



**YOUNG WORKERS CENTRE SUBMISSION TO THE
SENATE INQUIRY INTO THE FRAMEWORK
SURROUNDING THE PREVENTION, INVESTIGATION AND
PROSECUTION OF INDUSTRIAL DEATHS IN AUSTRALIA.**

JUNE 2018

Contact: Keelia Fitzpatrick
T: (03) 9659 3567
E: kfitzpatrick@vthc.org.au
W: youngworkers.org.au

Victorian Trades Hall Council
Ground Floor, Old Building, Trades Hall,
Cnr Victoria & Lygon Streets, Carlton South, VIC 3053

ABOUT THE YOUNG WORKERS CENTRE

The Young Workers Centre, based in Trades Hall, was established in 2016 to break the cycles of exploitation at work for young Victorians.

We educate young people on their rights, safety and wellbeing at work via training programs available to all Victorian high schools, TAFEs and technical colleges. We provide free legal advice to young people to resolve workplace issues. We organise and train young people to develop campaigns to improve their workplaces. We document life at work through our young workers research project.

OUR VISION

A state in which young people are safe at work, do not suffer harassment or bullying, and are provided their legal entitlements. For this vision to be realised, we must encourage young people to speak up without fear and join with other young workers to make change and improve their workplaces and communities.

INTRODUCTION

Every worker has the right to go home safe. Employers, regulators and employees all have roles to play in creating and maintaining safe workplaces. Sadly, 11 workers in Victoria have gone to work and not returned home to family and loved ones in 2018 to date. This figure includes one 17-year old girl and four men in their 20s.

The framework for preventing, investigating and prosecuting industrial deaths is of concern to the Young Workers Centre (YWC) as Victorian WorkSafe data shows the number of industrial deaths of young people in Victoria has plateaued over the last 15 years, despite a decline in overall numbers of industrial deaths. This is evidence of a broken system that requires urgent attention.

The current system whereby corporate negligence resulting in death attracts a fine only provides insufficient deterrence and punishment for those offending corporations. Work health and safety laws that issue pecuniary penalties only are out of step with other manslaughter laws that attract criminal penalties and the prospect of jail time.

Queensland and the Australian Capital Territory (ACT) have introduced industrial manslaughter laws in order to adequately deter and punish offenders. We call for similar laws to be introduced in Victoria and included in the model WHS (Work Health and Safety) Act.

This submission will address the following terms of reference:

- (a) the effectiveness and extent of the harmonisation of workplace safety legislation between the states, territories and Commonwealth; and
- (f) the effectiveness of penalties in situations where an employer has been convicted of an offence relating to a serious accident or death.

RECOMMENDATIONS

1. YWC recommends that mandatory work health, safety and rights training is included in high school curricula in all states and territories.
2. YWC recommends that the federal government inserts corporate and industrial manslaughter provisions into the Model Work Health and Safety (WHS) Act.
3. YWC recommends the harmonisation of national industrial manslaughter laws so that workers and members of the public are protected and offenders face the same penalties for negligence resulting in death regardless of the state or territory.
4. YWC recommends the introduction of corporate and industrial manslaughter laws that
 - a. Extend liability to company directors, executives and senior managers; and
 - b. Apply to the death of workers and members of the general public as a result of corporate or industrial negligence.

INDUSTRIAL DEATHS AND YOUNG PEOPLE: What the data tells us

The number of industrial deaths of young workers has plateaued, despite declining numbers of industrial deaths overall

Worksafe data on industrial deaths in Victoria shows an alarming trend for young workers. Over the 15 years 2003-2017 the number of industrial deaths of young people aged 24 years and under has plateaued, despite welcome falls in the total number industrial deaths.

Figure 1 shows the number of industrial deaths of young workers (aged 24 and under) compared with all industrial deaths in Victoria. Data is aggregated in five year periods dating back to 1988 to illustrate long-term trends.



Figure 1: Data from WorkSafe Victoria¹

The proportion of industrial deaths that are young people is growing

The percentage of industrial deaths of young people aged 24 and under is growing as a proportion of the total industrial deaths in Victoria. The proportion of industrial deaths that are of young people reached a low of 10.2% in the five-year period 2008-2012. Sadly, despite the long term trend of declining numbers of industrial deaths overall, the plateauing numbers of deaths of young people has resulted young people being increasingly represented in these statistics. While any death at work is one death too many, it is particularly tragic for all when a young person is killed at work.

Figure 2 shows the percentage of all industrial deaths in Victoria that relate to young workers (aged 24 and under). Data is aggregated in five year periods dating back to 1988 to illustrate long-term trends.

¹ Data from WorkSafe Victoria. (2017). *Workplace fatalities by year and month to 31 December 2017 (Data Vic)*. Retrieved from <https://www.worksafe.vic.gov.au/assets/statistics/DAT-workplace-fatalities-up-to-dec2017-2018-01.xlsx>



Figure 2: Data from WorkSafe Victoria²

This data is evidence of a system that is failing to prevent deaths of young people at work.

NO JUSTICE FOR WORKERS: Insufficient penalties to drive changes in employer behaviour

Under the current system, corporate negligence that results in the death of a worker or workers attracts financial penalties. The current financial penalties alone are insufficient. Two key issues include:

- The costs associated with removing hazards or safeguarding workers can and do exceed the fines issued for corporate negligence resulting in a death at work (see *DPP v Amcor Packaging Pty Ltd [2005] VSCA 2019 [30], [33]*). This creates a financial disincentive for corporations to create and maintain fully safe workplaces.
- The inconsistency in our laws around negligence causing death. Negligence causing death in other arenas (such as reckless driving) attracts criminal penalties including prison sentences. Negligence causing death at work does not.

The lack of justice for workers is illustrated in the case study below.

Case study: REDBACK TREE SERVICES

\$150,000 fine for the “tragic and totally preventable death” of 22 year old worker.

On 1 May of 2014, 22 year old Scott Gamble was killed when a branch he was working on hit a nearby live powerline. Mr Gamble died on the job while working for Redback Tree Services.

² Data from WorkSafe Victoria. (2017). *Workplace fatalities by year and month to 31 December 2017 (Data Vic)*. Retrieved from <https://www.worksafe.vic.gov.au/assets/statistics/DAT-workplace-fatalities-up-to-dec2017-2018-01.xlsx>

One month earlier, Redback's manager attended the site to quote for the removal of two trees from the front yard. Redback's manager noted that there were power lines approximately two to three metres from the relevant trees. He also asked the resident to obtain a local law permit for the work from Kingston City Council. Despite working with the resident to ensure such paperwork and formalities were completed prior to the tree removal, no real steps were taken to address the risk identified in the live powerlines.

In the process of cutting branches from the trees, one of the branches hit the nearby powerlines and Mr Gamble was tragically electrocuted and killed.

The court held³:

"Although the risk the existence of live powerlines had been identified by Redback, no real steps were taken to deal with that risk. The power was not shut down or suppressed. No other steps to reduce the risks were taken...it was reasonably practical to deal with the known risk. In this case... shut down the electricity in some meaningful way."

"There was a clear risk identified of death and/or serious injury, created by working so close to the live powerlines...it appears to me that virtually nothing was done to reduce or eliminate that risk. It would appear that the company relied upon the skill of Mr Gamble to avoid having branches coming in touch with the electric wires. Obviously that failed."

"Clearly general deterrence must be the predominant sentencing factor in cases of this sort. Corporate employers need to understand that substantial penalties await company convicted of offences against the Occupation Health and Safety Act of 2004. The maximum penalty of \$1,299,000 fine demonstrates how seriously Parliament views breaches of this act."

"In all the circumstances, the company is convicted and is fined the sum of \$150,000."

National Industrial Manslaughter laws must be introduced

Industrial manslaughter laws have been introduced in the United Kingdom and resulted in successful prosecutions and imprisonment of persons responsible for negligence resulting in death. Industrial manslaughter laws have also been introduced in Queensland and the ACT in order to adequately deter and punish offenders. We call for similar laws to be included in the model WHS (Work Health and Safety) Act and introduced in all states and territories. These laws must:

- Provide adequate punishment for those company directors, executives and senior managers to be held liable and face criminal penalties (including imprisonment) when found guilty of corporate negligence resulting in death; and

³ *Director of Public Prosecutions v Redback Tree Services [2017] VCC 1602* http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2017/1602.html?context=1;query=redback%20;mask_path=au/cases/vic/VCC

- Apply to the death of workers and members of the general public as a result of corporate or industrial negligence.

CONCLUSION

The long-term evidence shows industrial deaths, particularly of young people, are a live and pressing issue in need of urgent action. So far in 2018, 11 Victorians have been killed at work: the same number as this time last year. Five of these workers were in their teens or 20s and their lives were tragically cut far too short.

We respectfully encourage the Senate Committee for the inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia to make recommendations and take action to include a crime of corporate and industrial manslaughter in the Model WHS Act, to harmonise national industrial manslaughter laws, and to ensure that these laws extend liability to senior managers and apply to the death of workers and members of the general public.

REFERENCES

Director of Public Prosecutions v Redback Tree Services [2017] VCC 1602. Available from http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2017/1602.html?context=1;query=redback%b20;mask_path=au/cases/vic/VCC

WorkSafe Victoria. (2017). *Workplace fatalities by year and month to 31 December 2017 (Data Vic)*. Retrieved from <https://www.worksafe.vic.gov.au/assets/statistics/DAT-workplace-fatalities-up-to-dec2017-2018-01.xlsx>