



THE LAW SOCIETY
OF NEW SOUTH WALES

21 December 2016

The Hon Victor Dominello MP
Minister for Innovation and Better Regulation
c/- Regulatory Policy Branch
Better Regulation Division
Department of Finance, Services and Innovation
Locked Bag 2906
LISAROW NSW 2252

By email: legislationreview@safework.nsw.gov.au

Dear Minister,

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

The Law Society of NSW supports the national harmonised Work Health and Safety framework including the model *Work Health and Safety Act 2011* (NSW) ("the Act"), *Work Health and Safety Regulation 2011* (NSW) and Codes of Practice.

The Law Society recognises that the purpose of the statutory review of the *Work Health and Safety Act 2011* Discussion Paper ("Discussion Paper") is to prompt consideration of the NSW-specific provisions in the Act and notes that a comprehensive national review of the model laws is planned for 2018.

The Law Society has reviewed the Discussion Paper. The Law Society provides the following response to select questions set out in the Discussion Paper.

This submission is based on the experiences of employment law solicitor members who regularly work with the legislation.

4. Are the objects of the Act still valid?

Yes, the objects of the Act are still valid.

5. Are the terms of the Act appropriate for achieving the stated objectives?

Yes, the terms of the Act are appropriate for achieving the stated objectives.

12. Do you have any comment to make regarding the IRC being the forum that can receive and decide whether to disqualify a HSR?

Law Society members have reported that the Industrial Relations Commission ("the IRC") is effectively and efficiently dealing with complaints and disputes about the actions of health and safety representatives ("HSRs") and appropriately determining whether or not to disqualify them on a case by case basis in accordance with the Act.

The IRC has also been an effective forum for resolving disputes about the selection or election of health and safety representatives.

19. Do you want to comment about the IRC being the Authorising Authority for NSW?

The Law Society supports the continuation of the IRC as Authorising Authority for NSW. The Society considers that the disputes about right of entry are being addressed appropriately by the IRC.

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

The Law Society considers that it is appropriate that the *Industrial Relations Act 1996* (NSW) remain named as a relevant industrial law in NSW, noting that the *Fair Work Act 2009* (Cth) is also named where it is relevant to do so¹.

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

The District Court is the forum with jurisdiction under the Act and the Law Society considers that this is the appropriate forum.

29. Do you have any comment about the District Court 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?

The District Court is the forum with jurisdiction under the Act and the Law Society considers that this Court is the appropriate forum.

35. Do you wish to comment about the provisions of a secretary of a union to bring proceedings for an offence against the Act?

Yes, the Law Society considers the current provisions are appropriate in NSW.

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

The Law Society considers that the concept and practical application of an on-the-spot fine or penalty to be of little value in encouraging better compliance responsibilities under the legislation.

Law Society members are not aware that any on-the-spot fines have been issued under section 243 of the Act. The Society considers that issuing provisional improvement notices and the penalties for contravention of a notice are a more appropriate and effective way to deal with contraventions of the Act. A provisional improvement notice provides a workplace with a period of time in which to repair or make good any contravention before a penalty is issued. The Society does not consider that it is consistent with the objectives of the Act for on-to-spot penalties and fines to continue.

¹ Refer to section 124 of the Act for an example.

70. Do you wish to comment on the Civil and Administrative Tribunal being the forum for external review following the regulator's decision to refuse to review a MHF License (clause 599)?

Yes, the Law Society considers that the NSW Civil and Administrative Tribunal is the appropriate forum.

Should you have any queries in regard to this submission, please contact [REDACTED] policy lawyer on [REDACTED] or by email to [REDACTED]

Yours sincerely,

[REDACTED]

Gary Ulman
President