

# Work Health and Safety in WA – Past, Present and Future

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**WA's Chequered WHS  
History**



**WA's Reform Process**



**Where to in WA over the  
next decade**

# WA'S OSH ACT - WORST WORKPLACE SAFETY IN THE COUNTRY

- The *Occupational Safety and Health Act 1984* was an artefact;
- Primary duty of care and definition of employee outdated and ineffective;
- No clear duties in relation to psychological health or sexual harassment;
- Offence provisions were antiquated and difficult to prosecute;
- Widespread non-compliance.

# WA FELL SHORT - INVESTIGATIONS

*2019 Coroners Report -*

*"It was apparent from his evidence that [the driver] made an assumption that if his lights and reversing beepers were operating, people approaching would know to keep out of his way, but that is a dangerous assumption to make in such circumstances."*

*The coroner also remarked --*

*"[Senior WorkSafe official] also acknowledged that if the WorkSafe investigation had commenced at an earlier stage, it might have led to a different outcome in terms of a WorkSafe prosecution being commenced. There is nothing that can be done about this now, as the statute of limitation period has expired."*

# ASBESTOS REGULATION

## *Auditor General Report 2020-*

*“There are significant gaps in WorkSafe’s processes and practices which limit how effectively it regulates asbestos removal licensing in Western Australia.*

*"Audits [by WorkSafe] are not comprehensive, not consistently undertaken or documented and do not routinely or regularly include inspections of worksites when asbestos material is removed.*

*“Regulatory actions are not risk-based, documentation is weak, and there is a lack of rigour and transparency in licensing approval controls.*

*"There are significant deficiencies in WorkSafe’s overall monitoring and compliance activities.”*

# REGULATOR REFORM

- Appointment of Independent Commissioner
- Three resources announcements from the McGowan Government
  - Early 2019 – 6 inspectors
  - Late 2019 – 24 positions, including 21 inspectors
  - 2021 – ~35 positions
- Amalgamation of Dept of Mine Safety and WorkSafe into a single regulatory body

# WA HARMONISED. FINALLY.

- 2008 – Agreement to harmonise workplace safety laws
- 2008 – Carpenter Govt commits to harmonisation but soon after lost Government.
- 2011-13 – All jurisdictions (Inc NZ) except Vic and WA harmonise.
- 2014 – Barnett Govt releases a WHS ‘green bill’. Goes nowhere.
- 2017 – McGowan Govt announces Advisory Panel into WHS.
- 2022 – WHS Act 2021 enacted.

# PUBLIC DEBATE ON WHS

- Local Government submissions to the Legislation Committee Inquiry into the WHS Bill:

- “If someone breaks into a worksite illegally and is killed, will the PCBU be charged with IM?” – Greater City of Geraldton
- “If a worker is bitten by an insect or snake on a worksite and dies, will the PCBU be charged with IM?” – Shire of Carnamah

- *“He also warned that new industrial manslaughter laws meant that builders could be held liable if the intruders were hurt on the premises.”*

Master Builders Association comment re: homeless trespassers – West Australian, 30 June 2021



# WHY INDUSTRIAL MANSLAUGHTER

Prosecution of Valmont (WA) Pty Ltd for fatality of 17 year old Wesley Ballantine:

*“Although these construction company workers were called down and told to wear their safety harness and PPE there was no adequate fall injury prevention system for them to connect their harnesses to.”*

**-WorkSafe Prosecution Summary**

(<https://prosecutions.commerce.wa.gov.au/>)

*"This is just an example of the two-tiered justice system which has one set of rules for the common person and another set of rules for people who sit behind their corporate veils."*

*"We are talking about a situation where the head contractor knew there was an 'obvious and high-risk hazard' on the site but did nothing about it. But why would they? There are no consequences."*

- Regan Ballantine, mother of Wesley.

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# WHAT LIES AHEAD

- **Psychosocial Hazards**
- **Focus on areas of non-compliance**
  - **Agriculture**
  - **Transport/Gig-Economy**
  - **Occupational Disease**
- **Prosecutions to Increase and Continue**
- **Harassment and Assault**

# PSYCHOSOCIAL HAZARDS

- WA moved early on suite of Psychosocial Code of Practice
  - Insecure Work a Psychosocial Hazard
  - New focus on workplace behaviour
- Future focus on:
  - Trauma
  - Workload
  - Violence
- Employer focus on generic wellness programs and EAPs – likely to backfire

# INCREASED PROSECUTIONS

Even before the passing of the WHS Act there had been an increase in penalties for safety breaches after a greater focus from the regulator. That will continue with modernised laws.

May 2021 - \$605,500 fine. Owner/Director jailed for eight months

- Magistrate stated:

*MT Sheds and Mr Withers as its director held direct responsibility for the safety and health of its workers. That responsibility is not mitigated or diminished by the circumstances of the company or its directors. It may be that the implementation of training in a small organisation means lost hours for workers, however that is a matter, given the serious risks that may arise from a lack of training, that should be built into every business where the risk arises.*

# HARASSMENT & ASSAULT

- Current focus on the Resources Industry. Inevitable that it will be turned onto other industries.
- Fair Work Ombudsman on the Agriculture Industry:  
*Safety concerns are raised particularly where young workers - especially females with limited English travelling alone - are encouraged through the 417 second year visa requirements to travel to remote areas to undertake specified work.*

*The power imbalance is creating an environment where some unscrupulous operators are exploiting vulnerable visa-holders who are reluctant to report unsafe working conditions, sexual harassment and other forms of exploitation for fear that employers will refuse to provide the required evidence.*

**Farm employers 'manipulate' female backpackers into sexual acts in return for Australian visa sign-off**

**Backpackers sexually harassed and underpaid, government report finds**

More than a third surveyed in Fair Work Ombudsman report say they earn less than the minimum wage, and some say they work just for accommodation

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# CONCLUSION

- Renewed effort from regulator delivering results but more to be done
- Nowhere to hide for industry wide non-compliance
- Workplace harassment and assault a ticking time-bomb for hospitality, agriculture and other industries
- Psychosocial safety increasing in prominence, employers largely on the wrong path