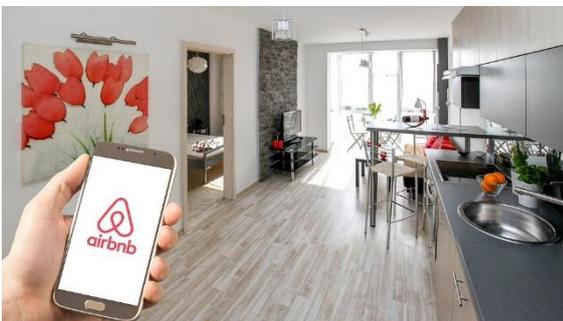


# SAFETY IN THE WORKPLACE

Welcome to our 2019 Winter Edition of “Safety in the Workplace – WHS Quarterly”.

This edition discusses:

- Is Airbnb a risky option for business travel?
- Is an injury at home still a workplace injury?
- A manager jailed for WHS breaches that caused worker’s death.



## ***Is Airbnb a risky option for business travel?***

With the emergence of new online platforms such as Airbnb, employers are more frequently using these services for business accommodation for their travelling employees. Over 700,000 companies worldwide have signed up and used Airbnb for business travel to date, with 300% growth in bookings from 2016 to 2017 and again from 2017 to 2018. As more and more employees use Airbnb in the course of work-related travel, we consider the potential legal ramifications of this and ask the question:

What kind of unique work health and safety risk hazards does Airbnb pose when compared with traditional accommodation? And how can employers mitigate that risk?

Employers should consider the risks of each location that employees are deployed to on business trips. One of the potential issues with utilising less regulated accommodation platforms is that safety standards may not meet the high standards of hotels and serviced apartments. Online accommodation platforms are not subject to the same safety regulations and instead typically fall under the scope of local laws. Guests are often reliant on individual hosts adhering to local laws, regulations and Airbnb policies.

For example, a recent study in the United States revealed that many Airbnb properties do not contain safety equipment including smoke detectors, carbon monoxide detectors, fire extinguishers and first aid kits, potentially putting guests at risk in the event of an emergency. And who’s liable?

To mitigate the risks associated with using such platforms for business travel, employers should have a well drafted Corporate Travel Policy, that steps out the parameters for using these services for work related travel.

A background image of a construction site with several tall buildings under construction, cranes, and a clear blue sky.

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## A Corporate Travel Policy should consider (among other things):

- Whether accommodation needs to meet certain security and safety standards to be booked;
- Provision of contact details for the property including the address and land line details;
- The minimum requirement for employee communication;
- Whether the employer should arrange or has the appropriate insurance covering employees use of these platforms; and
- A contingency plan in case of emergency.

Whether an employee's accommodation is booked through Airbnb or some other means, it is important to have a well drafted policy which considers the reasonably foreseeable risks an employee might be exposed to when travelling, and the reasonably practicable measures that can be taken to minimise these risks. If you have any questions please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.



***Former employee compensated for injury sustained at home***

## Is an injury at home still a workplace injury?

Workplace injuries can be very costly for employers and it now looks like an employer's liability could continue post-employment and extend to outside the workplace.

In *Roberts v Return to Work South Australia* (2017), a former truck driver was awarded \$17,351 in compensation for an injury he sustained at home, *after* his employment had been terminated.

The South Australian Employment Tribunal upheld the former employee's argument that the injury he suffered at home was caused by two previous workplace injuries that occurred during his employment.

## The workplace injuries

The worker sustained the previous injuries when:

A dark blue banner with the text 'SAFETY IN THE WORKPLACE' in white, serif, all-caps font. The banner is set against a background image of a city skyline with several construction cranes and buildings under development.

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1. He slipped and struck his head when he was attempting to connect air brake lines to a truck; and
2. He was involved in a crash (which was no fault of his own) whilst driving a company vehicle. The impact from the crash caused the worker to blackout.

Both injuries caused him to suffer from regular and ongoing dizzy spells and impaired balance. Due to the injuries, the worker returned to work for 6 months on light duties. Shortly after this period his employment was terminated.

### **Post-employment**

A month after the worker's employment had ended, he suffered from a dizzy spell at home which caused him to fall and hit his head on a heavy wooden table, causing him to become fully deaf in one ear. The worker claimed that this at-home injury was caused by his workplace injuries and that he was entitled to compensation.

### **The decision**

The South Australian Employment Tribunal considered the incident in light of that state's *Return to Work Act 2014* (SA). For an injury to be considered work-related and compensable, there are two basic requirements: the injury must arise out of or in the course of the person's employment, and the worker's employment must be a significant contributing cause of the injury.

On appeal the South Australian Employment Tribunal found that the two workplace injuries were a significant contributing cause of the at-home injury. As a result, the post-employment injury qualified as a workplace injury and the driver was entitled to compensation.

### **The takeaway for Employers**

This case demonstrates the importance of employers having clear and effective safety procedures in place to reduce both the incidence and severity of workplace accidents.

If the employer in this instance had such procedures in place, the truck driver's first injury may have been avoided entirely, which would have reduced the severity of the second injury (in worsening the dizzy spells and impaired balance) and, in turn, may have even prevented the third accident from ever occurring.

If you have any questions relating to drafting and implementing effective workplace safety procedures please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

A background image of a construction site with several tall buildings under construction, cranes, and a clear blue sky.

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## ***Manager jailed for WHS breaches that caused worker's death***

A Director of MCG Quarries was sentenced to 18 months in prison in May this year after a court found he failed his health and safety obligations resulting in the death of a young man who got tangled in a conveyor belt on a South Moranbah quarry in 2012.

The court heard that, despite warnings from experienced contractors, the managing director, William McDonald, hurried to get the quarry up and running prior to external commissioning being completed. The court held this contributed to the death of Sean Scovell, 21 who was working alone on 5 June 2012 when he was pulled into an uncommissioned conveyor belt that did not have a safety guard fitted.

The magistrate said Mr McDonald was “personally aware the plant was operating before

commissioning had been completed” and found that it would have been “very unlikely” for the accident to have occurred had a safety guard been fitted to the conveyor belt.

MCG Quarries was charged with three counts of breaching health and safety obligations, while Mr McDonald and senior executive Tony Addinsall were also charged with multiple safety breaches.

The company, which is now insolvent, was fined \$400,000, Mr Addinsall was fined \$35,000 but no conviction was recorded and Mr McDonald was sentenced to prison.

The company that made the conveyor belt, Global Crushers and Spares, was convicted in 2017 of failing to discharge their health and safety obligations for not installing guard panels.

This case serves as a timely reminder that individuals will be prosecuted for workplace health and safety breaches, especially those that cause the serious injury or death of workers. As at 6 June this year, there have been 64 Australian workers killed at work in 2019.

Directors must ensure that the safety of workers is their number one priority, and that they have well drafted policies, procedures and training in place to reflect this.

If you require any advice or assistance to ensure your firm is implementing effective and compliant workplace safety policies, procedures or training

A photograph of a city skyline with several skyscrapers under construction, featuring cranes and scaffolding against a clear blue sky.

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please contact Nick Stevens, Jane Murray or  
Angharad Owens-Strauss.

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