# Safety Snapshot
## July 2019

## What are we seeing?

### 1. Review of model WHS laws
- Marie Boland’s [Final Report](#) containing the findings of the review of the model work health and safety (WHS) laws was released on 25 February 2019.
- On 24 June 2019, Safe Work Australia (SWA) published a Consultation [Regulation Impact Statement (RIS)](#) containing its initial assessments of the Boland Report’s 34 recommendations. SWA is seeking feedback on the RIS by 5 August 2019.
- The Boland Report will likely inform changes to WHS laws across Australia, including harmonised and other laws.

### 2. Push for industrial manslaughter offence
- A recent review of WHS in the Northern Territory, published 10 January 2019, has recommended introducing industrial manslaughter laws, including potential life sentences for senior officers who negligently cause a death in a workplace.
- The Victorian Government has established a workplace manslaughter implementation taskforce as a first step to make industrial manslaughter a criminal offence.
- The South Australian Greens Party re-introduced the [Work Health and Safety (Industrial Manslaughter) Amendment Bill 2019 (SA)](#) into parliament on 1 May 2019.
- The Queensland Government, in consultation with resources industry associations and unions, is considering expanding industrial manslaughter laws to the resources sector.
- Industrial manslaughter offences may be extended beyond Queensland and the ACT.
- This issue is receiving particular attention in Victoria, Northern Territory and South Australia.

### 3. Review of safety in offshore oil and gas sector
- The Department of Industry, Innovation and Science is undertaking a review of the safety regime for offshore oil and gas workers in Commonwealth waters. The review is part of continuous regulatory improvement, anticipating the sunsetting of the [Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009](#), in 2020.
- In June 2019, the Department released the [Offshore Safety Review: Discussion Paper](#), which provides an overview of the offshore petroleum safety legislation and raises issues for public comment. Submissions close 23 July 2019.
- Oil and gas companies should consider making submissions on the discussion paper.
- This review could see significant changes in offshore petroleum safety laws.

### 4. WA Update
- Harmonisation is still progressing – the WHS Bill could enter Parliament before the end of 2019. Consultation on the WHS Regulations is expected to begin in late July 2019.
- Mental health in fly-in fly-out workplaces is in the spotlight – on 2 April 2019, WA’s Department of Mines, Industry Regulation and Safety published the [Code for Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors](#).
- WA businesses should consider what they need to do to prepare for WHS harmonisation (e.g. ensuring officers’ due diligence activities are adequate).
- WA businesses should consider whether their approach to mental health issues is in line with the Code.
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#### 5. Increasing focus on individuals and increased penalties, including imprisonment

- In January 2019, a Victorian owner/operator of a scrap metal business was **sentenced** to 6 months in prison and fined $10,000 for recklessly endangering and killing a worker.
- In February 2019, a Queensland director was convicted of the first ‘Category 1 – Reckless conduct’ charge and sentenced to 12 months in prison. He successfully **appealed** and, in May 2019, a retrial was ordered.
- In April 2019, a NSW director was **fined** $37,500 for due diligence breaches after failing to ensure an identified height risk was recorded in the weekly risk assessment and for not instructing workers not to work on work platforms without wearing a harness.
- In April 2019, a director was **ordered** to undergo due diligence training and fined $22,500 after an employee was injured after being dragged into machinery in NSW. The director’s culpability was increased by the fact that he did not have an understanding of the hazards and risks arising from workers accessing the workplace machinery.
- In May 2019, a Queensland quarry manager was sentenced to 18 months’ jail (6 months non-parole) after a worker was fatally crushed by an unguarded conveyor on crushing plant.
- In May 2019, a SA supervisor whose purported “brain fade” exposed a teenage apprentice to the risk of serious burns and death was convicted of reckless conduct and **fined** $12,000.

#### 6. Technology challenging the parameters of safety

- A Full Bench of the Fair Work Commission has **held** that a worker was unfairly dismissed for refusing, for privacy reasons, to use the employer’s new biometric fingerprint scanners to sign in and out of work. The Commission did not accept the employer’s argument that it was a safety risk to allow only one employee to manually sign in and out of a worksite.
- The National Transport Commission has released a **Consultation Regulation Impact Statement** proposing amendments to the Australian Road Rules that extend prohibitions on driver distractions for technologies like mobile phones and in-vehicle displays. Submissions close 21 August 2019.

#### 7. SWA update

- SWA has updated its **Worker Representation and Participation Guide** to reflect recent **Federal Court** and **High Court** rulings on union officials entering a workplace to assist health and safety representatives.

### Links for your further reading

- [Worker Representation and Participation Guide](#)
- [Consultation Regulation Impact Statement](#)

### Food for thought

- Individuals are increasingly being found personally liable for WHS contraventions.
- Are directors and officers in your business aware of and complying with their WHS due diligence duties?
- Do directors and officers know the consequences if they fail to comply?
- When attempting to implement technologies that rely on biometric data, employers must consider their options if an employee refuses to participate. Refer to our **article** for more information.
- Businesses will need to review their WHS and vehicle policies if these planned “technology-neutral” road laws are introduced.
- Companies should be aware of this change and consider whether any updates to their current policies and procedures is required.