

Statutory review of the Work Health and Safety Act 2011 (NSW)

#23

COMPLETE

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PAGE 1: Have your say!

Q1: Do you wish your feedback to remain confidential? No

Q2: Contact information

Name

Grahame Irvine

Industry

Public Sector

Region

NSW

Email Address (optional)

Q3: Tick the box that applies to you

Government representative

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Q4: Are the objects of the Act still valid?

Yes,

Please explain your answer
The clauses within this section are reasonable.
Consideration could be given to consolidating clause 2 into clause (1) (a) for simplicity.

Q5: Are the terms of the Act appropriate for achieving the stated objectives?

Yes,

Please explain your answer
They are appropriate and clear. However there is opportunity to reduce the number of clauses within the section by merging common content.

Q6: Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure?

Yes,

Please explain your answer
Business should be encouraged to innovate and integrate safety into day to day business systems.

Q7: Are any of the objectives causing unnecessary costs for business?

No,

Please explain your answer
The objectives allow business enough flexibility and discretion to operate efficiently where a reasonable effort is made to understand the intent.

Q8: Are the NSW-specific definitions in section four of the Act working effectively?

Yes,

Please explain your answer
They are easily understood



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Q9: Are these definitions clear? Please provide examples of circumstances where any definitions are not clear.

Yes,

Please explain your answer: provide examples where the definitions are not clear.
no explanation required

Q10: Do you have any comments about how the strict liability provision is working?

no

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Q11: Do you have any comment regarding the provision that prevents duplication of incident notifications where they must be notified to the Resources Regulator?

No

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Q12: Do you have any comment to make regarding the Industrial Relations Commission being the forum that can receive and decide whether to disqualify a health and safety representative?

No

Q13: Are the additional provisions that have been inserted for health and safety committees in coal mines working well?

No,

Please explain your answer
This Act should not be treating the coal/mining sector different to any other industry.

Q14: Are the provisions relating to prisoners working well?

Yes,

Please explain your answer
Persons institutionalised may not have the required capacity of control.

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Q15: Are the organisations listed to clarify who is an emergency services worker, appropriate?

No,

Please explain your answer
Consideration could be given to the organisations listed in question 16 below

Q16: Are there any other organisations that should be listed?

Biosecurity, Fisheries, Local Land Services

Q17: Are there any other organisations listed that should not be?

No

Q18: Do you have any comment to make regarding the District Court of NSW being the forum that can receive applications about civil proceedings in relation to discriminatory, coercive or misleading conduct?

No

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Q19: Do you wish to comment about the Industrial Relations Commission being the Authorising Authority for NSW?

No

Q20: Do you wish to comment on the Industrial Relations Act 1996 being named as the relevant state or industrial law in NSW?

No

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Q21: Is the definition of 'authorised person' working well?

Yes,

If no, please provide details and examples about how this could be improved for your particular circumstances
No comment

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Q22: Are the classes of persons that the regulator may appoint as an Inspector working well?

Yes,

Please explain your answer No further comment

Q23: Are the provisions for Inspectors to obtain a search warrant to obtain information about a suspected WHS breach clear?

Yes,

Please explain your answer No further comment

Q24: Do the references to the Law Enforcement (Powers and Responsibilities) Act 2002 provide suitable powers for a WHS inspector and NSW Police to cooperate and obtain information about a suspected WHS breach?

Yes,

Please explain your answer No further comment

Q25: Are any other provisions needed for the WHS Inspector and NSW Police to cooperate and obtain information about a suspected WHS breach via a search warrant?

No,

Please explain your answer
The current arrangements appear to be function appropriately.

Q26: Do you wish to comment on the provisions that NSW currently provides for an inspector to obtain a person's name and address?

Yes. If it is not an offence not to provide evidence of identity and address (3) how would an Inspector have any chance of obtaining accurate information?

Q27: Do you wish to comment on the provision regarding a person who fails to prove that the name or address they provided to an inspector, is correct?

Yes. Same as above. Good luck.

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Q28: Do you have any comment to make regarding the District Court of NSW being the forum that can receive applications by the regulator, about non-compliance with notices?

No

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Q29: Do you wish to comment about the District Court of NSW being the nominated forum to receive and hear an application for orders where a person is alleged to have contravened a WHS undertaking in NSW?

No

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Q30: Do you wish to comment about the Industrial Relations Commission being the nominated external body to receive and decide an application for review of a reviewable decision made by the regulator?

No

Q31: Do you wish to comment about the Industrial Relations Commission being the nominated external body to receive and hear an application for review of a decision made or taken to have been made, on an internal review by the regulator?

No

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Q32: Is the forum for proceedings for an offence against the WHS laws (except category 3 offences) being the local or district court in its summary jurisdiction, working well?

Yes,

Please explain your answer Appears to be

Q33: Is the requirement for proceedings about category 3 offences to be dealt with summarily, working well?

Yes,

Please explain your answer Appears to be

Q34: Are the provisions of the Industrial Relations Act 1996 that relate to appeals under the WHS Act working well?

Yes,

Please explain your answer Appears to be

Q35: Do you wish to comment on the provision for the secretary of a union to bring proceedings for an offence against the Act?

Yes. Personally I don't believe Unions should be permitted. They should have to refer matters to the relevant regulator for their consideration of action. If it is appropriate for unions to initiate proceedings it should be equally open to non union professional representative bodies to do so.

Q36: Do you wish to comment on the penalty notice scheme being made under the Fines Act 1996?

No

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Q37: Do you wish to comment on the provisions for sharing information by the NSW WHS regulators?

No

Q38: Do you have any comment regarding ongoing reviews of the Act?

No

Q39: What is/are not working well for small business in relation to the NSW-specific provisions of the WHS laws?

Prescriptive regulations that add no value.

Q40: What has/has not improved for PCBUs or workers operating in more than one jurisdiction?

No comment

Q41: Are there differences between how the NSW regulators are applying the legislation compared to other states, territories and the commonwealth?

Yes,

If yes, please provide a detailed response.
No comment

Q42: Are there differences between how the NSW regulators are providing advice and assistance compared to the other states, territories and the commonwealth?

Yes,

If yes, please provide a detailed response.
No comment

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Q43: Are the provisions that relate to two separate WHS regulators working well?

Yes,

Please explain your answer No comment

Q44: Are any additional provisions needed to provide for easier communication and exchange of information between the regulators?

No,

Please explain your answer No comment

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Q45: Do you have any comments to make about the forums nominated to conduct reviews under the Regulation in NSW?

No comment

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Q46: Do any parts or sections of schedule 4 require updating?

No,

If yes, please provide sufficient details about what the provision is, why it is out of date or not working well, and what can be done to improve it.
No comment

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Q47: Are the definitions in clause 5 and 7 working effectively?

Yes,

Please explain your answer
Consideration could be given to including Members of community boards where the board members have no authority over employees undertaking work for the board.

Q48: Do you wish to comment on provisions for the Act to apply (or may apply) to dangerous goods and high risk plant that are not at a workplace? (clause 10)

No comment

Q49: Do you wish to comment on the exclusions that mean the Act does not apply (or may not apply) to dangerous goods and high risk plant that are not at a workplace? (clause 10)

No comment

PAGE 18: The Work Health and Safety Regulation 2011

Q50: Is the note about training for health and safety representatives helpful?

Yes,

Please explain your answer
No further comment necessary

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Q51: Is any additional information required to make it easier to understand that the requirements for demolition licensing continue to apply from chapter 10 of the former legislation?

No,

Please explain your answer or provide examples of situations where the information has been needed.
No comment

Q52: Is the meaning of electrical equipment in clause 144 clear?

Yes,

Please explain your answer No comment

Q53: Do you wish to comment on the term 'authorised' that has been inserted by NSW in clause 146?

No comment

Q54: Do you wish to comment on the exclusion in clause 152 that applies to an electricity supply authority, or a person accredited and providing contestable services?

No comment

Q55: Is the note in clause 164 that advises that residual current devices are also regulated under the Electricity (Consumer Safety) Act 2004, helpful?

No,

Please explain your answer Its pretty obvious

Q56: Is the note in clause 166 that advises the Electricity (Consumer Safety) Act 2004 and the Electricity Supply (Safety and Network Management) Regulation 2008 also apply to the PCBU, helpful?

Yes,

Please explain your answer No comment

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Q57: Are the professional organisations or associations in clause 235, for determining a competent person to conduct a major inspection of registered mobile cranes and tower cranes, appropriate?

Yes,

Please explain your answer No comment

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Q58: Do the local laws that NSW added for exemptions to clause 328 remain appropriate?

Yes,

Please explain your answer No comment

Q59: Do you wish to comment on the Pesticides Act 1999 being specified in clause 354 to provide for an exemption, meaning an identification of physical or chemical reactions is not required when the chemical is being used for agricultural purposes?

No comment

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Q60: Do you wish to comment on the exemption in clause 419 that means a license is not required for work involving transport and disposal of asbestos or asbestos waste - that is done in accordance with the Protection of the Environment Operations Act 1997?

No comment

Q61: Do you wish to comment on whether the requirement for the regulator to be satisfied that the applicant is able to ensure the licensed work will be done safely, competently and in compliance with the conditions of the licence, working well? (clauses 497 and 500)

No comment

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Q62: Do you wish to comment on the exclusion in clause 530(1) that means chapter 9 does not apply to a facility that is regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 of the Commonwealth?

No comment

Q63: Do you wish to comment on the exclusion in clause 530(2)(a) that means chapter 9 does not apply to a port operational area under the control of a port authority?

No comment

Q64: Do you wish to comment on the exclusion in clause 530(2)(b) that means chapter 9 does not apply to a pipeline to which the Gas Supply Act 1996 or the Pipelines Act 1967 applies?

No comment

Q65: Do you wish to comment on the exclusion in clause 530(2)(e) that means chapter 9 does not apply to a mine or petroleum site?

No comment



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Q66: Is the example in clause 552 under the heading 'arrangements for preventing unauthorised access to the major hazard facility' helpful?

No comment

Q67: Do you wish to comment on the requirement in clause 557(2)(a)(i) to consult with Fire & Rescue NSW in preparing an emergency plan for a major hazard facility?

No comment

Q68: Do you wish to comment on the requirement in clause 557(2)(a)(ii) to consult with the NSW Rural Fire Service in preparing an emergency plan for a major hazard facility?

No comment

Q69: Do you wish to comment on the requirement in clause 561 for the operator of a major hazard facility, to provide the content for a safety case, as stated in schedule 18?

No comment

Q70: Do you wish to comment on the Civil and Administrative Tribunal in clause 599 being the forum for external review following the Regulator's decision to refuse to renew a MHF license?

No comment

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Q71: Do you wish to comment on the period of 21 days for the internal reviewer to review the previous decision in clause 680?

No comment

Q72: Do you wish to comment on the period of 21 days for the internal reviewer to give notice of the decision and the reasons for the decision in clause 681?

No comment

Q73: Do you wish to comment on the Civil and Administrative Tribunal being the forum that is nominated to hear and decide applications for external review of a decision in clause 683?

No comment

Q74: Is the note in clause 699, advising that the Public Health Act 2010 also imposes obligations relating to the notification of certain medical conditions, helpful?

Yes,

Please explain your answer Easily understood

Q75: Do you wish to comment on the Acts that have been prescribed in the Regulation for the purposes of section 271 (3) (c) (ii) of the Act? (clause 702)

No comment

Q76: Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A)

No comment

PAGE 25: Codes of Practice

Q77: Which of the pre-WHS codes do you still use?

Work near overhead powerlines, Safety in forest harvesting, Safe use and storage of chemicals in agriculture,



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Q78: How often do you use the pre-WHS codes you have listed? Please explain how often you use each code you named for the question above.

Very infrequently generally limited to development of SWMS

Q79: What parts of the pre-WHS codes have you looked up in the last 18 months? Please describe the situation and whether the part you looked up was useful, or not, and why.

Yes they are still useful

Q80: What parts of the pre-WHS codes do you or persons you represent find useful? Please describe which parts are useful, when and how these are useful to you or persons you represent.

all of them

Q81: Are there any parts of the pre-WHS codes that are unclear or confusing?

No,

If yes, please state which codes, which parts and what is unclear or confusing.

No comment

Q82: Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes?

No,

Please explain your answer

Not that we have come across

Q83: Is additional guidance needed for any of the subjects covered by the pre-WHS codes?

No,

If additional guidance is needed, please explain what guidance would be useful with practical examples of when you (or persons you represent) would use it.

No comment



