIS is to critically assess if the current draft can provide the guidance required while remaining relevant to all organizations in all countries. It is important to keep in mind that we are not drafting an American or European standard, a public or financial services standard, but much rather a generic International Standard.'*

Much of the complicated language has been eliminated from the standard, so the text is leaner and more precise with the expectation that the reader will find it simpler to understand. The new draft is shorter than the Committee Draft, but it gains in clarity and precision and is much easier to read. It also includes some substantial improvements, such as the importance of human and cultural factors in achieving an organisation's objectives and an emphasis on embedding risk management within the decision-making

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process. That said, the overall message of ISO 31000 remains the same – integrating the management of risk into a strategic and operational management system.

The next step in the process will be to finalise the revision work to reach the Final Draft International Standard stage. The new version of ISO 31000 is expected to be published at the end of 2017 or early 2018.

In November 2009, AS/NZS ISO 31000: 2009 replaced the previous Australian and New Zealand risk management standard AS/NZS 4360: 2004. AS/NZS ISO 31000:2009 which provides Fund Member agencies with principle and general guidelines to consider when developing risk management frameworks and programs.

More information can be accessed here; the draft version of the international standard can be accessed here.

Go back to 'In this alert'

Legislative Changes and Proposed Legislative Changes…

CTH - Building and Construction Industry (Improving Productivity) Regulations 2017

Relevance: CTH
Title of Instrument: Building and Construction Industry (Improving Productivity) Regulations 2017
Amending: N/A
Commencement: Commenced 25 February 2017
Industries: Construction and Building
Keywords: Enterprise Agreement; Transitional Provisions; Building Code
Regulations located here

The *Building and Construction Industry (Improving Productivity) Act 2016* (the Act) created a compliance regime that applies to the building and construction industry. It establishes the Australian Building and Construction Commissioner (ABC Commissioner) as a specialist workplace relations regulator with functions that include investigating and enforcing compliance with workplace relations laws by building industry participants.

The Act provides that a nominated Administrative Appeals Tribunal (AAT) presidential member, upon application by the ABC Commissioner, is to issue an examination notice if satisfied of certain matters. An examination notice is issued in relation to a person where there are reasonable grounds to believe that the person can assist with an investigation into a suspected breach of the Act or designated building law, and directs that person to give information, produce documents or answer questions.

The examination notice process in the Act broadly replicates a similar process set out in the *Fair Work (Building Industry) Act 2012* (the old Act). The old Act and its regulations were repealed by the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* (C&T Act). To assist the transition from the old Act to the new regime, regulations relating to the examination notice process made under the old Act were continued in force by the C&T Act (the old regulations).

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The purpose of the *Building and Construction Industry (Improving Productivity) Regulations 2017* (the 2017 Regulations) is to substantially replicate the *Fair Work (Building Industry) Regulations 2005* with changes to terminology and other technical amendments to reflect the provisions of the Act. This removes the need for transitional provisions. The 2017 Regulations:

- prescribe the content requirements for applications for examination notices and the form and content requirements for examination notices themselves;
- prescribe additional matters that a nominated AAT presidential member must be satisfied of before issuing an examination notice; and
- provide that the Regulations preserved by item 14B of Schedule 2 to the C&T Act cease to be in force.

Go back to 'In this alert'

ACT - Rail Safety National Law (ACT) Amendment Regulation 2017 (No 1)

Relevance: ACT
Title of Instrument: Rail Safety National Law (ACT) Amendment Regulation 2017 (No 1)
Amending: Rail Safety National Law (ACT) Regulation 2014
Commencement: Commenced on 24 February 2017
***Industries:* Rail Transport**
Keywords: Rail Safety; Rail Operations – Safety; Alcohol and Drug Testing
Amendment Regulation located here.

Section 15(6) of the Rail *Safety National Law (ACT) Act 2014* (the Act) sets out that an authorised person who carries out a breath analysis must give the rail safety worker on whom the analysis was carried out a signed written statement containing the particulars required by regulation.

Section 15 (7) of the Act requires that where a reading from a breath analysis of a rail safety worker shows the prescribed concentration of alcohol, the authorised person who carried out a breath analysis must give the rail safety worker a signed written notice prescribed by the regulation.

The *Rail Safety National Law (ACT) Amendment Regulation 2017 (No 1)* commences 24 February 2017, amending the *Rail Safety National Law (ACT) Regulation 2014* to set out the particulars to be provided, in writing, to a rail safety worker at the time they are tested, including information relating to the outcome of the breath analysis.

The Amendments Regulations inserts a new Regulation 5A which sets out the particulars required to be included in a statement mentioned in Section 15(6) of the Act or written notice under section 15 (7) of the Act. The details required to be included in the statement include:

- specifics of the instrument used;
- time;
- date;
- location of the test;
- details of the tester; and

- test results.

The particulars to be provided are consistent with the particulars required to be provided to a motor vehicle driver tested for alcohol under the ACT's drink driving legislation, with a minor adjustment to reflect differences in terminology between the *Road Transport (Alcohol and Drugs) Act 1977* and the Act. The alcohol and drug testing provisions in the Act are similar to the provisions that regulate the testing to detect alcohol and drugs in motor vehicle drivers. The advantage of aligning the procedures for alcohol and drug testing of rail safety workers and motorists in the ACT is that the potential for confusion and errors in processing tests and samples is reduced as police, sample takers and analysts will follow substantially similar procedures under the road transport legislation and the rail safety law.

Go back to 'In this alert'

ACT - Justice and Community Safety Legislation Amendment Act 2017

Relevance: ACT
Title of Instrument: Justice and Community Safety Legislation Amendment Act 2017
Amending: Civil Unions Act 2012; Coroners Act 1997; Guardianship and Management of Property Act 1991; Human Rights Act 2004; Human Rights Commission Act 2005; Information Privacy Act 2014; Juries Act 1967; Residential Tenancies Act 1997; Terrorism (Extraordinary Temporary Powers) Act 2006
Commencement: Commences 2 March 2017
Industries: Airline Operators; Information Technology Companies
Keywords: Justice and Community Safety
Amendment Act located here

The *Justice and Community Safety Legislation Amendment Act 2017* commenced on 2 March 2017, making amendments to nine Acts in the Justice and Community Safety portfolio. The administrative improvements in the Act cover information technology, coronial reports and changes to ministerial portfolios.

The amendments to the *Information Privacy Act 2014* will allow the ACT Government to take full advantage of accessing new information technology, such as cloud computing. They will do this by allowing for companies that have ACT contracts to comply with the privacy laws of their own jurisdictions. The current legislation requires service providers, even those based in other states, to abide by ACT legislation even when they are already subject to other privacy laws. The amendments in the Act will make it easier to contract across borders for IT services.

There is one amendment to the *Coroners Act 1997* in this Act. Currently, all reports of the coroner must be tabled. The amendment changes this to require tabling only if there is a public safety recommendation in the report. Additionally, the amendment gives the minister the power to redact personal information contained in a coroner's report before tabling. These changes help the government balance the public interest in the coronial process with the privacy of individuals and families.

Amendments to the *Human Rights Act 2004*, the *Human Rights Commission Act 2005* and the *Terrorism (Extraordinary Temporary Powers) Act 2006* reflect changed portfolio arrangements for human rights. Under previous legislation the Attorney-General was

named the minister responsible for functions under these acts. The changes reflect the new division of responsibilities between portfolios following the election

The amendments to the *Guardianship and Management of Property Act 1996* help deal with the management of enduring powers of attorney. The ACT Civil and Administrative Tribunal (ACAT) will sometimes appoint the Public Trustee and Guardian to represent an incapacitated person. If that person already has an enduring power of attorney in place ACAT only has the option of revoking it. The appointment might only be done on an emergency basis to review whether the power of attorney should continue in force. This amendment will allow the ACAT to suspend the enduring power of attorney for the duration of the Public Trustee and Guardian's appointment. This amendment provides a practical option for the ACAT in the context of its guardianship jurisdiction, particularly when making emergency orders.

The current laws in the ACT allow for the automatic recognition of heterosexual unions that take place outside of the ACT. This same recognition does not extend to same-sex couples. Same-sex unions are required to be registered in the ACT upon the couple's return to Canberra.

The Act will amend Section 27 of the *Civil Unions Act 2012* (ACT) to recognise an overseas or interstate relationship not between a man and a woman as a civil union under ACT laws. Mr Ramsay said of the Bill:

> *"We don't want to be making people in same-sex relationships jump through hurdles that others don't have to. We look forward to marriage equality, but until that is the case, we will make sure it is open and as equal as possible for all people…It's a way of recognising that all aspects of law and all aspects of love are equal."*

The last amendment I will detail helps airline crews. The amendment to the *Juries Act 1967* allows airline operating staff to claim an exemption from jury duties. This exemption was formerly available under the commonwealth's *Air Navigation Regulations 1947*. Those regulations have been repealed. This amendment replaces the exemption that was in the commonwealth regulation. Introducing the amendment allows airline crew the continued opportunity to receive an exemption from serving as a juror as the nature of their work often makes jury service impractical.

In addition to improving government process the amendments responds to a wide range of community issues. Canberra's laws for civil unions, protection orders, guardianship matters and juries will be improved.

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QLD - Gene Technology (Queensland) Act 2016

Relevance: QLD
Title of Instrument: Gene Technology (Queensland) Act 2016
Amending: Agricultural and Veterinary Chemicals (Queensland) Act 1994; Biodiscovery Act 2004; Biosecurity Act 2014; Right to Information Act 2009
Commencement: Commenced 1 March 2017
Industries: Health
Keywords: Gene Technology
Act located here

The *Gene Technology (Queensland) Act 2016* (the Act) commenced on 1 March 2017 following the Commonwealth Government declaring the Act as corresponding to Commonwealth legislation.

The Act:

- replaces the existing Queensland gene technology legislation (i.e. *Gene Technology Act 2001* and *Gene Technology Regulation 2002*) with new legislation;
- applies the Commonwealth gene technology laws as laws of Queensland;
- provides for the modification of the automatically-adopted Commonwealth gene technology laws through regulation (in effect, an 'opt out' model) in instances where it is not in Queensland's interests to adopt Commonwealth amendments;
- applies the Commonwealth Acts Interpretation Act 1901, criminal laws and administrative laws to the Act; and
- applies officer functions and powers under the Commonwealth gene technology laws in Queensland.

Gene technology activities in Australia are regulated through an integrated national legislative scheme. The scheme aims to protect the health and safety of people and the environment by identifying and managing risks associated with gene technology.

Before the commencement of the *Gene Technology (Queensland) Act 2016*, Queensland's gene technology legislation has to be amended whenever the Commonwealth gene technology legislation was amended to ensure that all gene technology activities in Queensland were regulated consistently.

In 2013, an independent statutory review of the Queensland Act was undertaken to investigate whether it was operating as an efficient and effective component of the regulatory scheme. The Queensland Review concluded that there are potential efficiencies to be gained from automatically applying the Commonwealth gene technology laws as laws of Queensland. It was decided that this was the most efficient way of maintaining consistency between the Commonwealth and Queensland legislation.

Minister for Innovation, Science and the Digital Economy Leeanne Enoch stated:

> *'The commencement of the Act will ensure that Queensland's legislation keeps pace with advances in gene technology...The new legislation automatically applies Commonwealth gene technology legislation as laws of Queensland. This is important as prior to the new act, whenever there was an amendment to the Commonwealth's laws, it meant changing Queensland legislation through a*

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cumbersome and sometimes long amendment process... The time lag between changes to the Commonwealth legislation and amending Queensland's previous legislation created uncertainty and potential disadvantages for Queensland research organisations.'

Note that Western Australia is the only jurisdiction that does not have corresponding gene technology legislation.

Go back to 'In this alert'

QLD - Industrial Relations Act 2016

Relevance: QLD
Title of Instrument: Industrial Relations Act 2016
Amending: Industrial Relations Act 1999 (to be repealed); Anti-Discrimination Act 1991; Holidays Act 1983; Hospital and Health Boards Act 2011; Magistrates Courts Act 1921; Ombudsman Act 2001; Public Guardian Act 2014; Public Service Act 2008; Workers' Compensation and Rehabilitation Act 2003; Work Health and Safety Act 2011
Commencement: Chapter 19, Part 9 (other than Sections 1118 to 1124, 1126 to 1128, 1151 and 1152 commenced on 9 December 2016. The remaining provisions commenced 1 March 2017
Industries: Particularly State Government Entities and Local Government
Keywords: Industrial Relations; Work Arrangements Generally
Act located here

New industrial relations laws that restore fairness for Queensland public sector and local government workers begin today with the commencement of the *Industrial Relations Act 2016* (IR Act 2016). One of the significant changes brought about by the new Act is the introduction of new powers granted to the Queensland Industrial Relations Commission (QIRC) to deal with bullying in the workplace.

The policy object of the Queensland *Industrial Relations Act 2016* (the Act) – which will be the major State law relating to industrial relations – is to provide for a framework for the conduct of industrial relations within Queensland's industrial relations.

The major amendments that deal directly with WHS issues in the new Act introduce a new regime in Queensland that mirrors the Federal Jurisdictions' dealing with bullying.

Clause 272 of the Act provides that an employee is bullied in the workplace if while at work an individual or group of individuals repeatedly behave unreasonably towards the employee, or a group of employees which the employee is a member of, and that behaviour creates a risk to the employees' health and safety. This does not apply to reasonable management action carried out in a reasonable manner.

The Act provides that an employee can apply to the commission for a stop bullying order if they believe they have been bullied in the workplace. The Act allows that the commission must start to deal with an application within 14 days of the application being made.

The Act allows that if the commission is satisfied that an employee has been bullied in the workplace and there is a risk that the employee will continue to be bullied in the workplace, it may make any order it considers appropriate to prevent the employee from

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being bullied. The clause also provides what the commission must take into account in considering the terms of the order.

Additionally, there are provisions allowing leave for victims of domestic and family violence. According to the Queensland Minister for Industrial Relations Grace Grace:

> *'Our Bill restores the balance with fairer and more effective laws that better reflect the reality of modern workplaces. I'm particularly proud that the Bill provides an entitlement of 10 days' paid leave for victims of domestic and family violence.'*

Although most of the rest of the Act does not deal largely with Health and Safety to any great degree, since it is the primary law in Queensland that regulates industrial relations, including bargaining in relation to work arrangements, it is reported on briefly below.

Following the Commonwealth's expansion of its industrial relations jurisdiction in 2005 to cover all trading corporations in the private sector through the use of its constitutional powers, and the subsequent referral by the State of the non-incorporated private sector to the Commonwealth in 2010, the State's industrial relations jurisdiction covers the Queensland and local government sectors. In some matters, for example long service leave and jury service leave, the State has a shared jurisdiction. During 2015, the Queensland Government approved an independent review of the State's industrial relations laws and tribunals to provide recommendations for industrial relations reform. An election priority for the Government, this was the first major review of the state's industrial relations laws.

The review group, chaired by Mr Jim McGowan AM, was comprised of representatives of Queensland's industrial relations' key stakeholders including representatives of unions and employer organisations, Queensland's Bar Association and Law Society, government agencies and the Local Government Association of Queensland (LGAQ).

Following public consultation and consideration of submissions, the Review group provided its Report entitled 'A Review of the Industrial Relations Framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group' (the Report) to the Government. The report was published in March 2016. The Report recommends that new industrial relations legislation be drafted due to the significant changes in the jurisdiction covered by the provisions of the now old *Industrial Relations Act 1999* (IR Act) and also recommends retention of the local government sector in Queensland's industrial relations jurisdiction.

The Report's recommendations promote 'genuine consultation and cooperative industrial relations underpinned by collective bargaining for setting wages and conditions, the independence of the industrial tribunals; strong, effective and transparent governance and accountability obligations for state-registered industrial organisations, and the Queensland Government as a model employer.'

The report also recommends the adoption of protections aligned with those afforded to private sector employees and employers under the *Fair Work Act 2009* (FW Act) including introducing a general protection and an anti-bullying jurisdiction in Queensland. The report also recommends that the Queensland Industrial Relations Commission (the

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commission) have an exclusive jurisdiction for work place/employment related antidiscrimination matters. The Government has accepted the report's recommendations.

The Act repeals the *IR Act 1999* and provides for an industrial relations system based upon the recommendations of the Report and policy issues determined by Government. The Act will achieve its purpose by: Setting the key elements for the State's industrial relations system including;

- A set of minimum standards;
- Collective bargaining as the cornerstone for setting wages and conditions;
- A set of individual rights to fair treatment;
- Effective, transparent and accountable governance and reporting obligations for registered organisations; and
- An independent commission and court.

The Act:

- Reframes the objects of the legislation around a fair and balanced system, the primacy of collective bargaining and recognising obligations of mutual trust and confidence;
- Strengthens enterprise bargaining arrangements with greater emphasis on responsible representation and good faith bargaining; and for the commission to assist the parties to reach agreement. Arbitration is triggered only as a last resort; and
- Revises the regulation of registered industrial organisations and associated entities.

The Act provides that the financial reporting requirements for industrial organisations and the training requirements for officers with financial management duties are similar with those of *the Fair Work (Registered Organisations) Act 2009* (FWRO Act). This will assist those organisations with counterpart federally registered bodies better manage their administrative arrangements while ensuring registered organisations in this State are accountable to their members.

The Act further provides the Industrial Registrar, as an independent statutory officer, with the authority to investigate suspected breaches of industrial organisation's obligations. The Act introduces new protections for workers to:

- Fulfil the Government's commitment to provide paid leave for victims of domestic and family violence;
- Establish a general protections jurisdiction to protect workers against adverse action during employment or dismissal from employment; workplace bullying remedies for state and local Government employees similar to those available to private sector workers under the FW Act;
- Further align Queensland's minimum employment standards with the national employment standards for parental, carers and compassionate leave, the requirement to give an information statement to an employee upon the commencement of employment; and
- Introduces a right to request flexible work arrangements.

In regard to strengthening Queensland's industrial tribunals, the Act:

- Provides the commission with exclusive jurisdiction to deal with all workplace related anti-discrimination matters, including those taken under the *Antidiscrimination Act 1991*; and
- Amends legal representation arrangements to be the same as those in the Fair Work Commission which means representation by a lawyer or other paid agent in the commission is permitted based on how unfair it would be not to allow representation. Legal representation is not permitted in enterprise bargaining arbitration matters.

The Act also amends:

- The *Public Service Act 2008* to ensure there is no overlap in the directive making powers of the Minister for Industrial Relations and the Public Service Commissioner; and
- Other State Government employing Acts to ensure these do not impede the rights of employees, other than those on Statutory appointment, judicial officers and their associates, and employees engaged for special and specific tasks (e.g. special investigators) to have access to enterprise bargaining for their terms of employment.

The Act also enables the Industrial Registrar to partition the Local Government Industry Modern award into three awards based upon occupational divisions identified in the Award Modernisation Variation Notice issued by the Minister on 6 June 2016 pursuant to Section 140CA of the IR Act. This is an administrative function only and is done to assist employers and workers by making the document more user-friendly for each occupational division.

Go back to 'In this alert'

QLD - Industrial Relations (Transitional) Regulation 2017

Relevance: QLD
Title of Instrument: Industrial Relations (Transitional) Regulation 2017
Amending: Industrial Relations Regulation 2011
Commencement: 1 March 2017
Industries: Particularly State Government Entities and Local Government
Keywords: Industrial Relations; Transitional Regulations;
Regulations located here

The *Industrial Relations Act 2016* (IR Act 2016) is due to commence on proclamation, which is scheduled for 1 March 2017. A regulation is required to give effect to certain provisions in the IR Act 2016. While a comprehensive review of regulation to support the IR Act 2016 is planned for 2017 an interim regulation is required until the new regulation is in place. The nature of matters required in a regulation to support the IR Act 2016 are generally those that provide greater detail or guidance on matters provided for in the Act.

The Transitional Regulation amends the *Industrial Relations Regulation 2011* (IR Regulation 2011) to facilitate the transition from the operation of the IR Act 1999 to the operation of the IR Act 2016. The majority of amendments to the IR Regulation 2011

involve minor amendment to replace cross-references to provisions in the IR Act 1999 with the relevant provisions in the IR Act 2016.

Other amendments make minor changes to reflect amendments to the underpinning legislative provision; to reflect current drafting styles; and to alter a prescribed amount. Examples of these amendments include:

- Amendment to Part 2, Sections 4 and 5: These sections are omitted and replaced with a new Section 4 which reflects a change in the language of the substantive provision, section 297 of the IR Act 2016. The intention of the provision is consistent with existing Section 5 of the IR Regulation 2011; and
- Amendments to reflect change in language of substantive legislation from 'certified agreement' to 'proposed bargaining instruments': Amendments are made throughout the regulation, to reflect the references in the IR Act 2016 to 'proposed bargaining instruments', to encompass both 'certified agreements' and 'bargaining awards'.

Amendments are also made to omit regulations that have been made obsolete as the underpinning legislative provision has not been included in the IR Act 2016 or no longer requires a regulation, for instance:

- Clause 52 omits Part 14A of the Regulations: Sections 146A and 146B which extended the nominal expiry dates and provided for wage increases for particular certified agreements, (along with the corresponding Schedule 5C, also omitted at Clause 54) are not maintained under the transitional regulation, as the substantive provisions were in the IR Act 1999 and have not been included in the IR Act 2016. However, these agreements, their extended nominal expiry dates and wage increases continue in force by virtue of Section 998 of the IR Act 2016.

Section 3 of this Regulation declares it is a transitional regulation which will expire 1 year after the day of the commencement of section 1085 of the IR Act 2016.

Go back to 'In this alert'

QLD - Rail Safety National Law (Queensland) Bill 2016

Relevance: QLD
Title of Instrument: Rail Safety National Law (Queensland) Bill 2016
Amending: Coal Mining Safety and Health Act 1999; Coroners Act 2003; Mining and Quarrying Safety and Health Act 1999; Queensland Competition Authority Act 1997; Queensland Rail Transit Authority Act 2013; Rail Safety National Law (Queensland) Bill 2016; Right to Information Act 2009; Surat Basin Rail (Infrastructure Development and Management) Act 2012; Transport Infrastructure Act 1994; Transport Operations (Passenger Transport) Act 1994; Transport Planning and Coordination Act 1994; Work Health and Safety Act 2011
Commencement: 30 June 2017
Industries: Rail Transport
Keywords: Rail Safety; Harmonisation; National Rail Safety Regulator; Rail Operations – Safety
Act located here

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The Rail Safety National Law (Queensland) Bill 2016 was assented to on 28 February 2017. The main purpose of the Bill is to adopt national rail safety regulation and investigation reforms by applying the Rail Safety National Law as a law of Queensland and establishing the Office of the National Rail Safety Regulator as the rail safety regulator in Queensland.

Due to the inconsistent regulatory practices between States and Territories and the impact they have on inter-jurisdictional rail transport operators, there has been significant work undertaken to harmonise regulatory requirements between the jurisdictions.

The Rail Safety National Law was prepared and passed by South Australia, as the host jurisdiction, with the intention that all other States and Territories pass legislation to apply the Rail Safety National Law as a law of their own jurisdiction. The Rail Safety National Law, as applied, commenced in:

- South Australia, Tasmania, the Northern Territory and New South Wales in January
  2013;
- Victoria in May 2014;
- Australian Capital Territory in November 2014; and
- Western Australia in November 2015.

As the remaining jurisdiction, applying the Rail Safety National Law in Queensland will ensure consistency across Australia. Consistent with the *Transport (Rail Safety) Act 2010*, the Bill retains the co-regulatory approach to rail safety.

The Bill will also achieve the objectives of the Rail Safety National Law, which are, as outlined in section 3 of the Rail Safety National Law:

- To establish the Office of the National Rail Safety Regulator (ONRSR)
- to make provision for the appointment, functions and powers of the National Rail Safety Regulator;
- To make provision for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations;
- To provide for the effective management of safety risks associated with railway operations;
- To provide for the safe carrying out of railway operations;
- To provide for continuous improvement of the safe carrying out of railway operations;
- To make special provision for the control of particular risks arising from railway operations;
- To promote public confidence in the safety of transport of persons or freight by rail;
- To promote the provision of advice, information, education and training for safe railway operations; and
- To promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

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As the Rail Safety National Law and the *Transport (Rail Safety) Act 2010* were both based on the Model Law, there are only a small number of policy changes for Queensland when moving from the *Transport (Rail Safety) Act 2010* to the Rail Safety National Law.

The differences between the Bill (as applying the Rail Safety National Law) and the *Transport (Rail Safety) Act 2010* are:

Cost Benefit Analysis
The Rail Safety National Law provides that the ONRSR must undertake a cost benefit analysis if a particular decision is likely to result in significant costs or expenses to the rail transport operator. The cost benefit analysis is undertaken as a comprehensive assessment of a decision's appropriateness, efficiency and effectiveness. The outcome of a cost benefit analysis does not prevent a decision being made, but does ensure the decision made is the best option available to achieve the desired outcome.

The *Transport (Rail Safety) Act 2010* does not require a cost benefit analysis.

Exclusions Under Both the Transport (Rail Safety) Act 2010 and the Rail Safety National Law
A number of railways are excluded from the operation of the respective Law. For example, a mining railway that is currently excluded under the *Transport (Rail Safety) Act 2010* might not be excluded under the Rail Safety National Law due to its above ground operation. Transitional provisions will provide a period of 36 months to allow railways that are currently excluded from coverage of the *Transport (Rail Safety) Act 2010*, but included under the Rail Safety National Law, time to gain accreditation to enable them to operate in compliance with the Rail Safety National Law.

Duties for Loaders and Unloaders
The Rail Safety National Law recognises that there is a shared responsibility to ensure the safety of railway operations and that the lack of any safety duty on persons engaged in the loading or unloading of rolling stock has made rail transport operators disproportionately responsible for the safety of these activities.

Therefore, the Rail Safety National Law introduces a duty for persons who load or unload freight on rolling stock to ensure, so far as is reasonably practicable, that such operations are carried out safely. This change is expected to increase rail safety standards in Queensland.

Drug and Alcohol Management
Under the *Transport (Rail Safety) Act 2010*, a railway operator must ensure, so far as is reasonably practicable, that each rail safety worker who is on duty has a blood alcohol limit of less than 0.02 in their blood or breath, or is not impaired by a defined drug.

Currently, drug and alcohol testing of rail safety workers extends only to train drivers who may be tested by police under the provisions of the *Transport Operations (Road Use Management) Act 1995*, Section 80.

The Rail Safety National Law provides that it will be an offence for a rail safety worker (which includes a train driver) to carry out, or attempt to carry out, rail safety work;

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- while there is present in their blood more than the prescribed concentration of alcohol (0.00); or
- while a prescribed drug is present in their oral fluid or blood; or
- while they are so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.

This policy will be supported by the ONRSR undertaking random, targeted and post incident testing of rail safety workers.

Drug and alcohol testing of rail safety workers will be undertaken by authorised persons who are appointed by the ONRSR. Testing may be undertaken if a rail safety worker is about to carry out, is carrying out, or attempting to carry out rail safety work or is on railway premises. Officers of the Queensland Police Service will continue to conduct drug and alcohol testing of train drivers under the *Transport Operations (Road Use Management) Act 1995*, Section 80. If a rail safety worker who is a train driver is involved in an incident, they may be tested by either an authorised person or a police officer.

An authorised person may not exercise a power to test the rail safety worker in any circumstance in which a police officer is exercising a power under Section 80 of the *Transport Operations (Road Use Management) Act 1995*, in relation to the rail safety worker. To this effect, the rail safety worker cannot be charged under both the Rail Safety National Law and the *Transport Operations (Road Use Management) Act 1995*. The provisions of the Bill are expected to increase safety standards in Queensland as it will now be an offence for any rail safety worker to carry out rail safety work while they have alcohol or a prescribed drug in their system or while they are impaired by a drug or alcohol.

Penalties

A large number of the proposed penalties in the Rail Safety National Law are significantly higher than the penalties currently contained within the *Transport (Rail Safety) Act 2010*. However, the proposed penalty amounts in the Rail Safety National Law have been aligned to penalty amounts contained in Work Health and Safety legislation and also reflect the national harmonisation of rail safety law.

The increase in penalties may act as a greater incentive to comply with the Rail Safety National Law and reflect the potentially serious outcomes should a person not comply with the Law. Due to jurisdictional variations in the value of a penalty unit, penalties in the Rail Safety National Law are not from the penalty unit system. The Rail Safety National Law provides a monetary penalty amount to ensure the penalty is the same in each jurisdiction.

Compliance and enforcement

The ONRSR will have the power under the Rail Safety National Law to issue an infringement notice in circumstances where a rail transport operator or an individual has breached the Rail Safety National Law, if that particular breach has an infringement penalty as contained in Section 233 of the Rail Safety National Law.

The Bill also makes minor and consequential amendments to the:

- *Coal Mining Safety and Health Act 1999;*

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- *Mining and Quarrying Safety and Health Act 1999;*
- *Queensland Rail Transit Authority Act 2013;*
- *Work Health and Safety Act 2011;*
- *Coroners Act 2003;*
- *Queensland Competition Authority Act 1997;*
- *Right to Information Act 2009;*
- *Surat Basin Rail (Infrastructure Development and Management) Act 2012*;
- *Transport Infrastructure Act 1994;*
- *Transport Operations (Passenger Transport) Act 1994;*
- *Transport Planning and Coordination Act 1994.*

Go back to 'In this alert'

QLD - Transport Legislation Amendment Regulation 2017

Relevance: QLD
Title of Instrument: Transport Legislation Amendment Regulation 2017
Amending: Transport Operations (Marine Safety) Regulation 2016;
Transport Operations (Road Use Management—Driver Licensing) Regulation 2010
Commencement: 24 February 2017
Industries: Transport Administration/National Transport Commission
Keywords: Marine Safety; Compulsory Pilotage
Amendment Regulations located here

Following Queensland and Commonwealth Government approvals, in November 2015 Rio Tinto announced that it would proceed with a major bauxite mining operation in the Amrun area south of Weipa. Bauxite will be shipped from Boyd Point to Australian and overseas refiners from a new purpose-built facility.

The amendments are designed to help ensure the safety of vessels during the construction and operation of the Amrun export facility near Weipa.

The amendments to the *Transport Operations (Marine Safety Regulation) 2016 (Marine Safety Regulation)* are consequential to amendments made to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, which now benefits Rio Tinto and provides for the establishment of a bauxite export facility in the Boyd Point area.

The amendments will not remove the ability of the government's regional harbour master to deal with marine pollution incidents, dangerous goods, extreme weather events, hazards and other marine safety issues. However under the Agreement, before exercising any powers the harbour master must consult with RTA Weipa if the exercise of a power would affect the company's rights. This is similar to a statutory arrangement that applies in Queensland's other ports.

Taken together the Agreement and the changes to the *Marine Safety Regulation* will help ensure the safety of vessels using the waters around the Boyd Point export facility during its construction and operation.

Go back to 'In this alert'

NSW - Dangerous Goods (Road and Rail Transport) Amendment (Revision of ADG Code) Regulation 2017

Relevance: NSW
Title of Instrument: Dangerous Goods (Road and Rail Transport) Amendment (Revision of ADG Code) Regulation 2017
Amending: Dangerous Goods (Road and Rail Transport) Regulation 2014
Commencement: Commenced 1 March 2017
***Industries:* Transport Industry**
Keywords: Dangerous Goods and Explosives; Occupational Health and Safety; Transport of Dangerous Goods
Amendment Regulations not available

The *Dangerous Goods (Road and Rail Transport) Amendment (Revision of ADG Code) Regulation 2017* commence on 7 March 2017 amending the *Dangerous Goods (Road and Rail Transport) Regulation 2014*. The object of the Amendment Regulations is to amend the *Dangerous Goods (Road and Rail Transport) Regulation 2014* as follows:

- to update references to the Australian Code for the Transport of Dangerous Goods by Road and Rail, which has been revised;
- to give effect to the placard limits in the new edition of that Code;
- to give effect to changes in the new edition of that Code that clarify when a receptacle is "appropriately marked";
- to omit requirements about licence labels and offences relating to such labels; and
- to update references to the Standing Council on Transport and Infrastructure, which is now called the Transport and Infrastructure Council.

Go back to 'In this alert'

NSW - Transport Administration Amendment (Independent Transport Safety Regulator) Act 2017

Relevance: NSW
Title of Instrument: Transport Administration Amendment (Independent Transport Safety Regulator) Act 2017
Amending: Government Sector Employment Act 2013; Passenger Transport Act 2014; Public Finance and Audit Act 1983; Rail Safety (Adoption of National Law) Act 2012; Rail Safety (Adoption of National Law) Regulation 2012; Transport Administration Act 1988
Commencement: Assented to on 1 March 2017; Commencement on days to be appointed by proclamation.
Industries: Transport
Keywords: Transport Administration; National Transport Commission; Office of the National Rail Safety Regulator
Amendment Act located here.

The *Transport Administration Amendment (Independent Transport Safety Regulator) Act 2017 (the Act)* was introduced to the NSW Parliament on 14 February 2017. The Bill proposes to amend *Transport Administration Act 1988* to abolish the Independent Transport Safety Regulator and to make consequential amendments to other legislation.

The Independent Transport Safety Regulator is a New South Wales statutory corporation that provides specific functions and services under delegation from the Office of the

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National Rail Safety Regulator (ONRSR), a body established under the Rail Safety National Law (NSW) and corresponding laws of other participating jurisdictions. The functions that the Independent Transport Safety Regulator currently provides include operating the New South Wales branch office of the ONRSR and performing a range of regulatory and compliance activities. Those functions will now be undertaken directly by the ONRSR.

On its abolition, the assets, rights and liabilities of the Independent Transport Safety Regulator will be transferred to the Crown. Arrangements are being made for the ongoing employment of certain existing employees of the abolished body by the ONRSR, including arrangements relating to the maintenance of the accrued rights of those employees.

Go back to 'In this alert'

SA - Gene Technology (Miscellaneous) Amendment Act 2017

Relevance: SA
Title of Instrument: Gene Technology (Miscellaneous) Amendment Act 2017
Amending: Gene Technology Act 2001
Commencement: Commenced 28 February 2017
Industries: Health
Keywords: Gene Technology
Act located here

The *Gene Technology (Miscellaneous) Amendment Act 2017* commenced 28 February 2017 amending the *Gene Technology Act 2001* to bring the South Australian Act into alignment with the commonwealth legislation.

South Australia is a signatory to the National Gene Technology Agreement. The agreement is an inter-governmental agreement which sets out the understanding between Commonwealth, State and Territory governments to establish a nationally consistent regulatory scheme. This agreement ultimately aims to ensure national fulfilment of the principles of the gene technology legislation; that is, to protect the health and safety of people and to protect the environment. This is achieved by identifying risks posed by, or as a result of, gene technology and by managing those risks through regulation of certain dealings, which include the manipulation, storage, transfer or disposal, of genetically modified organisms.

The Amendment Act brings the South Australian *Gene Technology Act 2001* into alignment with the commonwealth legislation. The changes will have minimal impact on the operation of the gene technology activities within South Australia.

Go back to 'In this alert'

CTH - Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

Relevance: CTH
Title of Instrument: Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017
Amending: Fair Work Act 2009
Commencement: Introduced 1 March 2017
Industries: Employment and Industrial Relations
Keywords: Employment Conditions and Regulation; Civil Penalties
Bill located here

The *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* proposes to amend the *Fair Work Act 2009* to implement the Government's commitment to protect vulnerable workers by:

- increasing maximum civil penalties for certain serious contraventions of the Act;
- holding franchisors and holding companies responsible for certain contraventions of the Act by their franchisees or subsidiaries where they knew or ought reasonably to have known of the contraventions and failed to take reasonable steps to prevent them;
- clarifying the prohibition on employers unreasonably requiring their employees to make payments in relation to the performance of work;
- providing the Fair Work Ombudsman (FWO) with evidence-gathering powers similar to those available to corporate regulators such as the Australian Securities and Investment Commission and the Australian Competition and Consumer Commission; and
- prohibiting the hindering or obstructing of the FWO and or an inspector in the performance or his or her functions or powers, or the giving of false or misleading information or documents.

The Bill addresses increasing community concern about the exploitation of vulnerable workers (including migrant workers) by unscrupulous employers, and responds to a growing body of evidence that the laws need to be strengthened.

In summary the proposed amendments will more effectively deter unlawful practices including those that involve the deliberate and systematic exploitation of workers. It will also ensure the Fair Work Ombudsman has adequate powers to investigate and deal with serious cases involving the exploitation of vulnerable workers and the deliberate obstruction of its investigations.

Go back to 'In this alert'

In Other News...

RIS Released for Automatic Fire Suppression Systems for Covered Balconies in Residential Buildings

The Australian Building Codes Board has published its Final Decision Regulation Impact Statement (RIS) on Automatic fire suppression systems for covered balconies in residential buildings.

The Final Decision RIS assesses the problem of fire occurring on balconies of new residential buildings over 25 metres in effective height.

The goal of the Building Code of Australia (BCA) is to enable the achievement of nationally consistent, minimum necessary standards of relevant safety (including structural safety and safety from fire), health, amenity and sustainability objectives efficiently.

The objective of this RIS was to assess the options that safeguard occupants of new residential buildings over 25 metres in effective height through measures that respond effectively to a fire event on a balcony.

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The Board at their June 2016 meeting considered options to mandate sprinklers on covered balconies:

- The Status Quo;
- Remove the exemption for Class 2 buildings; and
- Remove the exemption for Class 2, 3, 4 and 9 buildings.

In the context that these options would result in a net cost to society, the Board agreed to retain the status quo acknowledging that this issue may be reconsidered as part of the holistic review of fire safety project.

The RIS stated:

> *'There are benefits from extending internal sprinkler protection to the balconies in controlling fires that start on balconies and so reduce occupants' risk to life safety from these fires. The issue is how much will the risk to life safety be reduced? The internal fire sprinkler systems are already adequate in protecting occupants' life safety inside the residential unit. It is possible to improve upon an "adequate" level of protection, however, that improvement may be imperceptible. The value of an additional level of protection in extending sprinklers to all residential balconies is ultimately a subjective assessment.'*

The Final Decision RIS can be accessed here.

Go back to 'In this alert'

DMP WA Plan Enhancements to Safety Regulation System for Health and Hygiene Sampling

The Department of Mines and Petroleum WA (DMP) is planning to publish in late-April 2017 further enhancements to Safety Regulation System, including phase one of a new health and hygiene sampling system. This system replaces the current CONTAM database and consolidates all health and hygiene material submitted to the department.

This enhancement will enable industry to submit sampling results for personal exposure to airborne contaminants, noise and biological agents via SRS. Users will also be able to manage samples identified as exceedances online. Sites that submit a large volume of samples may wish to continue to utilise the bulk sample lodgement system.

Delivering this functionality will modernise the way health and hygiene monitoring data is captured by DMP, standardise communications between industry and the department and improve the focus on risk-management in health and hygiene areas.

Over the next month, DMP will provide further guidance in the form of a frequently asked questions (FAQs) webpage and personalised communications.

The SRS can be accessed here.

Go back to 'In this alert'

DMP WA Publish Two New Dangerous Goods Information Sheets

The Department of Mines and Petroleum WA (DMP) has published the following:

- Dangerous Goods Safety Information Sheet; and
- Dangerous Goods Transport Hazard Overview.

The **Dangerous Goods Safety Information Sheet** aims to summarise and explain upcoming changes to the Code in regards to dangerous goods transported in limited quantities.

Amendments to the *Dangerous Goods Safety (Road and Rail Transport of Non-Explosives) Regulations 2007* (accommodate the upcoming edition (ADG7.5) of the Australian Code for the Transport of Dangerous Goods by Road and Rail) have been delayed due to the upcoming Western Australian State election.

Once the changes are gazetted, ADG7.5 will take effect, transitioning with edition 7.4 (ADG7.4) over a one-year period until 1 March 2018. At this time ADG7.5 will be the mandatory Code.

The **Dangerous Goods Transport Hazard Overview** highlights the potential issues associated with the transport of dangerous goods in a variety of packaging modes. Primarily, the template is a prompting mechanism for operators to use in evaluating their control of transport hazards.

The information sheet can be accessed here; and the Dangerous Goods Transport Hazard Overview can be accessed here.

Go back to 'In this alert'

SafeWork NSW Launch New Ad Campaign

SafeWork NSW launched a $3.2 million campaign which aims to make NSW the safest state to work in Australia.

The campaign has been given the title 'Safety Starts With You' and was developed in response to the alarming statistics about workplace injuries and illnesses in NSW. The campaign's full tagline is 'No matter what you do, safety starts with you'.

As part of the campaign SafeWork will be running brand new television commercials, which aim to convey the following message:

> *'We're all under pressure to get the job done. But regardless of how urgent, or how important a job may be, nothing is worth risking your safety. Whether you're a worker or an employer, together we can make the workplace safe. Because no matter what you do, safety starts with you.'*

SafeWork NSW has stated that it received reports of 30,902 major workplace injuries and illnesses and 60 fatalities in 2015/16 alone. The economic burden of workplace injuries in the state is estimated to be at $17.3 billion, or 3.7 percent of gross state product.

SafeWork NSW, Executive Director, Peter Dunphy stated:

> *'Since 2005, there has been a 49 percent drop in the number of workplace fatalities in NSW, and a 39 percent reduction in serious injuries and illnesses...However, the current figures are still unacceptably high...Anyone with a job in this state has the right to a safe and healthy workplace, and whether you are an employer or a worker, and regardless of your industry, occupation or background, workplace safety is everyone's responsibility.'*

As part of the campaign, SafeWork has also launched a free app, which helps identify and resolve safety issues in a workplace. Users will be able to create teams; raise, discuss and resolve safety issues; and attach photos. Mr. Dunphy went on to urge:

> *'businesses and workers across the state to get involved in the campaign and think about how they can create safety culture in their workplace'*

The campaign is a result of SafeWork's Work Health and Safety Roadmap for NSW 2022, which aims to reduce workplace fatalities by 20 percent and serious injuries and illnesses by 30 percent.

The ad can be accessed here.

Go back to 'In this alert'

Recreational Diving and Snorkelling Code of Practice to be Updated

Following on from the Reef Safety Roundtable held in Cairns last week Workplace Health and Safety Queensland (WHSQ) will update the state's *Recreational Diving and Snorkelling Code of Practice*.

Industrial Relations Minister Grace Grace stated that specific Working Groups are to be established in March would oversee a series of improvements to the snorkelling and diving parts of the industry Code. Ms Grace went on to say:

> *'The Working Groups will take a close look at snorkelling and diving safety with a view to updating the code by July...We know that Queensland's existing snorkelling and diving laws are already the strongest in Australia, and possibly the world...But the recent tragic events we've seen on the reef show that the code needs to be updated – that was the clear consensus of the Roundtable.'*

Ms Grace said the Working Groups would include marine tourism operators, Surf Life Saving Queensland, WHSQ experts and other stakeholders, and would consider:

- medical declarations for at risk snorkellers prior to them entering the water;
- automatic external defibrillators on reef tourist vessels;
- ensuring the use of floatation devices for at risk snorkellers; and
- requiring at risk snorkellers to wear a different coloured vest or snorkel for easy visual identification.

As with any recreational water activity, there are significant and serious risks associated with snorkelling. Sadly, each year on average five people die while snorkelling at Queensland locations (that are considered to be workplaces). Many others receive serious injuries. The emotional and financial cost of these deaths and injuries to families, businesses and Queensland's tourism industry is immense.

The current version of the Code of Practice can be accessed here.

Go back to 'In this alert'

Monitoring Respirable Dust in Coal Mines Training

Simtars Queensland (Safety in Mines Testing and Research Station) is hosting a two day course on Monitoring respirable dust in coal mines.

Tailored to meet the needs of industry and coal workers, Monitoring respirable dust in coal mines is delivered face-to-face by our Safety Training Centre experts over two days. For coal workers who need to carry out respirable dust sampling at a coal mine in line with the current Australian Standards, this training opportunity is a must.

Course participants will gain the skills and knowledge required to monitor, measure, collect, interpret, evaluate and report on respirable dust exposure data.

Queensland's Safety and Mines Testing and Research Station, a world-leading centre for mining safety and health research, also offers scientific, engineering and training services nationally and internationally.

More information can be accessed here.

Go back to 'In this alert'

Master Builders Association NSW Releases WHS Construction Guide Video

The Master Builders Association NSW has produced a multilingual video on 'The Work Health and Safety Act and Regulation – A Guide for Construction' supported by WorkCover NSW.

The video has been produced with a view to breaking down the communication barrier between people who speak English as their primary language and people who don't. This easy-to-watch video is a perfect tool to break down a language barrier in order to provide a safe work environment. The Australian Bureau of Statistics, in conjunction with SBS, have determined the languages that would be of most benefit for the industry are Arabic, Mandarin, Cantonese, Korean, Vietnamese, Spanish, Portuguese, Croatian and Serbian.

The video can be accessed here.

Go back to 'In this alert'

DMP WA Publish Two Significant Incident Reports

The Department of Mines and Petroleum WA (DMP) has published information on two recent incidents.

The first of which involved the unexpected initiation of a detonator and detonating cord in August 2016. Two shotfirers were attempting to initiate an open pit blast with a remote firing device (RFD), however after two failed attempts, it was decided to manually fire the shot using a stomper (manual initiation device). The shotfirers then rolled out the detonating cord from the blast site to the firing position on the waste dump, located outside the blast exclusion zone. A long-period delay detonator (LP detonator; 3.6 m lead, 9.6 sec) was connected to the stomper. On the first attempt the stomper's shot-shell failed. On the second attempt the shotshell fired, but when the detonator did not fire instantly one of the shotfirers thought the detonator had failed. The shotfirer cut the detonating cord below the detonator and picked up the detonator (and attached cord) to discard it. At this point the shotfirer realised it was a LP detonator and dropped it – a few seconds before it fired, initiating the attached detonating cord.

Without reporting the incident to the quarry manager, the blast crew proceeded to fire the shot manually after sunset, with a new LP detonator. Fortunately, there were no serious injuries or fatalities.

The report sets out contributory causes, actions required as well as reference to further information.

The second incident involved a block-making machine which was being set up to manufacture limestone blocks. The machine was switched on and set to operate in auto mode, when the operator noticed a large rock in the feed tray. He then opened the safety guard and entered the machine, however the machine started to operator trapping him between the moving tamper head and the feed tray. He received emergency medical treatment and was transferred to hospital with serious injuries. The report sets out contributory causes, actions required and refers to further information.

The incident reports can be accessed here and here.

Go back to 'In this alert'

Funding Boost to put the safety of Health Workers First in Victoria

Frontline workers and patients will benefit from additional safety measures to reduce and prevent violence in hospitals and mental health services through the second round of the Andrews Labor Government's $20 million Health Service Violence Prevention Fund.

Minister for Health Jill Hennessy and Minister for Mental Health Martin Foley recently announced 30 rural hospitals and nine metropolitan hospitals, as well as 10 mental health services will share in more than $7 million in funding.

The second round will see significant safety and security upgrades at these services, including additional CCTV, more personal duress devices and alarms, and new infrastructure such as security doors, windows and restricted access areas.

Jill Hennessy went on to state that:

> *'Our dedicated health care workers put themselves in incredibly vulnerable positions on our frontline – they deserve to feel as safe and secure as possible in the important work they do...This funding is going to make a difference to the working conditions of hospital staff, who work tirelessly every day caring for and saving the lives of so many Victorians.'*

More information can be accessed here.

Go back to 'In this alert'

WorkCover WA Return To Work Conference

The program for this year's WorkCover WA Return to Work Conference has been released.

The Conference will be held on 3 & 4 May 2017 at Pan Pacific Hotel, Perth. More than 300 stakeholders are expected at the Conference to learn about the latest in return to work best practice and initiatives.

According to WorkCover WA, delegates will have the opportunity to choose from a range of sessions across two streams, catering for specific areas of interest in the return to work field during the two-day Conference.

Highlights include:

- Dr Norman Swan, the host of The Health Report on ABC Radio National, and Tonic on ABC News24;
- Dr Jordan Nguyen, biomedical engineer who will explore the future of health technologies;
- Dr Rory Gallagher, the Managing Director of The Behavioural Insights Team, who will discuss how nudge theory can be used to influence behaviour; and
- Ms Claire Madden, a social researcher and generational expert.

Additional information on registration, Conference sessions and speakers is available here.

Go back to 'In this alert'

ARPANSA Publish Regulatory Guide on Plans and Arrangements for Managing Safety

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) have published a Regulatory Guide which sets out safety requirements under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) and *Australian Radiation Protection and Nuclear Safety Regulations 1998* (the Regulations). It specifically looks into the requirements Schedule 3, Item 4 of Parts 1 and 2 of the Regulations.

The Guide is applicable to both sources and facilities. Its purpose is to outline those key aspects that should comprise an organisation's plans and arrangements for managing safety. It should be applied to the extent practicable and commensurate with the degree

of hazard associated with the conduct or dealing. For example, the plans and arrangements for a complex facility will be different to those for a low hazard source. A graded approach is important to ensure that efforts and resources are directed to the matters that are most significant for protection of health and safety of people and the environment.

The guide also assists licence holders in their review of plans and arrangements required under Regulation 50.

The Regulatory Guide can be accessed here.

Go back to 'In this alert'

Standards Australia Withdraw Plumbing Standard

Following wide spread consultation with key industry stakeholders, including the Australian Building Codes Board, Standards Australia have withdrawn AS/NZS 3500.5:2012, Plumbing and Drainage – Housing Installations.

See statement here.

Go back to 'In this alert'

Open for Comment…

Please note that some items below in the 'Open for Comment' section have been carried over from the previous week's safety alert and will remain in this section until the listed closing date. Items marked as 'NEW' on the sub-heading have appeared in the 'Open for Comment' section for the first time. The 'NEW' items in the 'Open for Comment' section will appear first and will be followed by older items for your convenience*

Draft Standards Open for Comment *'NEW'*

A number of draft standards are open for comment. They include:

Draft Standard	Comments due by
AS/NZS IEC 61882:2017 Hazard and operability studies (HAZOP studies) - Application guide	13 March 2017
AS 1940 The storage and handling of flammable and combustible liquids	14 March 2017
AS/NZS 1577 Scaffold decking components	16 March 2017
AS/NZS 1802 Electrical equipment for mines reeling & trailing cables - coal	21 March 2017
AS 4349.2 AS 4349.2 Inspection of buildings	21 March 2017
AS 61000.6.5 Electromagnetic compatibility (EMC) - Part 6-5: Generic	23 March 2017

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standards - Immunity for equipment used in power station and substation environment	
AS 61000.4.5 Electromagnetic compatibility (EMC), Part 4.5: Testing and measurement techniques—Surge immunity test	23 March 2017
AS/NZS 60076.3 Power transformers-Part 3: Insulation levels, dielectric tests and external clearances in air	29 March 2017
AS/NZS 1576.3:2015 Amd 1 Scaffolding Part 3: Prefabricated and tube-and-coupler scaffolding	4 April 2017
AS/NZS 4399 Sun protective clothing - Evaluation and classification	6 April 2017
AS IEC 60601.1.8 Medical electrical equipment, Part 1.8: General requirements for basic safety and essential performance	10 April 2017
AS IEC 60601.1.6 Medical electrical equipment, Part 1.6: General requirements for basic safety and essential performance	10 April 2017
AS IEC 60601.1.11 Medical electrical equipment, Part 1.11: General requirements for basic safety and essential performance	12 April 2017
AS IEC 60601.1.12 Medical electrical equipment, Part 1.12: General requirements for basic safety and essential performance	12 April 2017
AS IEC 60601.1.9 Medical electrical equipment, Part 1.9: General requirements for basic safety and essential performance	12 April 2017
AS IEC 61000.4.1 Electromagnetic compatibility (EMC), Part 4.1: Testing and measurement techniques—Overview of IEC 61000-4 series	12 April 2017
AS IEC 60601.1.2 Medical electrical equipment, Part 1.2: General requirements for basic safety and essential performance	12 April 2017
AS IEC 60601.1.10 Medical electrical equipment, Part 1.10: General requirements for basic safety and essential performance	12 April 2017
AS 4024.3303 Safety of machinery,	12 April 2017

Part 3303: Robots and robotic devices--Collaborative robots	
AS 4024.3302 Safety of machinery, Part 3302: Robots and robotic devices--Safety requirements for industrial robots--Robot systems and integration	12 April 2017
AS 4024.3301 Safety of machinery, Part 3301: Robots and robotic devices--Safety requirements for industrial robots--Robots	12 April 2017
AS/NZS 4645.1 Gas distribution networks Part 1 Network management	26 April 2017
AS/NZS 4645.2 Gas distribution networks Part 2 Steel pipe systems	26 April 2017
AS/NZS 4645.3 Gas distribution networks Part 3: Plastics pipe systems	26 April 2017
AS/NZS 4760 Procedures for specimen collection and the detection and quantitation of drugs in oral fluid	27 April 2017
AS/NZS 3500.3 Plumbing and drainage	01 May 2017
AS 4182 Automotive repairs - Code of practice for reconditioning reciprocating spark ignition engines	04 May 2017
AS 4427 Automotive repairs - Code of practice for reconditioning reciprocating compression ignition engines	04 May 2017
AS 5140 Microbiology of food, animal feed and water - Preparation, production, storage and performance testing of culture media(ISO 11133:2014,MOD)	05 May 2017

A full list of standards under review, along with a link to the draft standards and a link for making comments to the above draft standards can be accessed here.

Readers who may have an interest in Standards reviews are encouraged to view the whole list, as the reviews listed above are only a selection of those standards under review.

ACT Government Seek Feedback on Smoking in Public Transport Waiting Areas *'NEW'*

The ACT Government has released a discussion paper titled 'Smoke-Free Public ACT Public Transport Waiting Areas' to assist interested community members in responding to the ACT Government's proposal to ban smoking within five meters of all publicly and privately owned transport waiting areas, including bus and coach interchanges, residential bus stops, taxi ranks, light rail stations and train stations.

Similar smoke-free areas were established late last year under the *Smoke-Free Public Places Act 2003*, which prohibited smoking within 10 metres of public playgrounds and play spaces. Currently the ACT is the only State or Territory that does not have legislation to prohibit smoking at bus stops.

The ACT Government is committed to protecting the community from the harms of smoking and exposure to second-hand smoke, but also wants to reduce the normalcy and social acceptability of smoking behaviours, particularly for young people in the community. Currently the ACT is the only State or Territory that does not have legislation to prohibit smoking at bus stops.

This consultation closes on **7 April 2017**.

Feedback may be submitted via:

- the online portal; here
- Post:

  Health Protection Service,
  Locked Bag 5005,
  HOLDER ACT 2611

- Email: hps@act.gov.au

The discussion paper can be accessed here.

CASA Seeking Feedback on Frequency Used at Low Level Airspace *'NEW'*

The Civil Aviation Safety Authority (CASA) has published a discussion paper titled 'Frequency Use at Low Level in Class G Airspace'. The purpose of the Discussion Paper is to consider the most appropriate very high frequency (VHF) radio frequency for pilots to use at low level in Class G airspace. Under Regulation 166C of the *Civil Aviation Regulations 1988*, pilots must make a radio broadcast when operating in the vicinity of a non-controlled aerodrome whenever it is reasonably necessary to avoid a collision or the risk of a collision. The regulation does not specify which frequency to use, other than 'the VHF frequency in use for the aerodrome'.

Members of the aviation community-including the Regional Airspace and Procedures Advisory Committees (RAPACs) have expressed concerns about the absence of consultation that led to the Aeronautical Information Publication amendments made on 30 May 2013. The RAPACs have also advised CASA that the current procedures introduce risks associated with:

- non-relevant radio broadcasts overriding higher altitude communications on frequencies used by air traffic control (ATC) and commercial passenger aircraft;
- lack of area VHF contact with ATC at lower altitudes in rural and remote Australia;
- frequency confusion where some aerodromes are printed on one type of chart but not another type; and

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- frequency confusion where aerodromes are located close together or close to the area VHF boundaries marked on charts-particularly when aircraft can only monitor one VHF frequency.

RAPAC convenors recommended MULTICOM as the common low-altitude visual flight rules (VFR) frequency and have requested that CASA review frequencies used in Class G airspace.
CASA seeks to address this issue by providing options for industry to consider. This DP will look at the two options described below:

- maintain the current policy whereby area VHF is recommended as the appropriate VHF frequency in the vicinity of an aerodrome not published on an aeronautical chart; and
- promulgate MULTICOM as the common low-altitude VFR frequency for use in Class G airspace.

The safety benefits and risks associated with each option are discussed in this DP. CASA recognises the valuable contribution that industry consultation makes to the regulatory development process and issues this DP as the basis for CASA to make an informed decision about the appropriate frequency to use at low altitudes in Class G airspace.

Please forward your response to CASA via the online response form by **28 April 2017**.

The discussion paper can be accessed here.

Public Consultation on Code of Conduct for Health Care Workers in TAS ***'NEW'***

The Department of Health and Human Services Tasmania is seeking public comment sought on the implementation of the National Code of Conduct for health care workers (the Code) in Tasmania.

These workers include, for example, self-regulated health professionals such as social workers, speech pathologists dieticians, orthotists, and audiologists and the broader group of health practitioners providing complementary and alternative health services. The Code is intended to operate alongside the Health Practitioner National Law, setting minimum standards of conduct and practice for all health care workers in professions apart from the 14 professions currently regulated under the National Law.

Health professions covered by the National Law include doctors, nurses, dentists, optometrists, pharmacists, and psychologists. The Code will apply to professions covered by the National Law when a professional is providing a service unrelated to their registration. Health Ministers from all States and Territories and the Australian Government have endorsed the Code and agreed each State and Territory would examine the options for introducing the Code in their jurisdiction.

The preferred model for Tasmania is to incorporate the Code within the *Health Complaints Act 1995*. This provides a straightforward legislative model where the Health Complaints Commissioner will be provided with additional functions to administer and enforce the Code.

There are a number of implementation issues where Tasmania needs to determine its preferred arrangements. As part of the process of finalising these arrangements, Tasmania has released a consultation paper setting out the proposed implementation of the Code in Tasmania and seeking community and key stakeholder comment on the suggested changes to the *Health Complaints Act 1995*.

The DHHS is seeking submissions from interested stakeholders and the general public on the issues identified in the consultation paper and whether the preferred options are supported.

Written submissions should be sent to:

Public Consultation – Code of Conduct for health care workers
Department of Health and Human Services
Attention: Mr Paul Geeves
GPO Box 125
HOBART TAS 7001

OR

Email: paul.geeves@dhhs.tas.gov.au with subject heading: Code of Conduct for health care workers

Submissions must be received by close of business Friday **17 March 2017**.

More information can be accessed here.

Electrical Safety Amendments Released for Comment in WA *'NEW'*

As announced in its 2016-17 State budget, Western Australia, will improve electrical safety standards through amendments to the *Electricity (Licensing) Regulations 1991* and *Occupational Safety and Health Regulations 1996.*

Draft amendments to the Occupational *Safety and Health Regulations 1996* and the *Electricity (Licensing) Regulations 1991* have been published and are now available for comment.

Background

De-energising electrical installations is the most effective means of eliminating the hazards posed by electricity. This approach is the natural conclusion of any risk assessment conducted to meet the general duty of care under the *Occupational Safety and Health Act 1984*. It is also emphasised in the training for electrical workers and in numerous publications issued by the Department of Commerce - EnergySafety and WorkSafe Divisions. Despite this, four electrical workers lost their lives and another two were seriously injured in Western Australia, while doing electrical work during the past three years. Two of these fatalities occurred in the roof space of domestic dwellings.

Following these incidents, it became evident that industry was not paying heed to regulators advice. The Director of Energy Safety and the WorkSafe Western Australia

Commissioner subsequently proposed that legislation be amended to mandate appropriate safety precautions.

In March 2016, the Minister for Commerce approved drafting amendments to the *Occupational Safety and Health Regulations 1996* (OHSR) and the *Electricity Licensing Regulations 1991* (ELR).

Consequently, amendment regulations have been drafted to:

- prohibit certain types of electrical work on or near energised electrical installations; and
- require the electricity supply to be switched off at the electrical installation's main switch when work is to be undertaken in the roof space of specified types of buildings.

Proposed Amendments to the *Occupational Safety and Health Regulations 1996 'NEW'*

The draft amendments to the *Occupational Safety and Health Regulations 1996* are as follows:

- The insertion of a new definition of Electrical Installation;
- The replacement of Regulation 3.58, which now deals with the preparations to be taken before electrical work is commenced on de-energised electrical equipment. As well as amending the definitions of Energised, Network Operators, De-energised and Isolated;
- The insertion of a new Regulation 3.59A, which will require the specified duty holders (the employer, main contractor, self-employed person, person having control of the workplace, person having control of access to the workplace) to ensure an electrical installation is de-energised prior to the commencement of electrical work;
- The insertion of a new Regulation 3.59B, which will require that all parts of the electrical installation in the roof space of classified buildings (domestic type buildings Class 1, 2 or 10a, as classified in the Building Regulations 2012) have been de-energised before work commences. However Regulation 3.59(2) allows any service apparatus in the roof space to remain energised, but additional care should be taken to ensure that the safe work method statement recognises the presence of energised service apparatus in the roof space and that electrical work is not carried out near the service apparatus. Regulation 3.59(3) prohibits an employee from entering a roof space unless the part of the electrical installation in the roof space, other than service apparatus, is de-energised. While, Regulations 3.59(4) provides for electrical equipment in individual fire-separated segments of a roof space where work is to be carried out to be de-energised during the period that the work is in progress while other segments remain energised provided that there is no direct access between segments. Finally, Regulation 3.59(5) provides that, if the work is electrical installing work to be carried out under ELR subregulation 55(3), the above provisions do not apply as a specific risk assessment and safe work method statement are required; and

- Multiple technical amendments.

Proposed Amendments to the *Electricity Licensing Regulations 1991* *'NEW'*

The *Electricity Licensing Regulations 1991* do not apply to electrical work carried out on energised overhead conductors that form part of a network or electrical installation. The Regulations relating to this activity will be prescribed in the *Electricity Regulations 1947*.

The draft amendments to the *Electricity Licensing Regulations 1991* are as follow:

- The definition of Network Operator bas been removed;
- The insertion of a new Regulation 54A, which provides for a network operator to carry out work on service apparatus that it owns and is connected to service apparatus owned by a consumer. Regulation 54A allows the network operator or other persons authorised by the network operator to carry out work on this electrical equipment without being a licensed person;
- The insertion of a new Regulation 55, which provides conditions under which electrical work on electrical installations can or cannot be carried out on an energised part of the electrical installation. This means that Regulation 55 does not apply to work on electricity networks by network operators as the networks are not electrical installations for the purposes of the Electricity (Licensing) Regulations. Network operators must comply with the requirements of the *Electricity (Network Safety) Regulations 2015*. Regulation 55(2) sets out when electrical installing work is carried out near an energised part of an electrical installation. If a person is at a location where contact can be made with an uninsulated energised part of the installation either:
    - directly by a part of the person's body; or
    - indirectly by something the person is holding or controlling;

  then the person is or will be working near an energised part of the electrical installation.

  Regulation 55(3) prohibits electrical work on an energised part of the electrical installation unless the provisions of Regulation 55(4) apply. Regulation 55(4) makes it a requirement that a safe work method statement be prepared by a competent person, and that person is satisfied that there is no reasonable alternative before work commences on the energised part of the electrical installation. Regulation 55(5) prescribes circumstances under which specified electrical work can be carried out when the electrical installation is energised. While, Regulation 55(6) relates to electrical contractors or holders of in-house electrical installing work licence.

The proposed changes are consistent with best work practice and similar to regulations and provisions operating in New South Wales, South Australia, Queensland and Tasmania which adopted the Model Work, Safety and Health legislation.

Accompanying the consultation draft amendments is a draft Code of Practice on Work On or Near Energised Electrical Installations. The Code will act as a practical guide for all those to whom the *Electricity (Licensing) Regulations 1991* and the *Occupational Safety and Health Regulations 1996* apply.

Submissions on the proposed amendments, a draft Code of Practice and explanatory notes must be emailed to livework@commerce.wa.gov.au by **31 March 2017**.

More information, including the draft amendments and Code of Practice can be found here.

Heavy Vehicle Safety Programs Consultation

Consultation has opened on the next round of heavy vehicle safety programs to be administered by the National Heavy Vehicle Regulator.

The NHVR is engaging broadly with heavy vehicle industry participants to identify heavy vehicle safety initiatives to put forward to Transport and Infrastructure Council for funding in 2017-18. The NHVR is calling for submissions detailing implementable, value-for-money initiatives that have the potential to deliver significant heavy vehicle safety benefits.

Federal Infrastructure and Transport Minister Darren Chester said the Federal Government would provide $3.8 million a year to support the Heavy Vehicle Safety Initiative program benefiting both freight operators and the community. Mr Chester went on to say:

> *'I want to hear from operators and industry on the next round of safety initiatives and ensure that funding for heavy vehicle safety continues to hit the mark…Australia's truck drivers help get our exports to the world, help get food from farmers to families and freight from Point A to Point B and we are serious about making our roads safer for all road users, including heavy vehicle drivers who play such a valuable role in our national economy'*

The Federal Government is supporting a number of current programs under the Heavy Vehicle Safety Initiative including information on Chain of Responsibility, support to develop Industry Codes of Practice and Automatic Number Plate Recognition cameras.

The purpose of this Commonwealth funding is to support projects and initiatives that deliver tangible improvements in heavy vehicle safety. The 2016–17 funding is being used to support priority projects:

- The rollout of a safety camera network that will enable the NHVR to improve on-road compliance and identify where pressures in the supply chain, in scheduling and in the management of trucking operations, which are placing pressure on drivers;
- Building awareness of obligations under Chain of Responsibility laws; and
- Improving heavy vehicle road safety awareness.

There were 208 fatalities involving heavy vehicles across Australia in 2015-16 and the hope is to see that number continue to decline.

National Heavy Vehicle Regulator (NHVR) CEO, Sal Petroccitto welcomed the funding and acknowledged the extensive work many heavy vehicle operators and peak bodies had already undertaken. Sal Petroccitto went further to say:

> *'We don't pretend to have all the answers, which is why we are asking heavy vehicle operators and peak industry bodies to harness their existing knowledge and apply for funding where appropriate..We are particularly looking at programs that can be delivered nationally to enhance safety across the heavy vehicle industry and therefore the safety of all road users.'*

Applications will be open from **February 16 2017** and close on **March 21 2017**.

The guidelines and submission form can be accessed here.

CASA Seeking Feedback on Aircraft Maintenance Engineer Licensing

The Civil Aviation Safety Authority (CASA) is accepting submissions for the post-implementation review of matters covering aircraft maintenance engineer licenses and ratings (Part 66 of the Civil *Aviation Safety Regulations 1998*, the Part 66 Manual of Standards and associated advisory material).

A priority of the review is to address issues identified with previous proposals for a new small aircraft maintenance licensing structure. In particular, the aim is to better integrate small aircraft maintenance licences into a progressive licensing system. Further detail, including issues identified so far, is available on the CASA website.

The introduction of the proposed new small aircraft maintenance licensing structure, which was to have started on 4 July 2016, has been postponed while the review is underway. This follows requests from maintenance training organisations and aviation representative groups. While the review is underway people can still gain an aircraft engineer licence for the maintenance of small aircraft using the CASA basics examinations and schedule of experience system.

Submissions are due by close of business Friday **26 May 2017**.

For more detail on the Part 66 post implementation review and how to make a submission is located here.

Review of International Atomic Energy Agency (IAEA) Drafts

ARPANSA coordinates the Australia's comment on documents as they are developed and provides feedback on behalf of Australia to the IAEA through Safety Standards Committee members to the International Atomic Energy Agency.

Comments on drafts are requested in relation to:

- Relevance and usefulness - Are the stated objectives appropriate, and are they met by the document?

- Scope and completeness - Is the stated scope appropriate, and is it adequately covered by the document?
- Quality and clarity - Do the requirements/guidance in the document represent the current consensus among specialists in the field, and are they expressed clearly and coherently?

All comments should be submitted using the 'Member State Comments template' (see below). Comments should refer to the relevant paragraph number in the document being reviewed, and when appropriate, should propose alternative text.

IAEA drafts that are currently under review are:

- DS493 – Format and Content of the Package Design Safety Report (PDSR) for the Transport of Radioactive Material – closing Date: **11 March 2017**
- NST051 - Security during the Lifetime of a Nuclear Facility (Draft Implementing Guide) - Closing Date: **10 April 2017**
- NST045 - Computer Security for Nuclear Security (Draft Implementing Guide) - Closing Date: **10 April 2017**
- DS492 - Human Factors Engineering in the Design of Nuclear Power Plants - Closing Date: **14 April 2017**
- DS449 - Format and Content of the Safety Analysis Report for Nuclear Power Plants - Closing Date: **28 April 2017**
- DS481 - Design of the Reactor Coolant System and Associated Systems in Nuclear Power Plants - Closing Date: **3 May 2017**
- DS468 - Remediation Process for Areas Affected by Past Activities and Accidents - Closing Date: **12 May 2017**

Full details, including on how to make a submission can be found here.

CASA Reviewing Medical Certification Standards

The Civil Aviation Safety Authority (CASA) are calling for submissions into a wide-ranging discussion paper to consider industry and community views to any possible changes for the medical certification regime. The paper, titled Medical Certification Standards, raises a number of issues, the responses to which will assist CASA in determining whether to make changes to the current medical certification regime which encompasses class 1, class 2 and class 3 medical certificates, as well as the recreational aviation medical practitioner's certificates.

The discussion paper contains six options, ranging from continuing existing medical requirements to developing a new medical certificate for the sport and recreational sectors. Other options include re-assessing risk tolerances, streamlining certification practices, aligning sport and recreational standards and mitigating the risks of any changes through operational restrictions. The discussion paper also looks at a range of relevant issues such as CASA's approach to aviation medicine, the approach to medical certification in four other nations, pilot incapacitation in Australia, accidents and risks, psychiatric conditions and the protection of third parties.

The review is intended to stimulate debate and raise awareness of the current approach to aviation medicine, the propriety of current medical fitness standards, the factors involved in aeromedical decision-making and related considerations, and developments internationally and in other jurisdictions. If there are other issues or sources of information not included in this discussion paper, but which are relevant to medical certification for any of the affected sectors, we will be happy to receive comments on those matters as part of this process.

The paper will form the basis for any future consultation and all affected stakeholders on the issues raised and any action we propose to take. Aviation medicine is complex-involving medical, regulatory and legal considerations. We encourage written submissions and comments from all sectors of the aviation and medical communities. Submissions/comments close **30 March 2017**.

The discussion paper can be accessed here.

How to respond:

Written submissions and comments may be provided by email to: avmed.dp@casa.gov.au

Please include "Avmed discussion paper" in the email title.

Alternatively, by post to:

Avmed Discussion Paper
CASA
GPO Box 1544
Canberra ACT 2601

National Transport Commission Publishes Discussion Paper on Transport Planning for Australia

The National Transport Commission (NTC) has recently proposed a five yearly "*Who moves what where" report in a publication titled "Who moves what where: Better informing transport planning for Australians discussion paper".*

Chief Executive, National Transport Commission, Paul Retter stated that it made sense to keep building upon the data the NTC had compiled from more than 150 data sets and released in the *Who moves what where* information paper on 8 September last year. Retter went on to state that:

> *"publishing a regular report on passenger and freight movement trends would help industry, governments and local communities plan for the future...If we are able to use the knowledge and power of even more big data sets and better analytics, we can produce detailed reports that identify national trends and the likely impact those trends will have on the transport systems and associated infrastructure routes we use every day.....Australia needs to have the best information to make the best investments in transport infrastructure, from large-scale projects to the location of bus stops."*

Other proposed recommendations in the discussion paper are related to a transport wide approach to identifying long-term statistical and information priorities and introducing data collections to assist with measuring transport productivity.

Mr Retter said while the NTC's *Who moves what where* information paper went some way to analysing Australia's transport movements, information gaps were identified as predicted, and the NTC expects that any future editions would include much more data, such as information about port movements.

The transport and logistics industry is one of the key drivers of the Australian economy, yet it is often difficult to find up-to-date and comparable passenger and freight data for road and rail that can assist in transport planning and reform. To determine whether we could improve this situation, transport ministers approved the Who moves what where project in November 2015.The project was designed to build a better understanding of the nature and composition of the transport sector in Australia and the use of transport networks. In particular, the project aims to provide:

- A strategic overview of the Australian land transport industry, including an update to now decades-old analyses describing the composition of the road freight sector;
- an analysis of the key data gaps and discussion of improved, cost-effective methods of collecting detailed network usage data;
- identification of existing transport usage and transport user data and whether this data is able to be shared; and
- origin-destination information for passenger and commodity movements for network planning and strategic investment purposes.

The NTC will consider the feedback it receives from stakeholders, after which it will finalise recommendations. The NTC will discuss the recommendations with the Transport and Infrastructure Standing Officials Committee in September 2017and subsequently provide them to the Transport and Infrastructure Council, in November 2017.

Stakeholders can make a submission via the NTC's website before 5pm, Friday **10 March 2017.**

Mr Retter said the feedback would help the NTC determine the final recommendations to be presented to Australia's transport ministers at their meeting scheduled for November 2017. He said the project was a good example of the higher level strategic work the NTC was encouraged to focus on as part of the 2015 review into the NTC.

To make an online submission, click here, then on the 'Make Submission' button next to the Who moves what where discussion paper - January 2017 item.

You will need to enter your NTC website login name and password to make an online submission. If you have not registered your details with us, you can do so by selecting the 'Register' button. If you have forgotten your login name and password, you can retrieve it by selecting the 'Forgotten your password' button.

Alternatively, you can mail your comments to:

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Sydney NSW 2000

National Transport Commission
Public submission - (insert project/report name)
Level 15/628 Bourke Street
MELBOURNE VIC 3000.

A copy of the report can be accessed here.

NHVR Proposes Modernising Heavy Vehicle Modifications

The National Heavy Vehicle Regulator (NHVR) is calling for feedback on the updated draft of the *Vehicle Standards Bulletin (VSB) 6: National Code of Practice for Heavy Vehicle Modifications* released last week.

Vehicle Standards Bulletin (VSB) 6: National Code of Practice for Heavy Vehicle Modifications is the national standard for common modifications performed to heavy vehicles. VSB6 is intended to provide a single national technical standard to ensure that modified heavy vehicles are safe and continue to comply with the Australian Design Rules (ADRs) and in-service vehicle standards Regulations.

VSB6 is made up of a series of sections, each one detailing the standards for modifications made to specific vehicle components or systems. Each of these sections is identified by a letter and then further broken down into numbered Codes, which address specific modifications.

The proposed changes to VSB6, along with the relevant section number in the Draft Code, are outlined below:

- reformatting to modernise the document design and layout;
- updated diagrams, referenced standards and guidance material to reflect modern vehicle design and construction practices;
- simplified standards for air-operated accessories (H6);
- revised standards for the installation approved front underrun protection systems (FUPS) and devices (FUPD) (G6);
- new modification codes for:
    - design certification of FUPS and FUPD (H7)
    - installation of rollover protection systems (ROPS) and falling object protection systems (FOPS) (J3)
    - child restraint anchorage installation (K6)
- simplified standards for vehicle mounted lifting systems, combining the R1 and Q1 Codes into a single R1 modification Code.

NHVR Director Safety, Daniel Elkins, stated that VSB6 sets the national standard for common modifications performed to heavy vehicles and that:

> *"The proposed changes substantially modernise VSB6 to guide industry through common modifications performed to heavy vehicles...We want to hear more from*

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industry on how we can make it easier for the heavy vehicle industry to modify their vehicles, this is an industry standard so their input is critical...As the national standard, VSB6 is used throughout Australia by individuals involved in the modification of heavy vehicles."

VSB6 ensures modified heavy vehicles are safe and that they comply with relevant *Australian Design Rules* (ADRs) and in-service vehicle standards Regulations. In July 2015, the NHVR commenced a comprehensive review of VSB6, which was conducted in partnership with modification experts, State and Territory transport authorities vehicle and component manufacturers and national industry associations.

Elkins went on to say that the review focused on:

"ensuring VSB6 represents the professional nature of the industry, adopts performance based requirements that are clear, reflects current vehicle design and construction, and allows for certification of a wide range of common modifications."

Please note that this is a consultation draft only. Before the final VSB6 is published, the NHVR will be undertaking a full quality assurance process, including proof reading, insertion of appropriate images and diagrams, and final reformatting. These documents are drafts only and may be changed following feedback provided during public consultation. The drafts are not to be regarded as an authorised standard until approved and issued by relevant heavy vehicle regulators.

The NHVR proposes to publish the revised VSB6 on the NHVR website July 2017, so that AVEs and other users of the standard can familiarise themselves with the content and any changes that have been implemented. The proposed commencement for the revised version of VSB6 is 1 September 2017.

From Monday **6 February 2017** until **Friday 17 March 2017**, the draft VSB6 will be available for review.

The public consultation draft is available at here.

CASA Consultation on Transfer of Certain Recurring Maintenance Requirements from ADs to the Part 42 MOS

The Civil Aviation Safety Authority (CASA) is seeking comment on its Consultation Draft 1611MS - Transfer of certain recurring maintenance requirements from airworthiness directives (ADs) to Part 42 Manual Standards Amendment Instrument (MOS).

Part 39 of the *Civil Aviation Safety Regulations 1998* (CASR) provides that an AD can be issued to rectify an unsafe condition in a particular aircraft type or in specific equipment arising out of a design deficiency, or a production and manufacturing fault. During a review of Australian unique airworthiness directives (ADs), CASA identified a number of recurring maintenance-related ADs that did not fully satisfy the criteria for the issue of an AD under Part 39 of CASR.

These ADs, listed in Appendix A, relate to aircraft systems and equipment that are generally common to all aircraft types and are essential for safe operation of an aircraft.

The recurring maintenance requirements contained in these ADs ensure continuing serviceability of these systems and equipment. A number of these ADs were prematurely cancelled with the intent that the requirements of the cancelled ADs would be included in Civil Aviation Order 100.5 or the Part 42 Manual of Standards in due course. The Appendix identifies both the current and cancelled ADs.

Purpose and scope of the proposed amendments
The requirements of the unique ADs should ideally be treated as maintenance program instructions. CASA proposes to transfer the requirements of these ADs to the Part 42 Manual of Standards (MOS), where they would be specified as additional maintenance that must be included in an aircraft's maintenance program.

The Part 42 MOS already includes standards for an aircraft maintenance program and the AD requirements would complement these standards. The AD requirements would be included in an appendix to the Part 42 MOS.

CASA has also taken this opportunity to propose amendments to Chapter 15 of the Part 42 MOS, that would allow a pilot licence holder who is a member of an aircraft's flight crew to carry out additional maintenance on the aircraft.

Please forward your response to the Project Leader, Iftekhar Ahmed, by email to: iftekhar.ahmed@casa.gov.au by close of business 10 March 2017.

The Draft Manual Amendment Instrument can be accessed here.

Go back to 'In this alert'

Proposal to Amend Schedule 20 of the Revised Australia New Zealand Food Standards Code

The Australia Pesticides and Veterinary Medicines Authority (APVMA) is seeking comment on its proposed amendments to Schedule 20 Maximum Residue Limits of the Australia New Zealand Food Standards Code.

The maximum residue limits (MRLs) contained in Schedule 20 provide the limits for residues of agricultural and veterinary chemicals that may legitimately occur in foods. By this means, Schedule 20 permits the sale of treated foods and protects public health and safety by minimising residues in foods consistent with the effective control of pests and diseases.

The APVMA has previously gazetted amendments which it has approved varying MRLs for substances contained in agricultural and veterinary chemical products as set out *as in the APVMA's MRL Standard.* Under Section 82 of the *Food Standards Australia New Zealand Act 1991*, the APVMA is proposing to incorporate those variations (Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2017 (No. 2)) to MRLs into Schedule 20 – Maximum residue limits in the Australia New Zealand Food Standards Code.

The APVMA and FSANZ are satisfied, based on dietary exposure assessments and current health standards, that the proposed limits are not harmful to public health.

Submissions should be strictly confined to relevant matters that the APVMA must consider (such as public health and safety) which are associated with the occurrence of the proposed residues in foods.

Comments close 6pm, **7 March 2017**.

Written submissions are invited from interested individuals and organisations to assist the APVMA in considering the proposal to vary Schedule 20 - Maximum residue limits in the Australia New Zealand Food Standards Code. Submissions should be strictly confined to relevant matters that the APVMA must consider (such as public health and safety) which are associated with the occurrence of the proposed residues in foods. Comments received outside these grounds will not be considered by the APVMA. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

Please send your written submission by email, post or fax to:

MRL Contact Officer
Australian Pesticides and Veterinary Medicines Authority
PO Box 6182
KINGSTON ACT 2604

Phone: 02 6210 4897

Fax: 02 6210 4840

Email: enquiries@apvma.gov.au

For more information on the proposed amendments, see the APVMA Gazette Notice (page 24), here.

Go back to 'In this alert'

TGA Consultation on Reforms to the Regulatory Framework for Complementary Medicines

The Therapeutic Goods Administration (TGA) is seeking comments from interested parties on a range of reforms to the regulatory framework for complementary medicines to address Government-agreed recommendations from the Review of Medicines and Medical Devices Regulation.

The purpose of this consultation is to provide an opportunity for consumers, health professionals and sponsors to contribute to the development and implementation of a range of reforms aimed to improve the regulation of complementary medicines in Australia. These reforms aim to increase transparency for consumers, provide additional flexibility for industry and support innovation, while maintaining the safety and quality of therapeutic goods available in Australia.

The scope of this consultation includes four elements:

- The development of a three-tiered risk-based framework for the regulation of complementary medicines. This will introduce a new assessment pathway sitting between the existing listed medicine (low risk) and registered medicine (high risk) pathways;
- The development of a list of permitted indications which must be used by the lowest risk complementary medicines;
- Allowing sponsors to claim that their medicine has been assessed by the TGA for efficacy where that medicine has undergone pre-market assessment by the TGA; and
- Mechanisms to incentivise innovation for the complementary medicines sector.

This consultation closes on **28 March 2017**.

Submissions may address any, or all, of the proposals in the consultation document or other identified issues. Submissions might include, for example, suggested improvements or an assessment of how the proposed change will impact on you.

The consultation document can be accessed here.

Submissions can be made electronically here or via post:

Complementary Medicines Reform Section
Complementary and OTC Medicines Branch
Therapeutic Goods Administration
PO Box 100
WODEN ACT 2606

TGA Consultation on Changes to Accessing Unapproved Therapeutic Goods

The Therapeutic Goods Administration (TGA) is seeking comments from interested parties on the proposed changes to the Special Access Scheme (SAS) and the Authorised Prescriber Scheme (AP).

On 15 September 2016, the Australian Government released its Response to the Review of Medicines and Medical Devices Regulation. Consultation with stakeholders will ensure that implementation of these reforms maintains timely and sustainable access to medicines for all Australians.

The Government endorsed MMDR Recommendations 24-26, relevant to SAS and AP. The proposed changes would introduce a notification system for access to certain unapproved therapeutic goods for patients with non-life threatening conditions. The existing SAS A notification and SAS B application access pathways would remain in place.

The MMDR Review also recommended improving the TGA processes for unapproved therapeutic goods by establishing an integrated, online system to manage notifications, approvals and reporting requirements. The TGA is seeking some general feedback at this

time from stakeholders about the idea of moving to an online system, but targeted consultation with regular users of the current paper-based system will occur once the design of the system is further developed.

The TGA is proposing to implement changes that will improve access to unapproved therapeutic goods. The changes will apply to the Special Access Scheme and the Authorised Prescriber Scheme.

Please find the consultation document here. This consultation closes on **29 March 2017**.

Submissions may address any, or all, of the proposals included in the Changes to Accessing Unapproved Therapeutic Goods through the Authorised Prescriber (AP) and Special Access Schemes (SAS) consultation document.

Submissions can be made electronically here or via post:

Reforms and Operations Section
Pharmacovigilance and Special Access Branch
Therapeutic Goods Administration
PO Box 100
WODEN ACT 2606

Go back to 'In this alert'

In the Courts…

Optus Administration Pty Limited v Glenn Wright by his Tutor James Stuart Wright [2017] NSWCA 21

Optus Administration Pty Limited v Glenn Wright by his Tutor James Stuart Wright
New South Wales Court of Appeal
February 2017

Extract from Judgment and commentary – The link to transcript can be found at the end of summary

Telecommunications giant Optus has successfully appealed against a $3.9 million Judgment for a labour-hire worker, who developed chronic post-traumatic stress disorder after a co-worker attempted to murder him.

The original decision was overturned on appeal after two out of three appellate Judges said Optus did not owe the victim a duty of care.

Please note that our OHS Alert No. 10 of 2015 included an analysis of **Wright v Optus Administration Pty Limited [2015] NSWSC 160**.

The appellant, Glenn Wright, claimed damages for psychological injury as a result of an attempt by a co-worker, Nathaniel George, to murder him by attempting to throw him from the roof of the premises of the respondent (Optus) at Gordon. He sued Optus as

occupier of the premises at which the attempted murder occurred and the entity responsible for his presence at those premises.

Both Mr Wright and Mr George were attending a training course at Optus premises, for call centre operators. The course was conducted by an Optus employee, Natalie Hedges, on the ground floor. Mr Wright and Mr George were unknown to each other before the training course commenced on 12 March 2001. Shortly prior to 15 March 2001, Mr George formed the desire to kill someone, and on the previous night, randomly settled on Mr Wright as his intended victim.

At about 9:30am on 15 March 2001, Mr George, having left the training course on the ground floor, was found in an unauthorised place on the roof balcony on the fourth floor of the Optus premises. Ms Hedges reported the incident to her superior, Trevor Williams. Together with Paul Dee he went to the roof balcony and observed Mr George to be unresponsive, appearing to be in a trance-like state, and repeatedly asking for "Glenn" while pacing up and down the roof balcony near the waist-high railing.

Mr Wright reluctantly complied with a request from Mr Williams communicated via Ms Hedges to provide his assistance and left the ground floor to attend the roof balcony. Mr Williams asked Mr Wright whether he had supplied drugs to Mr George, to which Mr Wright answered, "No". Mr Williams then left the balcony in order to report to senior management who instructed him to make arrangements for Mr George to be removed from the premises by the labour-hire company which had supplied his services.

While he was gone, Mr Wright approached Mr George while Mr Dee and Ms Hedges observed from about 15 metres away. After encouraging Mr Wright to go close to the balcony railing, Mr George attempted to lift Mr Wright off his feet and throw him from the balcony, while also punching and hitting him. Mr Dee intervened and restrained Mr George, allowing Mr Wright to escape.

As a result of the incident, Mr Wright suffered a blow to the head, occasioning no compensable loss. He later developed chronic severe post-traumatic stress disorder.

The primary Judge found that the relationship between Optus and Mr Wright was analogous to that of employer and employee, even though Mr Wright and Mr George were both employed by labour hire companies that had supplied their services to Optus. The primary Judge also found that Optus' duty of care to Mr Wright extended to taking reasonable care to protect him from the criminal acts of others in the workplace. In relation to the requirement in s 32 of the *Civil Liability Act 2002* (NSW) that the prospect of a person of normal fortitude suffering pure mental harm must be reasonably foreseeable, the primary Judge found that it was reasonably foreseeable that Mr George may assault Mr Wright when he was brought to him and that a person of normal fortitude might suffer a recognised psychiatric illness if reasonable care was not taken. The primary Judge identified the risk of harm as the risk that Mr George might inflict personal injury on Mr Wright, including mental harm, in the circumstances actually known to Optus employees, in particular Mr Williams and Ms Hedges, before Mr Wright was asked to attend the level four balcony.

The Court found that there had been a breach of the duty owed by Optus to Mr Williams:

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"The precaution that reasonable care required in the present case was really a combination of both remaining factors. That is to say, George should have been removed from the premises, and until that was done no one, and especially not Mr Wright, the person for whom he had been asking, the only person in whom he expressed an interest, should have been permitted to go near him whilst he remained in a place of possible danger on the roof. There is no evidence that Optus had any security personnel on site who could have been called upon to remove George from the premises promptly. Probably, had that option been available it would have been taken, especially given Mr Williams' apprehension. In the absence of security, consideration should have been given to calling the police given the aberrant behaviour. This is a matter of common sense. This is what most people would do confronted by a person on their premises behaving as though psychotic or severely affected by drugs. Treating George as Drake's problem is understandable, but it really only passed the buck given that George was unresponsive to directions given to him by Ms Hedges and Mr Williams. In my judgment the police should have been called before George's attempt on Mr Wright's life. And, in the meantime, no person, as I have said, especially not Mr Wright should have been allowed to go near him. But he should have been watched from a safe distance as Mr Dee was doing at Mr William's request."

His Honour found that that risk was not insignificant, and that a reasonable person in Optus' position would not have put Mr Wright in harm's way by exposing him to Mr George's aberrant behaviour. Judgment was ultimately entered in favour of Mr Wright for $3,922,116.09.

Issues on appeal

The issues on appeal were as follows:

- Whether Optus owed any relevant duty of care to Mr Wright not to cause him mental harm;
- In particular, whether the foreseeability requirement in s 32 of the *Civil Liability Act 2002* (NSW) was satisfied – that Optus ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care was not taken;
- Whether Optus breached any duty that it owed to Mr Wright;
- Whether the reasonable response to the risk of harm to Mr Wright was to remove Mr George from the premises and not to allow other workers to approach him before his removal;
- Whether Optus was vicariously liable for the conduct of Mr Williams or Ms Hedges;
- Whether the primary Judge erred in his assessment of damages under five heads: non-economic loss, future care, future medical treatment, future economic loss, and fund management.

In a majority decision, NSW Court of Appeal Justices John Basten and Clifton Hoeben found it was not probable that any of Optus' staff knew or should have known that Mr George might, as a possibility, attempt to kill or violently assail the plaintiff in a way which might cause a person of normal fortitude to suffer a psychiatric illness. Therefore none of

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them owed the plaintiff a duty of care with respect to mental harm and Optus could not be vicariously liable to the plaintiff.
Justices John Basten and Clifton Hoeben also found that the foreseeable risk of severe mental harm arising from such an incident was low, and therefore put aside the $4 million claim and ruled in favour of the appellant, Optus.

However, Justice Fabian Gleeson found in dissent that it was reasonably foreseeable that a person found on a roof balcony, unauthorised, behaving as though severely affected by drugs, and disobeying instructions and directions from his workplace supervisors, might harm himself or others who came in proximity to him at or near the balcony edge.

Justice Gleenson went further stating when:

> *"taking into account the control exercised by Optus over the participants in the training course on its premises, the first of the reasonable precautions which his Honour found that Optus should have taken – of not allowing Mr Wright to approach Mr George on the roof balcony – was not based on hindsight. Having regard to the risk of harm identified, the breach was assessed prospectively."*

The full transcript of the Court's Judgment can be found here.

Go back to 'In this alert'

Category 1 Charges Laid for Sunshine Coast Business
Directors committed to stand trial

Two family-owned Queensland businesses and their respective Directors have been committed to stand trial following a Workplace Health and Safety Queensland investigation into the death of a 62-year-old roofer.

If found guilty of the alleged category 1 offences, the Directors can be fined up to $600,000 each and face maximum jail terms of five years. The companies can be fined a maximum of $3 million.

The defendants, Lavin Constructions Pty Ltd and Multi-Run Roofing Pty Ltd, and company Directors Peter Raymond Lavin and Gary William Lavin, have been charged for contravening Section 19 (2) and/or s20 of the *Work Health and Safety Act 2011*. Whareheepa Te Amo, who only started the job four days earlier, fell almost six metres to his death while working on the edge of a roof without protection.

Whareheepa Te Amo, who only started the job four days earlier, fell almost six metres to his death while working on the edge of a roof without protection. Mr Te Amo was one of five roofers working on an industrial shed at Lake Macdonald in the Sunshine Coast Hinterland on 29 July 2014 when he fell.

It is alleged that Mr Te Amo was several metres ahead of two scissor lifts being used for fall control and not wearing a personal fall protection harness. The shed was part of a larger complex being re-furbished by Lavin Constructions Pty Ltd, which was the builder in control of the site, while Multi-Run Roofing Pty Ltd was engaged to fit roof sheeting.

An indictment relating to four separate complaints under the *Work Health and Safety Act 2011* was presented at the Maroochydore District Court on 8 February 2017 against the defendants, who will stand trial in the Brisbane District Court. The matter is due for mention on 19 April 2017.

Deputy Director-General for the Office of Industrial Relations Queensland, Dr Simon Blackwood said falls from heights is a serious issue in most industries, particularly construction, he went on to state:

> *"The roofing/re-roofing trade is certainly one where things can go wrong at height. In this case, the court will hear evidence that appropriate safety equipment was available and on site...Not following simple safety guidelines and taking unnecessary risks is just not on...Had the available and correct controls been used, Mr Te Amo's death would not have occurred."*

An indictment relating to four separate complaints under the *Work Health and Safety Act 2011* was presented at the Maroochydore District Court on 8 February 2017 against the defendants, who will stand trial in the Brisbane District Court.

The matter is due for mention in the Brisbane District Court on 19 April 2017.

Yours Faithfully,
Workplace Safety Australia Pty Ltd

Go back to 'In this alert'