1. Introduction

This is Master Builders Victoria’s submission responding to the Workplace Manslaughter Consultation Paper and is based on information provided via consultations with our members to understand the safety, legal and practical implications of the proposed laws. We provide for your information examples of some submissions from our members in Appendix 1.

Master Builders Victoria helps employers to get it right. We advise our members on how to meet their workplace obligations and keep their workplaces and workers safe. Our organisation and our members consider that any workplace death is one too many.

Representing our members, we are engaging with the Government to ensure that any new laws are targeted at safety, are workable, proportionate, fair, support continuing collaboration on workplace safety and avoid unintended outcomes.

1.1 The existing workplace safety regulatory environment

Current workplace safety laws in Victoria are rightfully strong. Victorian employers and employees have a shared responsibility for safety by working together. This collaborative approach is working. Victorian workplaces are the safest they have ever been.

WorkSafe’s own figures show that in 2017-18 workplace injury claims per million hours worked reduced to 6.23, the best result yet.

Safe Work Australia’s submission to the Federal Senate Inquiry into Industrial Deaths in Australia in 2018 also demonstrates that nationally, current legislative regimes are working. Since 2007, national workplace fatality rates have halved from 3.0 fatalities per 100,000 workers to 1.5 fatalities per 100,000 workers.¹

We acknowledge that there is still a way to go, which is why we stress that any new laws must focus on safety outcomes.

¹ The prevention, investigation and prosecution of industrial deaths in Australia, Submission 8, Safe Work Australia.
It is vitally important that the existing OHS legislative regime is not undermined. To that end, we believe that the recommendations in our submission will preserve the integrity of the existing legislative regime and workplace safety, and we trust the Victorian Government will adopt them.

It would be the antithesis for all participating implementation taskforce members, particularly family members, if the result of the taskforce’s work produced an outcome which negatively impacted safety. We want these laws to have a positive legacy. Mark Johns, South Australian Coroner, warns of these risks in the coronial inquest report into the tragic death of Mr Castillo-Riffo.²

Ultimately, we hope that these are laws that will not have to be used. Our response to the consultation paper has focussed on ensuring that the new laws are fair and workable and, most importantly, are effective in driving improvements in workplace safety outcomes.

2. Key legal issues identified in the draft legislation

The comments and recommendations below reflect our understanding of the Government’s proposed legislative approach contained in the consultation paper.

2.1 Exclusion of employees

The proposed offence would apply to officers of employers and any other person or entity that is a prescribed duty holder under Part 3 of the Occupational Health and Safety Act 2004 (OHS Act).

However, the consultation paper suggests that employees may be specifically excluded from the application of the offence.

We consider that this exclusion is inconsistent with the aim of the proposed offence, namely improving safety outcomes.

We note that while the Government’s pre-election commitment refers to the new offence applying to employers, we do not consider that this precludes the offence applying to employees, consistent with the current reckless endangerment offence and other duties owed under the OHS Act. In our view, the Government has no electoral mandate for the exclusion of employees. This is reinforced by the Victorian Labor Party’s Platform (2018) and section 2.1 of the Workplace Manslaughter Implementation Taskforce Consultation Paper.

It is entirely reasonable that where an employee has engaged in criminally negligent conduct that has caused the death of another person, that they too ought to be subject to this offence.

This can only improve the impact of the offence on safety outcomes, by applying it to a broader group of duty holders.

By doing so, individual employees will be actively deterred from engaging in criminally negligent conduct that leads to the death of a person.

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² Coroner’s Court, Finding of Inquest, Inquest Number 9/2018 (2071/2014), South Australia
This would also improve consistency with the broader Victorian OHS Act which imposes duties on individuals (as employers, officers and employees) as well as partnerships and incorporated entities.

It would be objectionable for a body corporate or officer to be successfully prosecuted for a workplace manslaughter offence based on the misconduct of an individual who could not be prosecuted for the offence. Such an outcome would be contrary to and undermine the requirement of the employee duty in section 25(1)(c) to co-operate with the employer, with respect to any action taken to comply with the OHS Act or OHS Regulations.

Applying the workplace manslaughter provisions to employees would send a very important message by the Government and Attorney General that workplace safety is a shared outcome among employers and employees.

**Recommendation 1**

That the offence applies to all duty holders under Part 3 of the OHS Act, including employees.

### 2.2 Defining negligence

The consultation paper confirms that the standard of criminal negligence, rather than ‘mere’ negligence, is intended to apply to the workplace manslaughter offences. The paper asks whether the proposed laws should include express guidance as to how negligence may be established for an organisation.

We consider that providing such guidance would be prudent, subject to care being taken not to lower the standard of proof of negligence that is required.

For avoidance of doubt, we recommend that the test of negligence be clearly stated in the legislation and that this should include express guidance as to how negligence may be established for an officer and organisation as outlined in Recommendation 3.

Section 144 of the OHS Act provides for an offence flowing from negligence by an officer. Section 144(3) sets our matters to which regard must be had in determining whether an officer has been negligent. For consistency, those matters should also be included in the definition of negligence.

**Recommendation 2**

That the test of criminal negligence is clearly stated in the legislation as proposed in recommendation 3 below.

### 2.3 Organisational liability

We consider that the proposed offence as drafted would result in the direct attribution of the criminally negligent conduct of any employees, agents or officers of a body corporate, either individually, or in aggregate, to be the negligent conduct of the body corporate.

This proposed direct liability of bodies corporate for workplace manslaughter is inconsistent with longstanding criminal law precedent in Victoria. Specifically, for offences which require proof of intent, such as manslaughter, a
body corporate could only be found liable if the criminally negligent conduct was that of an individual with sufficient authority within the organisation or the guiding mind of the entity (the identification doctrine).

Based on the direct liability model proposed in the current drafting of the offence, we consider that it is possible that an employer who has fulfilled its duty pursuant to section 21 of the OHS Act, and provided a safe work environment for its employees, so far reasonably practicable, could still be subject to a workplace manslaughter charge if:

a) the organisation owes a duty to a person pursuant to Part 3 of the OHS Act;

b) then the acts or omissions of its employees, agents or officers are considered to be the conduct of the organisation; and

c) provided the acts or omissions, either individually or collectively, are considered to be criminally negligent (i.e. a great falling short of the standard of care a reasonable person would have exercised); and

d) that conduct causes the death of that person.

The mental element of negligence will be imputed to an organisation provided that individual or collective acts or omissions are considered to be criminally negligent, regardless of the seniority, influence, status or standing of the employee within the organisation.

As the offence is currently drafted, the organisation inherits and adopts, in full, the acts or omissions of its employees or agents, regardless of any compliance measures it has implemented to avoid those negligent acts or omissions.

We note the requirements in section 25 for compliance by employees with measures put in place by the employer for compliance (and accordingly elimination of reduction of the risk of death or serious injury). A body corporate should not be guilty of an offence through the imputation of conduct to it that is in contravention of the employee duty and contrary to systems and instructions of the body corporate.

The imputation of conduct to a body corporate pursuant to section 143 is routinely only applied by courts where the body corporate through collective acts or omissions has failed, so far as was reasonably practicable, to provide and maintain systems for the elimination or reduction of risk. Misconduct by employees has not been found to represent a breach by a body corporate unless the body corporate has required or knowingly permitted the misconduct or failed so far as was reasonably practicable to prevent it occurring.

To avoid the effective imposition of absolute liability for bodies corporate we recommend that the proposed section define negligence by a body corporate to be by a failure to so far as reasonably practicable provide and maintain measures to prevent the death occurring. This is consistent with what we understand to be the intention of the Government’s policy.

We also consider that issues around direct liability for organisations are particularly problematic for small businesses that are a vulnerable group of stakeholders, who are not well positioned to access or afford adequate legal representation to defend workplace manslaughter charges arising from the criminally negligent conduct of any employees, agents or officers of a body corporate, either individually, or in aggregate, to be the negligent conduct of the body corporate or employer.
As such we also recommend an exclusion from organisational liability provisions for small businesses (employing 15 or fewer people as defined under section 23 of the Fair Work Act) while keeping individual liability of officers and employees. Without such exclusion, there is a possibility of unfair and unjust outcomes.

**Recommendation 3**

That negligence be defined to the following effect:

Conduct is **negligent** if it involves a great falling short of the standard of care that a reasonable person would have exercised in the circumstances and involves a high risk of death or serious injury resulting from the relevant conduct.

In determining whether a body corporate was negligent, regard must be had to steps taken or things provided by the body corporate to prevent or minimise the risk of death or serious injury and negligence must not be found solely because a person acted contrary to steps taken or things provided by the body corporate.

In determining whether an officer was negligent, regard must be had to:

(a) what the officer knew about the matter concerned; and

(b) the extent of the officer’s ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

(c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and

(d) any other relevant matter.

**Recommendation 4**

To avoid the issues highlighted above relating to direct liability, small businesses (employing 15 or fewer people as defined under section 23 of the Fair Work Act) should be exempt from organisational liability provisions, while keeping individual liability of officers and employees.

2.4 Compromised privilege against self-incrimination

Persons who are subject to investigation for criminal offences in Victoria have the right to exercise the privilege against self-incrimination also known as the 'right to silence'. This longstanding common law privilege means that an individual has the right to avoid saying or doing anything that would render them liable to be prosecuted for a criminal offence. This privilege or right is preserved by section 464J of the *Crimes Act 1958 (Crimes Act).*

Further, it is incompatible with the protection afforded to the human rights of individuals in criminal proceedings as defined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic).*

In contrast, the OHS Act provides a compromised and qualified protection against self-incrimination for individuals.
Under section 154 of the OHS Act a natural person may refuse to give any information that would potentially incriminate them when questioned by an Inspector, this protection does not extend to the production of documents. Under the proposed legislation, an individual would be compelled to provide incriminating documents to WorkSafe on request.

Further, the powers delegated to WorkSafe inspectors are broad and coercive, particularly when compared to the rights and powers of Victoria Police.

For instance, under the OHS Act, WorkSafe Inspectors are entitled to enter workplaces at any time to conduct investigations or to make inquiries. Save for certain circumstances, members of Victoria Police are required to obtain a warrant before entering premises or to arrest suspects.

These powers are justified in the beneficial context of the OHS Act where almost all offences currently prescribed (with the exception of reckless endangerment) are offences of absolute liability. Absolute liability offences do not require proof of criminal intent. For the most part, the penalties for contravening the OHS Act also do not involve imprisonment.

We consider that this compromised protection against self-incrimination provides insufficient protection to natural persons, such as officers, who may be prosecuted for workplace manslaughter.

As highlighted in the consultation paper, there is a risk that prosecutions using evidence obtained through coercive powers would not be able to rely on such evidence, and in some circumstances may not be able to proceed.

As such, we recommend that the legislation be drafted to ensure that investigation powers and prosecution process maintain the privilege against self-incrimination afforded to similar serious offences under the Crimes Act.

To achieve this, the legislation should specifically state that section 154(2)(a) does not apply to any investigation or prosecution to which the workplace manslaughter provision may apply.

Recommendation 5

That the legislation be drafted to ensure that investigation powers and prosecution process maintain the privilege against self-incrimination afforded to similar serious offences under the Crimes Act.

To achieve this the offence provision should include:

... Section 154(2)(a) shall not apply to any investigation or proceedings to which this Part may apply.

2.5 General Defences

The Law Council of Australia noted in its submission to the Federal Inquiry into Industrial Deaths in Australia in 2018 that unavailability of defences otherwise available under the Criminal Code Act 1899 (Qld) for other
homicide-based offences is one of a number of serious concerns with how Queensland’s industrial manslaughter offences have been drafted.³

As such we consider that all the general defences available for manslaughter under the criminal law must also be afforded to an accused person charged with an offence of workplace manslaughter.

Recommendation 6

All the general defences available for manslaughter under the criminal law must also be afforded to an accused person charged with an offence of workplace manslaughter. This may be achieved by the provision including:

... Nothing in this Part shall remove or limit any defence that would be available to a person in a prosecution for manslaughter under the common law or any other legislation.

2.6 Disproportionate impact on small and family business

As shown by recent reckless endangerment offences and officer prosecutions in Victoria and other states and territories, we consider the proposed workplace manslaughter offence will have a greater impact on smaller enterprises, including charities and not for profit organisations, than larger ones.

Put simply, smaller enterprises are more likely to involve officers and senior managers adopting a more 'hands on' role within the entity.

Due to their proximity to the business activities of the enterprise, these individuals are more vulnerable to prosecution and are not protected by the layers of corporate hierarchy found in larger enterprises. For instance, with small companies it is often the case that the director will be actively involved in day-to-day operations.

Using the United Kingdom as an example, of the 26 successful prosecutions since corporate manslaughter came into force there in 2010, most of those entities that have been successfully prosecuted have been smaller organisations.

It is also important to note that larger organisations will be better positioned and resourced to defend criminal prosecutions, which we understand may often range in legal costs between $250,000 - $350,000. Small organisations will not be able to afford such legal fees.

The consultation paper discusses possible exceptions for family run small businesses where the deceased is a family member of the business owner/operator, however concludes that prosecutorial discretion is sufficient to deal with these scenarios.

Family owned and run businesses are prevalent in the farming and construction sectors that we collectively represent.

³ The Prevention, Investigation and Prosecution of Industrial Deaths in Australia, Submission 3, Law Council of Australia.
If a family member is killed working in a family run business, we consider that the family will have suffered a great loss already and it would not be appropriate to prosecute another family member for workplace manslaughter.

We disagree with this assessment in the consultation paper that prosecutorial discretion is sufficient to deal with these scenarios. As such, we recommend that an exemption for family businesses be included in the legislation.

**Recommendation 7**

An exemption for family businesses should be included in the legislation to exclude circumstances where an individual could be prosecuted in relation to the death of a relative (as defined in the *Duties Act 2000*).

### 2.7 Indictable offence and jury trial

We note that duty breach offences under the OHS Act and the offence of manslaughter under the Crimes Act are indictable offences. For consistency, workplace manslaughter offences should also be clearly identified as being indictable offences.

The right of a defendant to a trial before a judge and jury for serious offences is fundamental to the criminal justice system. This right, which is ensured by the designation of offences as indictable, is available to defendants accused of duty breaches under the OHS Act and should also be available for a person accused of a workplace manslaughter offence.

**Recommendation 8**

For avoidance of doubt, the legislation should specify that workplace manslaughter offences are indictable offences. The defendant has a right to trial before a judge and jury.

### 2.8 Territorial nexus

The proposed section includes that an offence may be committed if the death occurred in Victoria even if some (or all) of the conduct occurred outside Victoria. It also provides that an offence may be committed if some or all of the conduct occurred in Victoria, even though the death did not.

If similar provisions are enacted in other States, this may result in a person being guilty of an offence in each State in which conduct or death occurred, resulting in multiple liability.

A further concern with the current nexus provision is that it would effectively apply Victorian workplace manslaughter laws in another jurisdiction where workplace manslaughter laws are not in place. A business may operate solely outside Victoria, with no business activities within Victoria, but the business may be liable under the Victorian laws if the death occurs in Victoria. An example is an Albury business with employees living in Wodonga, where the conduct occurs in New South Wales however the worker returns to Victoria and later dies.

### 2.9 Unintended consequences

As highlighted above, the existing OHS legislation in Victoria is strong. The collaborative approach by employers, employees, regulators and other stakeholders is a major driver of workplace safety. The legislation rightly
acknowledges the importance of all key stakeholders working to not only proactively manage safety in the workplace but also to work on improvements when things go wrong. Ideally all stakeholders work together to identify the causes of workplace safety incidents and to determine and implement measures to better manage these risks.

The introduction of a workplace manslaughter offence will have an adverse impact on this shared approach to workplace safety. Regardless of which duty holders are subject to the offence, it is likely that persons at risk of prosecution for workplace manslaughter will be less willing to cooperate with investigations into workplace incidents involving a fatality or a serious injury that may lead to a fatality. While prosecution for breach of an OHS offence is significant, and rightly so, it is not as serious as being prosecuted for an offence with the name “manslaughter.”

We consider that there will be several possible unintended and detrimental consequences of the introduction of this offence. These include but are not limited to:

- Decreased co-operation with WorkSafe and the Coroner's Court - Individuals and companies will be less inclined to co-operate with WorkSafe and Coronal investigations and seek to be excused from inquests or inquiries on the grounds of self-incrimination given the potential to be charged with such serious offences.
- An increase in contested criminal hearings - Individuals and companies will be less inclined to plead guilty to offences with such significant penalties.
- Undermining the preventative focus of duty holders to health and safety and decreased cooperation in the workplace.

Other possible consequences include:

- Skilled business leaders may be dissuaded from taking up positions as company officers or taking positions on company boards. Being charged with manslaughter, or even being a director of a company charged with the offence, would cause major reputational damage.
- Organisational learning post incidents (incident investigations, sharing of information, consultation) will be hindered through fear of possible legal risk exposure to workplace manslaughter offences.
- Small business closures as directors/principals decide that a workplace manslaughter prosecution cannot be defended due to high legal costs, and the reputational damage cannot be managed.

Consultation with members has highlighted, that a new workplace manslaughter offence is likely to lead to a reduced willingness to cooperate with WorkSafe and an increased reliance on legal advisors in the event of a safety incident.

### 3. Other actions to support implementation

Consistent with the objective of driving improvements in workplace safety, it is important that public communication on the new offence focuses on its objectives of improving safety and confirming that it applies to everyone.
In interpreting the new legislation courts will also look to associated documents such as the explanatory memorandum and second reading speech to ascertain the parliament’s intention in making the legislation.

For this reason, it is important that associated documents emphasise the safety objectives of the legislation without promoting an anti-business sentiment.

We consider that WorkSafe does not currently have the expertise or capacity to undertake investigations and manage prosecutions for an offence with penalties as serious as those for workplace manslaughter. As such, to support implementation, WorkSafe will need to be equipped with specialist, dedicated investigators that can fairly and effectively manage workplace manslaughter investigations.

There is also significant scope to promote workability and fairness in the implementation of the legislation through prosecution guidelines that provide further guidance to investigators and prosecutors on matters such as:

- Direct liability for organisations
- Fair treatment of small business in investigations and prosecutions
- Maintaining privilege against self-incrimination and the use of evidence gathered using coercive powers
- The appropriate roles of WorkSafe and Victoria Police in investigations
- The appropriate roles of WorkSafe’s Investigations and Enforcement division and the Director of Public Prosecutions (DPP).

Prosecutions under the Work Health and Safety Act in a number of jurisdictions can only be brought by the Director of Public Prosecutions. Manslaughter and similar prosecutions under the Crimes Act are brought by the DPP. The proposed offence of workplace manslaughter will carry with it severe penalties and involve concepts of negligence and other matters more akin to the criminal law than the OHSA offences. The DPP conducts complex prosecutions and has the conduct of prosecutions under the OHS Act after committal. We consider the DPP should accordingly be involved in the workplace manslaughter prosecution process from commencement, or at the very least that the commencement of a prosecution for workplace manslaughter not be commenced without the approval of the DPP.

We also note that section 131 of the OHS Act provides a mechanism for a person who believes an offence has taken place to request in writing that WorkSafe bring a prosecution. This may result in WorkSafe launching an investigation or prosecution in certain circumstances.

Section 131 should not be able to be utilised for the proposed workplace manslaughter offence. It would be highly inappropriate for outside organisations to pressure the authority to pursue such a serious charge and this should be solely at the discretion of WorkSafe, having first sought and received approval to proceed from the Director of Public Prosecutions (Recommendation 6).

**Recommendation 9**

WorkSafe Victoria should only be able to proceed with issuing workplace manslaughter charges after having sought and received approval to proceed from the Director of Public Prosecutions (this is consistent with the...
4. Conclusion

Master Builders Victoria looks forward to continuing to work collaboratively with the Government to ensure that any new laws are workable, proportionate, fair, support continuing collaboration on workplace safety and avoid unintended outcomes.

We consider that the changes proposed in this submission represent sound and workable improvements that will enhance the safety objectives of the legislation. We consider that without these changes the legislation will result in significant unintended consequence and have detrimental effects on safety.

5. About Master Builders Victoria

Master Builders Victoria was established in 1875 by a group of distinguished builders intent on raising standards in the building and construction industry.

Since that time, Master Builders Victoria has grown to become the leading voice for the entire building and construction industry. Master Builders Victoria is charged with the responsibility of protecting and furthering the interests of members in a manner that is fair to the general community.

Being a Master Builder clearly identifies a real point of difference from other builders – one that is highly regarded by consumers reflecting high standards and professionalism.

Master Builders Victoria supports its members through a range of services including policy and advocacy; advice on health and safety, industrial relations and legal, together with training and events.

6. Contact details

For further information regarding this submission, please contact the following:

- Rebecca Casson, Chief Executive Officer, rcasson@mbav.com.au 03 9411 4501
7. Appendix 1: Examples of member views

Member 1
It’s clear why the Vic Gov is pushing back on this aspect of the proposal for a number of reasons that in my view have no bearing at all on being fair to all parties involved in this industry.

Effectively any employee can claim "all care no responsibility." Great.

The legislation needs to have procedures in place to assure any individual including employees can’t be fitted up for causing serious injury or death to any individual or more.

Member 2
This is an outrage; it’s like charging the pedestrian hit by a motor vehicle with MURDER, at a pedestrian crossing.

Instead of implementing these laws, why not implement a White Card refresh course every 12 months – 24 months? This will ensure people are updated with their safety course and that includes both management and employees. This will provide jobs and facilitate a better knowledge of safety.

Then workers will think twice before being hurt by their own actions, And managers will think twice before instructing something unsafe. The Victorian government needs to educate both parties in safety.

Safety should come first at every site, and people need to be held accountable for their own actions, no one should be able to hide behind legislations.

If the legislation is passed, I fear it would cause a larger gap between employees and employers, causing stress for both parties.

We are Australian and uniting together is a character of our country, don’t take this away.

Member 3
Regarding the proposed workplace manslaughter consultation paper, it appears that the employers' position and ability to manage safety is not only thwarted by this legislation, but at the same time, that powerlessness under the legislation is inversely applied to the level of their responsibility.

The process of achieving a safe workplace or safe work practices requires as a minimum, cooperation and the full intellectual commitment of all parties involved in the task.

This necessitates complete physical and mental participation by all parties, including owners, managers, supervisors, planners (all on the owners' behalf) and the individuals directly or indirectly involved in the task.

To diminish the input (including responsibility) of any of these participants is to prevent the task being carried out safely.
To remove the responsibility of an individual worker and place it on to someone else is to remove their ability to carry out their duties in the safest possible manner.

As an analogy; if I lend you my car and you drive my car in an unsafe manner and kill someone, the law doesn’t make me responsible for the killing. You are responsible because you were the driver, even though you killed the person using my car.

This logic should follow when it comes to the workplace manslaughter legislation.

To argue differently in itself is negligent, and cannot be accepted.

Member 4
We voice our concerns over the balance of this proposal and see far better ways of improving workplace safety than simply jumping to this degree. As a regional builder who has operated within the industry for over 100 years with an excellent safety track record, you start to wonder if the risk and reward will become too unbalanced for our industry to bear in the future if this sort of legislation gets in.

We support the view of Master Builders Victoria on this matter.

Member 5
Again another reason for me to question my involvement as a small scale self – employed builder in the residential space.

I already put so much on the line for my warranty purposes and now I could face 20 years of my life lost because some crane company calls in a fill in driver unbeknown to me as the guy who I had lined up is sick and they kill someone as a result of their inexperienced driver onsite collecting a bystander due to ignorant practices.

If this comes in I will not continue building as what's the point???

And I would say many other builders will drop off also. As you know we contract anywhere from 15-20 odd contractors across any one build, I'd like to see the policy writers handle the day to day pressures and now even moreso that a 20 year sentence is looming.

Member 6
I am horrified at the possible outcome of this legislation to my business.

Under 3.3 2(2) and again under section 4.1 it is proposed to exempt employees!!!

We are a small company with fewer than 10 construction worker employees.

From my reading of this, I could be sitting in my office, and even though we have a stringent OHS agenda with manuals and training etc on sites, an employee somehow causing someone to be killed by circumventing our
workplace safety procedures would be exempt, and I would be the person charged. Absolutely ludicrous. Employees have got be responsible. It will be too risky to run a building business if it gets legislated like this, I would have to terminate all my employees, (some of whom have worked for me for over 25 years) and I would close the business. I am not risking going to jail for someone else’s failure to work safely and cause someone’s death.

Member 7
I would like to express my concern about the proposed first draft notes of the intended ‘workplace manslaughter’ law.

As an employer and director of a small construction building company, I am deeply concerned with a few draft notes and what is being proposed. Particularly the following:

- Employer sole liability for any deaths which may occur – It is disturbing to think that employees have no real responsibility or onus in relation to their actions through this draft. Especially when my company strives to make the workplace safe and maintain a high level of responsibility.

It is always extremely important for me as a business owner to provide a safe working environment, and I believe it takes everyone's input to make that properly work. To be the sole person that is culpable seems ridiculous. I agree that anyone found to be responsible and recklessly neglect their responsibility to provide a safe work place for their peers and workers around them should be dealt with accordingly.

I strongly believe that people should once again, that means everyone, be held responsible for their direct and indirect actions, where I believe the law would be much more effective.

Everyone has a duty of care, not just the boss or manager, or company director!

Member 8
The disproportionate targeting of small builders is a bit of a worry. I would like to see the statistics of organisations where the death occurred (both the site of the organisation and the as well as the organisation the worker belonged too) to see if it stacks up against a case for this type of legislation.

I would hope jail terms would only be used in the most extreme cases where officers knowingly neglect their duties repeatedly.

For example, forcing staff to do something unsafe via threats or other means, or blatantly disregarding faulty equipment and forcing staff to operate it. I don’t believe this type of behaviour is appropriate and surely this is part of the reason why we are where we are today with this proposed legislation.

I believe all parties should be responsible for everyone’s safety where that is employers, employees or contractors and includes the safety of the general public. To not include all parties involved in the work in this proposed legislation is detestable. The OHS legislation ensures that all parties must be involved in the OHS process; there
must be consultation by all involved in a Safe Work Method Statement. This proposed legislation should not just be targeted at one group of people. Sure, if the officers’ pattern of behaviour and negligence causes a death or serious injury in the workplace then due process should take place. However, if the same pattern of behaviour and negligence is performed by an employee, this proposed legislation protects them by omission? Safety is everyone’s responsibility; let’s reflect this in the law.

**Member 9**

As a business owner in the construction industry, I must say that this is the most concerning piece of legislation in the history of my business.  

As a subcontractor in this industry, we already take great financial risks in arguably the most temperate industries in Australia. The passing of this legislation will see me prefer to close my company and work for someone else for a living.

In this industry, I am not permitted to force my men to undergo random drug tests. We are also not permitted to sack any person found under the influence of any substance for the first offence and even need to offer counselling rather than just sack them.

Please, do not take this lightly, if this legislation passes it will ruin the prospects of future businesses in this state, if not, force all employees to become companies in order for business owners to avoid the risk. If that option is removed, many businesses will simply close their operations.

I have given it a great deal of thought when the prospect was put forward by the unions some time ago, I will not hesitate to shut up shop and do something else.

**Member 10**

To allow this legislation through without making all parties involved responsible for their actions would be a grave mistake.

I don’t believe you could find many people who wouldn’t want better safety in the workplace. The way we implement changes to who becomes responsible must be carefully considered so we all can take the same path to a safer workplace in the construction industry.

**Member 11**

We have been in business for 41 years and completed several thousand jobs.

We have 9 supervisors 2 building managers and a further 80 staff members and probably 200 subcontractors

Whilst we put in place all workplace requirements conduct regular checks on site and have continuous training no one can guarantee there will never be an accident.
This proposed law is not only unfair and selective, which flies in the face of what our history of what common law has established in terms of culpability and penalty, but will not apply to the very people who have control and oversight of workplace safety.

Also the administration of residential projects scattered over, with some companies having tens and hundreds of sites is not and cannot be the same as major apartment/commercial/industrial/public projects – accordingly they do not have the same direct oversight.

So a nurse who administers the wrong drug that results in a death of a patient or causes the death of a nurse’s aide will not be liable but the hospital director will lose his wealth and be jailed for 20 years???

Quite simply this is totally unjust.

If this comes into law, who will want to be a director or owner of a company – great message to send to all building graduates and students.

**Member 12**

As a small business owner, my thoughts in relation to the workplace manslaughter legislation are that the person responsible should be held accountable.

I have always kept a very tight ship in regards to OH&S as it is my duty of care to look after my employees, subcontractors, clients and the general public.

I make sure that our sites are well maintained (sometimes better than when we initially started work), I encourage the use of PPE and safe work methods and yet, some people just tend to ignore these given instructions!

This of course concerns me as I do not want an incident to occur or injury to anybody, but there is only so much you can do!!!

I think there is also definitely a relationship with the issue of alcohol or drugs and think that mandatory tests should be of an irregular occurrence within our industry to expose people that could be liable for such devastating incidents occurring.

**Member 13**

We are extremely concerned that certain elements in this proposed legislation do not appear either fair or rational.

The Government’s stated aim is creating a deterrent from engaging in criminally negligent conduct that could cause death.

We believe that if anyone knowingly fails to meet proper safety standards and causes a death, then they should be held accountable – whether they are the boss, manager, contractor, employee or other duty holder. The inclusion of ‘organisational liability’ does not seem fair or rational. This means businesses can be held accountable, even when employees are solely responsible for the alleged negligence.
The current direction of the legislation would see arguably innocent business owners and office holders potentially sent to prison for up to 20 years because of the rogue actions of employees. It does not seem fair to exclude employees and their responsibilities in the legislation, which we believe is illogical and unfair.

Workplace safety should be a primary concern for everyone on a work site.