

Statutory review of the *Work Health and Safety Act 2011*

Discussion Paper



**Better
Regulation
Division**

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THIS DOCUMENT HAS BEEN PREPARED BY:

Regulatory Policy Branch
Better Regulation Division
Department of Finance, Services and Innovation
92-100 Donnison Street GOSFORD NSW 2250

DISCLAIMER

This publication may contain work health and safety information. It may include some of your obligations under the legislation that SafeWork NSW and the Department of Industry, Resources Regulator, administer. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

MINISTER'S MESSAGE

The New South Wales (NSW) Government is committed to making NSW the easiest state to start a business. This will be achieved by creating a business-friendly environment for NSW entrepreneurs, by reducing or removing barriers, costs and complexity and making regulatory obligations easier to understand and implement. It is for these reasons NSW remains committed to seeing the benefits of harmonisation of work health and safety realised for businesses, the government and the NSW community. In addition to saving lives and reducing injuries, safe workplaces are more productive workplaces.

We know the majority of businesses in NSW are strongly committed to providing a safe and healthy workplace, and we are assisting them to drive continuous improvements in workplace safety performance. In this regard, the WHS regulators have been engaging with business owners, managers and workers and listening to stakeholders and providing advice and education. The basis for this starts with the legislative framework, reflecting valid policy objectives and supported by terms appropriate for securing these objectives. We now ask for your help, to ensure that we have the right work health and safety laws in place for NSW, and that they provide for the continued improvement in workplace safety performance, that we all strive for.

A handwritten signature in black ink, appearing to read 'Victor Dominello', with a small asterisk-like mark above the 'i'.

The Hon. Victor Dominello, MP
Minister for Innovation and Better Regulation

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ABBREVIATIONS

Abbreviation	Description
Act	The <i>Work Health and Safety Act 2011 (NSW)</i> . Copies are available online at www.legislation.nsw.gov.au
BRD	Better Regulation Division.
COAG	Council of Australian Governments.
COAG Examination	The Council of Australian Governments requested an examination of Work Health and Safety (WHS) laws. This was led by Safe Work Australia (SWA) during 2014/2015, and sought to identify whether the current system reflects best practice, where the regulatory burden could be reduced and how understanding and complying with the WHS framework could be made easier.
HSR	Health and safety representative.
IGA	The Inter-Governmental Agreement for Regulatory and Operational Reform of Occupational Health and Safety dated 3 July 2008.
Jurisdictional notes	The IGA permits very limited departures from the model Act and Regulations and the provisions where this is allowed, are called 'jurisdictional notes'. Jurisdictional notes are provided at the end of the model Act and Regulations. These provide further information on how provisions apply or can be amended to suit the existing legislation and local mechanisms of jurisdictions.
Model Act	The model WHS Act as developed and published by SWA. This is also called the model WHS Bill in some sections of this discussion paper. The terms are not intended to mean anything different, and are used interchangeably. Copies of the model Act are available online at www.swa.gov.au
Model Regulations	The model Work Health and Safety Regulations as developed and published by SWA. Copies are available online at www.swa.gov.au
WHS regulators	SafeWork NSW and the Resources Regulator, established by the NSW Department of Industry, are the regulators of work health and safety in NSW.
NSW-specific provisions	This review of the Act is intended to be limited to considering departures from the model as are allowed by jurisdictional notes, along with other provisions that have been inserted or amended by NSW. These are the focus of this review, and have been called 'NSW-specific provisions' in this discussion paper.
PCBU	Person conducting a business or undertaking.
Regulation	The Work Health and Safety Regulation 2011 (NSW). Copies are available online at www.legislation.nsw.gov.au
Resources Regulator	The NSW Department of Industry, Resources Regulator. This is the NSW regulator under the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> , responsible for administering the WHS laws at mines and petroleum sites in NSW.
SWNSW	SafeWork NSW is one of two NSW workplace health and safety regulators. This is the NSW government agency responsible for administering the work health and safety laws at workplaces in NSW. This excludes commonwealth land (regulated by Comcare), and mines and petroleum sites (regulated by the Resources Regulator).
SWA	Safe Work Australia is the national policy body created under the <i>Safe Work Australia Act 2008</i> . SWA is not a safety regulator; it is an independent government agency responsible for developing and maintaining the national work health and safety framework.
WHS	Work Health and Safety.

INTRODUCTION

PURPOSE OF THIS DISCUSSION PAPER

This paper provides a brief background to the statutory review of the *Work Health and Safety Act 2011*. The WHS regulators are committed to creating and strengthening stakeholder relationships and have provided a number of highlighted questions throughout the discussion paper. They are intended to prompt consideration and stimulate discussion. NSW stakeholders are encouraged to provide written submissions based upon experiences while working within this legislation.

Further details about the context of the review are provided in the terms of reference and the overview of work health and safety laws sections. It is important however, to note upfront, that information contained in this paper is written to **prompt consideration of the NSW-specific provisions**. There is a comprehensive national review of the model laws planned for 2018.

Why NSW specific?

The Model WHS Act and Regulations permit very limited departures from the national scheme. Permitted variations can be made where allowed, and in accordance with, jurisdictional notes. Jurisdictional notes can be found in the model Act and Regulations at www.safeworkaustralia.gov.au. These allow Commonwealth, state and territory WHS regulators to address local matters and ensure the provisions work, such as by referencing the relevant courts in each jurisdiction. Provisions that are the same in all jurisdictions are subject to regular reviews via the national processes. An examination of the model laws was recently conducted during 2014/2015, and amendments arising from that work are still in progress. There will also be a comprehensive review of the model laws during 2018. With this understanding of the national processes and framework, it makes sense for the NSW review to be confined to matters covered by the jurisdictional notes, along with other provisions that are specific to NSW. These are called 'NSW-specific provisions' in this discussion paper.

The questions posed throughout this paper have been specifically written to elicit information that relates to the NSW-specific provisions, and the terms of reference for the review. You are encouraged to provide written submissions that address the limited scope of this review, based on your experiences while working within this legislation. Please note BRD only expects you to answer questions relevant to your situation. Where possible, you should include any evidence and examples to explain your answer.

If your experience falls outside of the questions posed in this discussion paper, and you would like to submit comments for consideration, please do so. BRD will still consider submissions that do not fall within the scope of the review. How this is addressed will be determined on a case-by-case basis. This will involve consideration of:

- the harmonised framework
- evidence provided to illustrate the concerns raised
- how many businesses or workers are affected
- the potential consequence if the issue is left as-is
- the 2018 comprehensive review of the model WHS laws.

All feedback received during the consultation period that falls within the scope of the review will be analysed and contribute to the report to parliament about how the harmonised work health and safety framework is operating within the NSW context.

TERMS OF REFERENCE

The scope and terms of reference for the review have been determined by the minister and are grouped into three tiers. The terms of reference are emphasised by use of *italics* as follows:

- | | |
|----|---|
| #1 | Section 276B of the Act prescribes 'The review is to enquire into and determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'. Therefore <i>the review must enquire into the objectives contained in section 3 of the Act. The review will also consider how the Act is operating in the NSW context, to ensure it continues to be effective. The review will also consider the NSW-specific provisions of the Act.</i> |
| #2 | The Work Health and Safety Regulation 2011 (the Regulation) is due for staged repeal on 1 September 2017. In light of this <i>the review will also consider the NSW-specific provisions of the Regulation.</i> |
| #3 | The harmonised work health and safety framework includes the model Work Health and Safety Act, Regulation and codes of practice. Given that all parts of the harmonised framework are regularly reviewed and updated, the NSW review provides an opportunity to consider a number of NSW legacy codes that are not planned to be considered in any other reviews. These codes were made under NSW occupational health and safety legislation prior to development of the harmonised framework. <i>The review will consider the pre-WHS codes of practice that remain current under the Work Health and Safety Act 2011 in NSW.</i> |

STATUTORY REVIEW PROCESS AND TIMEFRAMES

Preparation for the statutory review of the Act commenced in mid-2015. SafeWork NSW and the Resources Regulator were consulted when developing the approach to conducting the statutory review. The mining regulator administers the *Work Health and Safety Act 2011* and regulation at mines and petroleum sites together with the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and Regulation. The mine specific legislation includes additional requirements necessary to achieve safety in the high risk operation of mines and petroleum sites.

This strategy has three main phases consisting of the pre-review, the statutory review and post review. The phases and steps involved in each are outlined below with indicative dates in table 1 below.

Table 1 – 2016-2017 NSW Statutory review timetable

Steps	Activities included	Dates
Phase 1 – Pre-review	Consultation between NSW WHS regulators – SafeWork NSW and the Resources Regulator Research, preparation, and development of review strategy Consultation with targeted stakeholders Analysis of responses to targeted stakeholder consultation	August 2015 – June 2016
Phase 2 – Statutory review	Development of a discussion paper for public consultation	June – August 2016
	40 days full public consultation	November – December 2016
	Further consultation as needed to clarify responses to initial public consultation	December 2016 – January 2017
	Analysis of feedback	December 2016 – January 2017
	Drafting of review report	January – April 2017
	Review report tabled in parliament	As determined by the Minister
Phase 3 – Post review	Recommendations from the review are actioned	July 2017 onwards

HOW TO MAKE A SUBMISSION

You are invited to make a submission for the statutory review of the Act. This can be done by providing answers to any or all questions in this discussion paper online, at www.haveyoursay.nsw.gov.au or www.safework.nsw.gov.au. BRD prefers to receive submissions via the online feedback form located on [Have Your Say](#). Non-online submissions should:

- clearly state that you are providing feedback on the 2016/2017 statutory review of the WHS Act
- answer the questions outlined in this paper that are relevant to your situation
- provide examples and evidence of where you are reporting problems or suggesting the laws could be improved

A summary of all questions outlined in this paper is provided at appendix 1.

The deadline for submissions is **20 December 2016**.

If you make a submission and send it by post, please contact us by calling 13 10 50, or email: legislationreview@safework.nsw.gov.au and request the mailing address. This will enable us to note your details and confirm we receive your submission.

IMPORTANT NOTE: RELEASE OF SUBMISSIONS

All submissions will be published on the SafeWork NSW website as soon as possible after the closing date for submissions.

If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. Generic confidentiality statements in an email are not sufficient; please provide specific information indicating which parts you do not wish to be disclosed, and the reasons. If satisfied with those reasons BRD will then make every effort to protect that information. Please be aware that the information may be required to be disclosed under the *Government Information (Public Access) Act 2009* or where otherwise required by law.

If you would like further information on making a submission, please contact the statutory review enquiries officer at BRD by phoning 13 10 50 during business hours.

OVERVIEW OF WORK HEALTH AND SAFETY LAWS

Together, the Act, Regulation, and codes of practice are a three-tiered structure of requirements designed to protect the health, safety and welfare of persons at work, or who may be affected by work activities being done by others.

The Act is the principal legislation, which broadly sets out who has duties and what they are. The Regulation is the middle tier, which contains detail on how the outcomes required by the Act can be achieved. The third and final tier is the codes of practice. These codes are not legal obligations, but instead they provide guidance about what is known about a hazard or risk in specific situations, and therefore what is reasonably practicable to ensure health and safety.

NATIONAL CONTEXT

The main objective of the model WHS legislation is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. The model Act, Regulation and codes of practice have been drafted to enable a mirror version to be enacted in all jurisdictions.

Harmonisation of WHS laws formally commenced with all Australian governments signing the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety on 3 July 2008. SWA was created and is the national policy body tasked with developing, maintaining and improving the model WHS framework.

Since 2008, ministers and regulators responsible for work health and safety legislation in different jurisdictions have communicated and cooperated on a regular basis. SWA has published a model WHS Act, Regulation and 23 model codes of practice. The model Act and regulations have been enacted in seven out of nine jurisdictions, with NSW being among the first to introduce the harmonised laws. Only Victoria and Western Australia have not implemented the model framework.

Harmonisation involves ongoing monitoring, discussions and reviews taking place between all jurisdictions that have implemented the model laws. This work is done in accordance with the IGA, and legislation that created SWA. NSW is actively involved in this multi-jurisdictional collaboration, and SafeWork NSW votes and contributes significantly to the decisions and outcomes from those processes. SafeWork NSW will continue to support and contribute to this harmonisation process.

Despite the commitment by NSW to harmonised laws this does not mean that everything decided or published at the national level is necessarily the preferred position of the NSW Government or NSW stakeholders. While SafeWork NSW continues to support and contribute to the harmonised process, it is important to keep in mind that NSW and other jurisdictions have differing businesses, environments and a variety of safety issues. The model Act and Regulations have been drafted with this in mind, and have jurisdictional notes included enabling each jurisdiction to maintain consistency that primarily involves a mirror version of the model laws, with only a few variations provided in certain parts.

The variations allowed provide for jurisdictions to reference the laws, authorities, and courts that are relevant to their jurisdiction.

One example of this is that NSW has two WHS regulators, reflecting the historical position of NSW having a specialist mines regulator. This is not the case in all jurisdictions, and so there are provisions that have been included in the NSW Act and Regulation to enable the two regulators to be efficient and effective. These and other NSW-specific provisions are highlighted via questions posed in this discussion paper, and we seek your support to keep these the focus of this statutory review.

COAG EXAMINATION OF WHS LAWS

The COAG examination of WHS laws was conducted in 2014/2015. It aimed to identify whether the current system reflects best practice, where the regulatory burden could be reduced and how the task of understanding how to comply with the WHS framework could be made easier.

Some people reading this paper will be aware of the COAG Examination, therefore we take this opportunity to advise that this NSW review is not intended to discuss the COAG examination, its process or recommendations and outcomes. The national framework and context have their part in the NSW WHS laws, but it is important for this review to focus on the NSW-specific provisions, how these are interpreted, applied and enforced. NSW-specific provisions will not be reviewed by any other jurisdiction, so this is an important opportunity to make sure what we have is working today, and continues to work effectively in the foreseeable future.

NSW (LOCAL) CONTEXT

The NSW WHS Act and Regulation are based on the model WHS Bill and Regulations. Together the Act and Regulation provide the framework to secure the health, safety and welfare of all persons at workplaces in NSW. These laws commenced in NSW on 1 January 2012.

There will be a review of the national model WHS laws in 2018. That will be the appropriate opportunity to discuss the content of the model law and how it can be improved. In the meantime, this NSW review is focussing on the objectives, the terms for securing those objectives, the NSW-specific context, and the NSW-specific-provisions of the Act, Regulation and pre-WHS codes that remain valid in NSW.

The term NSW-specific provisions is used throughout this discussion paper. This is intended to refer to provisions that NSW has in force, that differ from the model WHS legislation. As these are the focus of this review, it is important to clearly define these concepts. The jurisdictions that have enacted the model WHS legislation are committed to mirroring the model provisions. To do this presents challenges for dealing with each jurisdiction having legislation that works in conjunction with the WHS laws, without overlapping. Many jurisdictions have implemented provisions for the similar requirements, in differing legislation. Some examples of this are working with electricity, and the number and hierarchy of courts and tribunals. Allowing for each jurisdiction to make the model laws fit, without having substantial differences, is achieved via 'jurisdictional notes'. These are listed at the end of the model Act and model Regulations, and allow limited, but necessary differences. Copies of the model Act and Regulations are available online at www.swa.gov.au.

Key areas of difference for NSW provisions include, but are not limited to: two WHS regulators and the union right to prosecute. Many of the departures that are enabled by jurisdictional notes are minor in nature, however they remain NSW-specific provisions and therefore included.

SafeWork NSW is the regulator of WHS at non-mining workplaces in NSW. The Resources Regulator provides advice and enforces the WHS laws at mining and petroleum sites in NSW. The regulator for mines and petroleum sites is the secretary of the Department of Industry, Skills, and Regional Development. Regulator functions in relation to WHS at mines are administered by the Mine Safety Branch of the Resources Regulator. In this paper we refer to the regulator for mines and petroleum sites as the Resources Regulator. SafeWork NSW and the Resources Regulator have a cooperative relationship, with the two regulators meeting as required to discuss policy and legislation issues; however, they report to different ministers and work independently to regulate WHS in NSW.

NSW remains committed to seeing the full benefits of harmonisation achieved. In doing this, it must be noted that this review is being conducted while harmonisation of the laws is not yet complete with Victoria and Western Australia still to implement the model laws.

Section 276B of the Act requires a review of the Act to be undertaken as soon as possible after 7 June 2016, a period of 5 years from the date of assent to the Act. This discussion paper includes questions that seek to elicit information and evidence that can be analysed to determine the impact of the nationally harmonised framework for WHS laws, in the NSW context. It is very important that this review maintains its focus on identifying whether the policy objectives remain valid, plus ensuring the effectiveness of NSW-specific provisions in the Act, Regulation and pre-WHS codes of practice that remain applicable in NSW as though they were made under the Act.

The online feedback form has three initial questions as follows:

1. Do you wish for your feedback to remain confidential?

Yes

No

2. Contact information:

Name

Industry

Region

Email Address (optional)

3. Tick the box that applies to you:

Small business PCBU

Medium business PCBU

Large business PCBU

Worker

Union representative

Government representative

Professional association

Employer association

WORK HEALTH AND SAFETY ACT 2011

The Act provides for positive safety outcomes including protecting the health and safety of persons at work and others who may be affected by those work activities. The Act states in broad terms who has duties, and that they are to achieve the required outcomes by doing certain things. This includes:

- eliminating or minimising risks arising from work or workplaces
- having workers represented to ensure they are consulted when health and safety issues are being addressed and resolved in the workplace
- the underlying principle that workers and other persons should be given the highest level of protection against harm as is reasonably practicable.

THE ACT PART 1 - PRELIMINARY

The Act was created to protect people against work-related harm. Every person is entitled to protection, regardless of whether they are workers, members of the wider public, or have some other work related status.

The main object of the Act is provided in section 3 as follows:

3. Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:
 - a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and
 - b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, and
 - c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and
 - d) promoting the provision of advice, information, education and training in relation to work health and safety, and
 - e) securing compliance with this Act through effective and appropriate compliance and enforcement measures, and
 - f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act, and
 - g) providing a framework for continuous improvement and progressively higher standards of work health and safety, and
 - h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

Questions you may wish to answer about the objectives of the Act:

4. Are the objects of the Act still valid?
5. Are the terms of the Act appropriate for achieving the stated objectives?
6. Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure?
7. Are any of the objectives causing unnecessary costs for business?

There are six definitions in section 4 of the Act that are specifically for the NSW context and proposed for discussion as part of this review. These are:

- *Authorising Authority* means the Industrial Relations Commission
- *Court* means the court having jurisdiction in the matter concerned
- *Local authority* means a council or county council under the *Local Government Act 1993*
- *Medical treatment* means treatment by a medical practitioner registered under the [Health Practitioner Regulation National Law \(NSW\)](#).
- *Public authority* means:
 - a) a Division of the Government Service, or
 - b) a NSW Government agency, or
 - c) a local authority, or
 - d) any other public or local authority constituted by or under an Act.
- *Regulator* means the regulator established under clause 1 of Schedule 2, which is as follows:

Schedule 2 The Regulator

1 The regulator

- (1) For the purposes of this Act, the *regulator* is:
 - (a) the Secretary of the Department of Finance, Services and Innovation, unless paragraph (b) applies, or
 - (b) in relation to a mine or petroleum site to which the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#) applies or a workplace at which activities under the [Petroleum \(Offshore\) Act 1982](#) are carried out—the regulator under the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#).
- (2) The Secretary of the Department of Finance, Services and Innovation is, as the regulator under this Act, to be known as *SafeWork NSW*.
- (3)–(5) (Repealed)
- (6) SafeWork NSW is subject to the control and direction of the Minister except in relation to:
 - (a) the contents of any advice, report or recommendation given to the Minister, or
 - (b) any decision that relates to proceedings for offences under this Act, or
 - (c) any decision that relates to a WHS undertaking.
- (7) Nothing in this clause limits section 12A of the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#).

Note: That section authorises both regulators to exercise their functions in relation to all workplaces.

8. Are the NSW-specific definitions in section 4 of the Act working effectively?
9. Are these definitions clear? Please provide examples of circumstances where any definitions are not clear.

NSW has added a provision specifying the liability in relation to offences under the Act as follows:

12A Offences are offences of strict liability

Strict liability applies to each physical element of each offence under this Act unless otherwise stated in the section containing the offence.

Questions you may wish to answer about the strict liability provision:

10. Do you have any comments about how the strict liability provision is working?

THE ACT PART 2 – HEALTH AND SAFETY DUTIES

The Act specifies that there are work health and safety duties for Persons Conducting a Business or Undertaking (PCBUs), officers, unincorporated associations, government departments and public authorities including local councils, workers and other people at a workplace.

The duties under the Act are intended for a work context. This means the duties apply:

- where work is performed
- where processes or things are used for work, and/or
- in relation to workplaces.

The duties are not intended to apply for public health and safety more broadly, unless there is a connection to work. The connection to work is necessary to establish there is a duty.

Who does the Act relate to?

- people who carry out work in any capacity for a person conducting a business or undertaking including employees, contractors, subcontractors, self-employed persons, outworkers, apprentices and trainees, work experience students and volunteers who carry out work
- other people at a workplace like visitors and customers at a workplace.

It is good practice for unincorporated associations and 'volunteer associations' to apply the principles and meet the obligations under the Act, however if the association does not employ anyone, they are not captured by the Act.

Note: This review is intended to focus on parts of the Act that specifically relate to the NSW context, therefore **we do not propose any questions in relation to part 2 of the Act 'Health and Safety Duties'**.

THE ACT PART 3 – INCIDENT NOTIFICATION

All workplace deaths, plus serious injuries, illnesses and dangerous incidents that happen as a result of work activities need to be notified to SafeWork NSW. The notification is to be done by the PCBU, by the fastest means possible, which will normally be by telephone.

Businesses must keep a record of each notifiable incident for at least five years. The person in charge of a workplace where a notifiable incident has occurred, must make the site of the incident secure, so it is not disturbed until an inspector arrives, or advises the scene can be disturbed.

The requirement to preserve the scene does not stop a person/s taking action to prevent further injuries, or to help a person who is injured.

NSW also has mine-specific WHS legislation that requires the notification of these incidents as well as additional incidents to the Resources Regulator. To prevent duplication of notification requirements, **NSW has inserted an additional subsection** under Section 38 Duty to Notify of Notifiable Incidents, as follows:

(8) Despite subsection (1), a person is not required to give notice under this section of an incident that occurs at a workplace to which the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#) applies.

Questions you may wish to answer about incident notification:

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

THE ACT PART 4 – AUTHORISATIONS

The Act provides for licenses, permits, registrations and other authorities to be required. These are called ‘authorisations’ and the Act provides the broad requirements, or framework, for all WHS authorisations. The Act provides for the authorisation of:

- some workplaces
- certain plant and substances
- certain types of work.

Details about the types of workplaces, plant, substances and work that cannot be done without a licence, permit, registration or other authority, are set out in the Regulation.

Note: This review is intended to focus on parts of the Act that specifically relate to the NSW context, therefore **we do not propose any questions in relation to part 4 of the Act, ‘Authorisations’ as there are no NSW-specific variations here.**

THE ACT PART 5 – CONSULTATION, REPRESENTATION AND PARTICIPATION

Decisions that relate to health and safety are the responsibility of PCBUs, however this does not diminish the importance of having everyone in the workplace contributing to discussions before decisions are made. It is also essential for workers to be told what measures are in place for their health and safety, and why. Because consultation is recognised as being so important to make workplaces and work activities safe, the Act requires that PCBUs consult with workers and other PCBUs that may be affected by the activities of their business.

NSW has designated that the Industrial Relations Commission (IRC) is the relevant forum to receive and determine applications to disqualify a HSR for certain reasons as shown below:

65 Disqualification of health and safety representatives

- (1) An application may be made to the Industrial Relations Commission to disqualify a health and safety representative on the ground that the representative has:
 - (a) exercised a power or performed a function as a health and safety representative for an improper purpose, or
 - (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.
- (2) The following persons may make an application under this section:
 - (a) any person adversely affected by:
 - (i) the exercise of a power or the performance of a function referred to in subsection (1) (a), or
 - (ii) the use or disclosure of information referred to in subsection (1) (b),
 - (b) the regulator.
- (3) If the Industrial Relations Commission is satisfied that a ground in subsection (1) is made out, the Commission may disqualify the health and safety representative for a specified period or indefinitely.

The *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (The Mines Act) contains additional provisions for worker representation at coal mines including representation by site safety and health representatives, electrical safety and health representatives and industry safety and health representatives. Provisions in the Mines Act will be considered separately at a time when the Mines Act is reviewed for further details on this please contact the [Resources Regulator](#). This context is provided as it is relevant to note before highlighting that NSW has added the following provision that relates to the health and safety committee for a workplace that is a coal mine:

76A Special provision for coal mines

The health and safety committee for a workplace that is a coal mine within the meaning of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* must include:

- (a) at least 1 person who is a site safety and health representative for the coal mine, and
- (b) at least 1 person who is an electrical safety and health representative for the coal mine.

NSW has reworded the provision that explains that the requirements for consultation, representation and participation are not intended to apply to workers who are prisoners in lawful detention, custody or gaol, as follows:

103 Part does not apply to prisoners

Nothing in this Part applies to a worker who is in lawful detention or custody.

Questions you may wish to answer about consultation, representation and participation:

12. Do you have any comment to make regarding the IRC being the forum that can receive and decide whether to disqualify a HSR?
13. Are the additional provisions that have been inserted for health and safety committee's in coal mines working well?
14. Are the provisions relating to prisoners, working well?

THE ACT PART 6 – DISCRIMINATORY, COERCIVE AND MISLEADING CONDUCT

It is important for persons who raise health and safety issues, or do safety-related work, to be protected from discrimination. Part 6 of the Act provides protection and criminal and civil courses of action, which are in addition to the remedies afforded in Commonwealth or state laws.

The Act prohibits a person from using force, threats or persuasion to have another person use or not use a power under the Act. It also prohibits a person from using force, threats or persuasion to stop another person from undertaking a role under the Act. These protections are contained in section 108. This also clarifies that an emergency service worker who gives a reasonable direction during an emergency, is not in breach of this provision. **NSW has added information** about who is an emergency services worker in this situation, as follows:

...In this section, *emergency services worker* includes an officer, employee or member of any of the following:

- (a) the Ambulance Service of NSW,
- (b) Fire and Rescue NSW,
- (c) the NSW Rural Fire Service,
- (d) the NSW Police Force,
- (e) the State Emergency Service,
- (f) the NSW Volunteer Rescue Association Inc,
- (g) the New South Wales Mines Rescue Brigade established under the [Coal Industry Act 2001](#),
- (h) an accredited rescue unit within the meaning of the [State Emergency and Rescue Management Act 1989](#).

NSW has designated the District Court as the relevant forum to receive applications for civil proceedings in relation to engaging in, or inducing discriminatory or coercive conduct, as follows:

112 Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct

- (1) An eligible person may apply to the District Court for an order under this section. ...

Questions you may wish to answer about discriminatory, coercive and misleading conduct:

15. Are the organisations listed to clarify who is an emergency services worker, appropriate?
16. Are there any other organisations that should be listed?
17. Are there any organisations listed, that should not be?
18. Do you have any comment to make regarding the District Court being the forum that can receive applications about civil proceedings in relation to discriminatory, coercive and misleading conduct?

THE ACT PART 7 – WORKPLACE ENTRY BY WHS ENTRY PERMIT HOLDERS

Union officials may obtain and use a WHS entry permit to enter workplaces and ask questions about suspected WHS breaches, and meet with workers to discuss their work health and safety rights and obligations. Where there is a dispute about a right of entry, anyone affected by the dispute may ask for an inspector to attend the workplace to assist in resolving the dispute. Alternatively the dispute may be dealt with by the authority that issued the WHS entry permit.

Under part 1 of the Act, **NSW has specified that *Authorising Authority* means the the IRC**. Under part 7, the authorising authority is referenced in sections 138 and 142. If you wish to comment on this, please see focus question eight, 'Are these definitions working effectively?'

NSW has inserted 'the *Industrial Relations Act 1996* (The IR Act) as 'the relevant state or territory industrial law' into relevant sections of [part 7](#). To review examples of where the IR Act is referenced, refer to sections [124](#), [131](#), [133](#), [137](#), [138](#) and [150](#).

Questions that you may wish to answer about workplace entry by WHS entry permit holders:

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

THE ACT PART 8 – THE REGULATOR

This part provides for enforcement of the requirements in the Act and Regulation. This includes SafeWork NSW and the Resources Regulator monitoring and enforcing compliance with the Act. They are also to provide advice and information to duty holders and the community, and have the power to require a person to provide information about a possible breach of the WHS laws.

NSW has provided for an 'authorised person' to have a power of the regulator delegated to them, and **inserted a definition** of an 'authorised person' as follows:

154 Delegation by regulator

- (1) The regulator may, by instrument in writing, delegate to an authorised person a power or function under this Act other than this power of delegation.
- (2) A delegation under this section:
 - (a) may be made subject to such conditions as the regulator thinks fit, and
 - (b) is revocable at will, and
 - (c) does not derogate from the power of the regulator to act.
- (3) In this section:

authorised person means:

 - (a) a member of staff of the regulator, or
 - (b) a person of a class prescribed by the Regulations or of a class approved by the regulator.

Questions that you may wish to answer about the regulator:

21. Is the definition of 'authorised person' working well? If no, please provide details and examples about how this could be improved for your particular circumstance.

THE ACT PART 9 – SECURING COMPLIANCE

Inspectors play an important role in providing information and advice about how to understand and comply with requirements of the WHS laws. To enable Inspectors to do their duties, the powers, functions and accountability of appointed Inspectors are provided in part 9 of the Act.

NSW has deleted (a) a public servant, and added to (b) 'an officer or' to 'an employee of a public authority'. The provision regarding who may be appointed as an Inspector in NSW is as follows:

156 Appointment of inspectors

The regulator may, by instrument, appoint any of the following as an inspector:

- (a) an officer or employee of a public authority,
- (b) the holder of a statutory office,
- (c) a person who is appointed as an inspector under a corresponding WHS law,
- (d) a person in a prescribed class of persons.

Questions that you may wish to answer about Inspectors are as follows:

22. Are the classes of persons that the regulator may appoint as an inspector, working well?

In addition to general powers for Inspectors who enter a workplace, Inspectors are also able to search places that may or may not be a workplace, for evidence. This is only allowed when the Inspector believes a breach has occurred, and the Inspector has applied for, and obtained a search warrant

The NSW provisions for obtaining a search warrant are as follows:

167 Search warrant

- (1) An inspector may apply to an authorised officer for a search warrant if the inspector believes on reasonable grounds that a provision of this Act has been or is being or is about to be contravened in or about any premises.
- (2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of this Act.
- (3) Division 4 of part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) In this section:
authorised officer has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

Essentially this provides for Inspectors of SafeWork NSW or Resources Regulator to ask the NSW Police to arrange a search warrant and provide assistance to an Inspector. In this way the police will carry out the search warrant as they usually would, and the Inspector can obtain information about a suspected breach of the WHS laws. **Requirements for announcement before entry on warrant, and the requirement to give a copy of the warrant to a person in charge are provided in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) rather than the WHS Act.**

Questions you may wish to answer about search warrant provisions that relate to suspected WHS breaches are as follows:

23. Are the provisions for Inspectors to obtain a search warrant to obtain information about a suspected WHS breach clear?
24. Do the references to the *Law Enforcement (Powers and Responsibilities) Act 2002* provide suitable powers for the WHS Inspector and NSW Police to cooperate and obtain information about a suspected WHS breach?
25. 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?

Where an Inspector has found a person committing an offence against the Act, or the Inspector has information that created a reasonable suspicion that the person has breached their duties under the legislation, the Inspector may require the person to provide their name and residential address. The provision that enables this is as follows:

185 Power to require name and address

- (1) An inspector may require a person to provide the person's name and residential address if:
 - (a) the inspector finds the person committing an offence against this Act, or
 - (b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act.
 - (2) When asking a person to provide his or her name and residential address, the inspector must:
 - (a) tell the person the reason for the requirement to provide their name and residential address, and
 - (b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.
 - (3) If the inspector reasonably believes that the name or residential address is false, the inspector may ask the person to give evidence of its correctness. It is not an offence for a person to fail to give that evidence.
 - (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
- Maximum penalty: \$10,000.
- (5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

The above provision differs from the model in the following ways:

NSW has omitted section 185 (1) (c) 'if the Inspector reasonably believes that the person may be able to assist in the investigation of an offence against this Act', and **Added '(3)** If the inspector reasonably believes that the name or residential address is false, the inspector may ask the person to give evidence of its correctness. It is not an offence for a person to fail to give that evidence.'

Questions that you may wish to answer about the Inspector's power to obtain a person's name and address are as follows:

26. Do you wish to comment on the provisions that NSW currently provides for an Inspector to obtain a person's name and address?
27. 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?

THE ACT PART 10 – ENFORCEMENT MEASURES

Inspectors are given a range of enforcement tools. These enforcement tools are provided in addition to the regulator's functions and powers in part 8. They also complement the provisions that enable Inspectors to be appointed to provide advice, assistance and the powers, functions and accountabilities they are given under part 9 of the Act.

Enforcement tools available to Inspectors under Part 10 are:

- improvement notices
- prohibition notices and
- non-disturbance notices.

Inspectors are also able to issue on-the-spot penalty notices, which are a form of sanction for non-compliance, and are provided for in Part 13 – Legal Proceedings. For the purposes of this paper these are briefly discussed in part 13, and in the Regulation.

NSW has nominated the District Court of NSW as the appropriate forum to hear applications for an injunction for noncompliance with notices as follows:

215 Injunctions for noncompliance with notices

- (1) The regulator may apply to the District Court for an injunction:
 - (a) compelling a person to comply with a notice, or
 - (b) restraining a person from contravening a notice.
- (2) The regulator may do so:
 - (a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued, and
 - (b) whether any period for compliance with the notice has expired.

Questions that you may wish to answer about chapter 10 are as follows:

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

THE ACT PART 11 – ENFORCEABLE UNDERTAKINGS

SafeWork NSW or the Resources Regulator are able to accept an enforceable undertaking as an alternative to prosecution through the courts. An enforceable undertaking is a legally binding agreement between the regulator and the person who proposed the undertaking. The person is obliged to carry out the specific activities outlined in the undertaking. The activities may be substantial.

An enforceable undertaking cannot be accepted for a contravention or alleged contravention for a category 1 offence. Full information about the 3 categories of offences is found in part 2 of the Act. A short summary of category 1 and 2 offences is provided in this discussion paper at [The Act Part 13 – Legal proceedings](#).

An enforceable undertaking will only be accepted as an alternative to prosecution if it demonstrates three main principals:

- benefits to the workplace
- benefits to their industry
- benefits to the community.

When a proposed enforceable undertaking is accepted, any legal proceedings connected to the alleged contravention are discontinued. Where legal proceedings have not been started, acceptance of the undertaking means no proceedings will be started (as long as the undertaking is not contravened). Applications for an enforceable undertaking can be withdrawn any time up until they are accepted by the regulator. Once an undertaking has been accepted, the agreed actions must be carried out by the party that entered the agreement with the regulator. If a WHS undertaking is not complied with, the regulator that accepted the undertaking may apply to the District Court for an order to enforce compliance or to discharge the undertaking. The court may impose a financial penalty, and the regulator may also seek to prosecute the original contravention or alleged contravention.

Questions that you may wish to answer about WHS undertakings:

29. Do you wish to 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 ACT PART 12 - REVIEW OF DECISIONS

Decisions that are made under the Act are able to be reviewed by the provisions in part 12. There are also related details about this in chapter 11 of the Regulation. Generally reviewable decisions are decisions made by Inspectors and decisions by the regulator. Specific reviewable decisions are set out in a table of items within section 223 of the Act.

Decisions made by Inspectors are mostly reviewable by the regulator (internal review) before the decision is able to be reviewed by the IRC (external review).

Questions that you may wish to answer about the review of decisions:

30. Do you wish to comment about the IRC being the nominated external body to receive and decide an application for review of a reviewable decision made by the regulator?
31. Do you wish to comment about the IRC 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?

THE ACT PART 13 - LEGAL PROCEEDINGS

Certain parties may initiate prosecution action for breaches of the WHS laws. In limited circumstances where a breach of the most serious type has occurred, the laws provide a procedure for offences as follows:

229B Procedure for offences

- (1) Except as provided by this section, proceedings for an offence against this Act or the Regulations are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the District Court in its summary jurisdiction.
- (2) Proceedings for a Category 3 offence are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the Industrial Court.
- (3) Proceedings for a Category 1 offence committed by an individual are to be taken on indictment.

- (4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is \$50,000, despite any higher maximum monetary penalty provided in respect of the offence.
- (5) (Repealed)
- (6) The provisions of the [Industrial Relations Act 1996](#), and of the Regulations under that Act, relating to appeals from the Local Court to the Industrial Court in connection with offences against that Act apply to proceedings before the Local Court for Category 3 offences.

Note: Section 197 of the [Industrial Relations Act 1996](#) deals with appeals against convictions or penalties in connection with offences against that Act.

Proceedings for an offence against the Act may only be brought by the regulator, or:

- an Inspector acting with the written authorisation of the regulator,
- the Director of Public Prosecutions
- an Australian legal practitioner authorised in writing to represent a person who is authorised under this section
- the secretary of a union, in certain circumstances that are explained more below.

The categories of criminal offences for breaches of the legislation, and maximum penalties, are set out in part 2 of the Act. The categories of offences are mentioned here, because the secretary of a union is not entitled to commence a prosecution unless the matter is a category 1 or 2 matter. These categories are as follows:

Category 1 – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

The following provision enables the secretary of a union to commence a prosecution:

230 Prosecutions

- (1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:
 - (a) the regulator, or
 - (b) an inspector with the written authorisation of the regulator (either generally or in a particular case), or
 - (c) the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate, but only as permitted by subsection (3) if the offence concerned is a Category 1 offence or a Category 2 offence.
- (1A) Proceedings for an offence against this Act may also be brought by an Australian legal practitioner authorised in writing to represent a person who is authorised under this section to bring the proceedings.
- (2) An authorisation under subsection (1) (b) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.
- (3) The secretary of an industrial organisation of employees can bring proceedings for a Category 1 offence or a Category 2 offence only if the regulator has (after referral of the matter to the regulator and the Director of Public Prosecutions under section 231) declined to follow the advice of the Director of Public Prosecutions to bring the proceedings.

- (4) The regulator must issue, and publish on the regulator’s website, general guidelines for or in relation to:
 - (a) the prosecution of offences under this Act, and
 - (b) the acceptance of WHS undertakings under this Act.
- (5) Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.
- (6) The court before which proceedings for an offence against this Act are brought by the secretary of an industrial organisation of employees must not direct that any portion of a fine or other penalty imposed in the proceedings be paid to the prosecutor (despite section 122 of the *Fines Act 1996*).

Questions that you may wish to answer about the procedure for offences or prosecutions are as follows:

32. Is the forum for proceedings for an offence against the WHS laws (except category 3 offences) being the Local Court or the District Court in its summary jurisdiction, working well?
33. Is the requirement for proceedings about category 3 offences to be dealt with summarily, working well?
34. Are the provisions of the *Industrial Relations Act 1996* that relate to appeals under the Act working well?
35. Do you wish to comment about the provision for the secretary of a union to bring proceedings for an offence against the Act?

Penalty notice offences are on-the-spot fines that can be issued by an Inspector and resolved by payment of the financial penalty without being required to attend court. Only certain offences can be dealt with in this way. The person can however elect to have the matter heard by a court. The amount of the relevant penalty, and which offences this can apply to, is set out in the Regulation. The ability to have the penalty notice scheme in the Regulation is provided by section 243 of the Act as follows:

243 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, being an offence prescribed by the Regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the Regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The Regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and

- (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed 20% of the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in relation to offences.
- (10) In this section, authorised officer means a member of staff of the regulator authorised in writing by the regulator as an authorised officer for the purposes of this section.

Questions that you may wish to answer about the provision for a penalty notice scheme:

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

THE ACT PART 14 – GENERAL

In this part, miscellaneous provisions about topics such as false and misleading information, information sharing between regulators, making codes of practice and their role are set out.

SafeWork NSW and the Resources Regulator share the role of administering the Act in NSW. **To ensure the regulators are able to share documents and information, NSW has added a section** as follows:

271A Information sharing between regulators

- (1) Either one of the regulators or a member of staff of either one of the regulators is authorised to disclose information or give access to a document to the other regulator or a member of staff of the other regulator if the disclosure or giving of access is for the purpose of assisting the other regulator to exercise the powers or functions of the other regulator under this Act or the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013](#).
- (2) Section 271 applies to the use of information or a document that a person obtains or gains access to as a result of the disclosure of the information or the giving of access to the document as authorised by this section, as if the person had obtained the information or gained access to the document in exercising a power or function under this Act.
- (3) Section 271 (2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.

Questions you may wish to answer about regulators sharing information:

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

Section 274 of the Act provides for the minister to approve, vary or revoke a code of practice (code) however this can only be done if the development of the code, the variation or proposal to revoke was done in consultation with:

- the governments of the Commonwealth and each state and territory
- unions
- employer organisations.

This provision was drafted in this way to ensure that codes are part of the national framework and contain consistent information for duty-holders in all jurisdictions. It is worth noting at the time the model laws were developed, there was a plan to identify existing codes of practice that related to areas, topics, issues or risks common to several jurisdictions. Topics or areas that were common in more jurisdictions would be developed as a model code as a priority, with existing jurisdictional codes of practice to remain in place via transitional arrangements until they were superseded by model codes or guidance material. A number of the model codes that have been developed have replaced codes that were developed in NSW before the WHS laws came into effect, **however there are 20 codes of practice that remain in force in NSW, even though they were made under former Occupational Health and Safety (OHS) legislation. These codes are specific to NSW** therefore they form an important part of this review. Further information and questions you may wish to answer on the pre-WHS codes are provided later in this paper in the section titled, codes of practice.

Part of the miscellaneous provisions is the requirement for the review of the Act. This is the provision that requires the review that is currently being done, and the subject of this discussion paper. The requirement to conduct a review of Acts is a usual practice in NSW and is required to be written into all Acts before they are discussed in parliament. **The provision for conducting a review has been inserted by NSW and is as follows:**

S 276B Review of the Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

S276B provides for a one-off review five years after commencement of the NSW Act. **This is a section NSW has added** however this provision is included in all new NSW Acts.

Questions you may wish to answer about the review of the Act:

38. Do you have any comment regarding ongoing reviews of the Act?

Questions you may wish to answer about the WHS laws generally are as follows:

- 39. What is/isn't working well for small business in relation to the NSW-specific provisions of the WHS laws?**
- 40. What has/hasn't improved for PCBUs or workers operating in more than one jurisdiction?**
- 41. Are there differences between how the NSW regulators are applying the legislation compared to other states, territories and the commonwealth? If yes, please provide a detailed response.**
- 42. Are there differences between how the NSW regulators are providing advice and assistance compared to the other states, territories and the commonwealth? If yes, please provide a detailed response.**

THE ACT SCHEDULE 1 – APPLICATION OF ACT TO DANGEROUS GOODS AND HIGH RISK PLANT

When certain dangerous goods are in quantities exceeding what would normally be safe to store and handle, the requirements of the work health and safety laws apply, even if they are not at a workplace, or used for carrying out work. The same applies to high risk plant that may affect public safety, even if it is not at a workplace.

The Regulation defines dangerous goods and high risk plant that applies to the above as follows:

10 Application of the Act to dangerous goods and high risk plant

- (1) The following provisions of the Act are excluded from the operation of Schedule 1 to the Act:
 - (a) Divisions 2 to 8 of Part 5,
 - (b) Part 6,
 - (c) Part 7.
- (1A) Dangerous goods (within the meaning of the ADG Code) listed in Column 2 of the Table to clause 328 (1A) are prescribed for the purposes of Schedule 1 to the Act as dangerous goods if the quantity of the goods at a place is more than the relevant threshold for the goods referred to in Column 3 of that Table.
- (1B) The following plant is prescribed as high risk plant for the purposes of Schedule 1 to the Act:
 - (a) boilers categorised as hazard level A, B or C according to criteria in section 2.1 of AS:4343:2005 (Pressure equipment—Hazard levels),
 - (b) pressure vessels categorised as hazard level A, B or C according to the criteria in section 2.1 of AS:4343:2005 (Pressure equipment—Hazard levels), except:
 - (i) LP Gas fuel vessels for automotive use, and
 - (ii) serially produced vessels,
 - (c) lifts, including escalators and moving walkways,
 - (d) amusement devices covered by section 2.1 of AS:3533.1:2009 (Amusement rides and devices—Design and construction), except devices specified in subclause (1C),
 - (e) gas cylinders.
- (1C) Subclause (1B) (d) does not apply to the following:
 - (a) class 1 devices,
 - (b) playground devices,
 - (c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure,
 - (d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves,
 - (e) inflatable devices that are sealed,
 - (f) inflatable devices that do not use a non-return valve.

Note: This review is intended to focus on parts of the Act that specifically relate to the NSW context, therefore **we do not propose any questions in relation to schedule 1 of the Act, or the definitions of dangerous goods or high risk plant.**

THE ACT SCHEDULE 2 – THE REGULATOR

Some jurisdictions only have one WHS regulator, however **in NSW there are two. Schedule 2 provides for this** and is written as follows:

1 The regulator

- (1) For the purposes of this Act, the regulator is:
 - (a) the Secretary of the Department of Finance, Services and Innovation, unless paragraph (b) applies, or
 - (b) in relation to a mine or petroleum site to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies or a workplace at which activities under the *Petroleum (Offshore) Act 1982* are carried out—the regulator under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.
- (2) The Secretary of the Department of Finance, Services and Innovation is, as the regulator under this Act, to be known as SafeWork NSW.
- (3)–(5) (Repealed)
- (6) SafeWork NSW is subject to the control and direction of the Minister except in relation to:
 - (a) the contents of any advice, report or recommendation given to the Minister, or
 - (b) any decision that relates to proceedings for offences under this Act, or
 - (c) any decision that relates to a WHS undertaking.
- (7) Nothing in this clause limits section 12A of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

Note: That section authorises both regulators to exercise their functions in relation to all workplaces.

Questions that you may wish to answer about the regulator are as follows:

43. Are the provisions that relate to two WHS regulators working well?

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

THE ACT SCHEDULE 3 – REGULATION-MAKING POWERS

The ability to make regulations under the Act is provided in part 14. This schedule expands on that and specifies what the regulations may include. Of particular interest for this review are the provisions for review of decisions, which are as follows:

14 Review of decisions

Matters relating to the review of decisions under the Regulations including:

- (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the Regulations, and
- (b) prescribing procedures for internal and external review of decisions under the Regulations, and
- (c) conferring jurisdiction on the Local Court or the Industrial Relations Commission to conduct reviews under the Regulations, and
- (d) conferring jurisdiction on the Civil and Administrative Tribunal to conduct administrative reviews under the [Administrative Decisions Review Act 1997](#).

Questions that you may wish to answer about the review of decisions:

45. Do you have any comments to make about the forums nominated to conduct reviews under the WHS Regulation in NSW?

THE ACT SCHEDULE 4 – SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

This schedule is specific to NSW. You can access the schedule online at [WHS Act schedule 4](#).

46. Do any parts or sections of schedule 4 require updating? 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.

WORK HEALTH AND SAFETY REGULATION 2011

The power to make the Work Health and Safety Regulation 2011 is provided under section 276 of the *Work Health and Safety Act 2011* and the regulations cover a wide range of matters pertaining to work health and safety in NSW. This includes but is not limited to:

- introductory matters including definitions, application provisions and incorporated documents (chapter 1)
- representation and participation (chapter 2)
- managing risks to health and safety and general workplace management (chapter 3)
- hazardous work involving noise, hazardous manual tasks, confined spaces, falls, demolition work, electrical safety and energised electrical work, diving work and licensing of high risk work and accreditation of assessors of competency (chapter 4)
- plant and structures (chapter 5)
- construction work (chapter 6)
- hazardous chemicals including lead (chapter 7)
- asbestos (chapter 8)
- major hazard facilities (chapter 9)
- mines (chapter 10)
- review of decisions, exemptions, and prescribed serious illnesses (chapter 11).

The current Regulation is due for staged repeal on 1 September 2017. This means that SafeWork NSW will need to either remake the Regulation, or seek approval to postpone the repeal of the Regulation. As the statutory review of the Act and the repeal of the Regulation are due to occur so close together, the minister has decided to include consultation on the Regulation in this paper. This will provide valuable insights for the government to gain a better understanding of how the Regulation is currently operating in the NSW context. This information will form part of the information used to decide whether it may be better to postpone the repeal of the Regulation, or remake the Regulation before it expires on 1 September 2017. If the Regulation is to be re-made and commence on 1 September 2017, further consultation will occur in line with the requirements of the *Subordinate Legislation Act 1989*.

The term 'NSW-specific provisions' is used throughout this discussion paper. More detailed information about this is provided in the [abbreviations](#) and [NSW \(local\) Context](#) sections of this discussion paper. In summary, the NSW-specific provisions are particular points where NSW has varied the provisions of the model Act and Regulations, to reflect the particular requirements of the NSW environment. Most of these amendments are made in accordance with 'Jurisdictional Notes'. A copy of all jurisdictional notes can be found at the end of the model Regulations and model act, available on the [SWA website](#).

REGULATION CH 1 – PRELIMINARY

Chapter 1 of the Regulation provides the meaning of various terms used throughout the Regulation. It sets out the application of the Act to dangerous goods and high risk plant and the application of the regulations as well as establishing the parameters under which an assessment of risks should occur. Provisions relating to incorporated documents are also provided.

There are several definitions in clauses 5 and 7 of the Regulation **that are specific to the NSW context** and are proposed for discussion as part of this review. These are:

5 Definitions

(1) In this Regulation:

- **combustible liquid** means a liquid, other than a flammable liquid, that has a flash point, and a fire point less than its boiling point.
- **competent person** means:
 - (a) for electrical work on energised electrical equipment or energised electrical installations (other than testing referred to in clauses 150 and 165)—a person who is authorised under the [Home Building Act 1989](#) to do electrical wiring work,
 - (b) for general diving work—see clauses 174 and 177,
 - (c) for a major inspection of a mobile crane or a tower crane under clause 235—see clause 235,
 - (d) for an inspection of an amusement device or passenger ropeway under clause 241—see clause 241,
 - (e) for design verification under clause 252—a person who has the skills, qualifications, competence and experience to design the plant or verify the design,
 - (f) for a clearance inspection under clause 473—a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds:
 - (i) a certification in relation to the specified VET course for asbestos assessor work, or
 - (ii) a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health,
 - (g) for any other case—a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.
- **emergency service organisation** includes any of the following:
 - (a) the Ambulance Service of NSW,
 - (b) Fire and Rescue NSW,
 - (c) the NSW Rural Fire Service,
 - (d) the NSW Police Force,
 - (e) the State Emergency Service,
 - (f) the NSW Volunteer Rescue Association Inc,
 - (g) the New South Wales Mines Rescue Brigade established under the [Coal Industry Act 2001](#),
 - (h) an accredited rescue unit within the meaning of the [State Emergency and Rescue Management Act 1989](#).

- **emergency service worker** includes an officer, employee or member of any of the following:
 - (a) the Ambulance Service of NSW,
 - (b) Fire and Rescue NSW,
 - (c) the NSW Rural Fire Service,
 - (d) the NSW Police Force,
 - (e) the State Emergency Service,
 - (f) the NSW Volunteer Rescue Association Inc,
 - (g) the New South Wales Mines Rescue Brigade established under the [Coal Industry Act 2001](#),
 - (h) an accredited rescue unit within the meaning of the [State Emergency and Rescue Management Act 1989](#).
- **excavation** means a trench, tunnel or shaft, but does not include:
 - (a) a mine, or
 - (b) a bore to which the [Water Act 1912](#) applies, or
 - (c) a trench for use as a place of interment.
- **passenger ropeway** means a powered ropeway used for transporting, in a horizontal or inclined plane, passengers moved by a carrier that is:
 - (a) attached to or supported by a moving rope, or
 - (b) attached to a moving rope but supported by a standing rope or other overhead structure, including, in relation to the powered ropeway, the prime mover, any associated transmission machinery and any supporting structure and equipment, but does not include any of the following:
 - (c) a cog railway,
 - (d) a cable car running on rails,
 - (e) a flying fox or similar device,
 - (f) an elevating system for vehicles or boat style carriers associated with amusement devices,

Example. An elevating system for a log ride or boat flume ride.

 - (g) a winding system in a mine.
- **pressure piping:**
 - (a) means an assembly of pipes, pipe fittings, valves and pipe accessories subject to internal or external pressure and used to contain or convey liquid or to transmit liquid pressure, and
 - (b) includes distribution headers, bolting, gaskets, pipe supports and pressure containing accessories, but
 - (c) does not include:
 - (i) a boiler or pressure vessel, or
 - (ii) any piping that is regulated under the [Gas Supply Act 1996](#), the [Petroleum \(Offshore\) Act 1982](#) or the [Pipelines Act 1967](#).
- **primary emergency service organisation** means Fire and Rescue NSW.
- **registered training organisation (RTO)** means a training organisation that:
 - (a) is listed as a registered training organisation on the National Register established under the [National Vocational Education and Training Regulator Act 2011](#) of the Commonwealth, and
 - (b) has entered into an agreement with the regulator to deliver training and conduct assessments.

- **specified VET course** means:
 - (a) in relation to general construction induction training—the VET course Work Safely in the Construction Industry or a corresponding subsequent VET accredited course, or
 - (b) in relation to Class A asbestos removal work—the VET course Remove friable asbestos, or
 - (c) in relation to Class B asbestos removal work—the VET course Remove non friable asbestos, or
 - (d) in relation to the supervision of asbestos removal work—the VET course Supervise asbestos removal, or
 - (e) in relation to asbestos assessor work—the VET course Conduct asbestos assessment associated with removal, or
 - (f) in relation to high risk work—the relevant VET course specified in Schedule 4.

7 Meaning of “person conducting a business or undertaking”—persons excluded

- (1) For the purposes of section 5 (6) of the Act, a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
- (2) Subclause (1) does not apply if the strata title body corporate engages any worker as an employee.
- (3) For the purposes of section 5 (6) of the Act, an incorporated association may be taken not to be a person conducting a business or undertaking if the incorporated association consists of a group of volunteers working together for 1 or more community purposes where:
 - (a) the incorporated association, either alone or jointly with any other similar incorporated association, does not employ any person to carry out work for the incorporated association, and
 - (b) none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the incorporated association.
- (4) In this clause, strata title body corporate means an owners corporation constituted under the [Strata Schemes Management Act 1996](#).

NSW has included schedule 1 of the Act and therefore dangerous goods and high risk plant that are not at workplaces are regulated under the WHS Act. Clause 10 of the Regulation prescribes what plant and dangerous goods are covered by schedule 1 of the Act. The same clause also provides for exclusions, and **NSW has referenced relevant legislation** as follows:

10 Application of the Act to dangerous goods and high risk plant

- (1) The following provisions of the Act are excluded from the operation of Schedule 1 to the Act:
 - (a) Divisions 2 to 8 of Part 5,
 - (b) Part 6,
 - (c) Part 7.
- (1A) Dangerous goods (within the meaning of the ADG Code) listed in Column 2 of the Table to clause 328 (1A) are prescribed for the purposes of Schedule 1 to the Act as dangerous goods if the quantity of the goods at a place is more than the relevant threshold for the goods referred to in Column 3 of that Table.
- (1B) The following plant is prescribed as high risk plant for the purposes of Schedule 1 to the Act:
 - (a) boilers categorised as hazard level A, B or C according to criteria in section 2.1 of AS:4343:2005 (Pressure equipment—Hazard levels),

- (b) pressure vessels categorised as hazard level A, B or C according to the criteria in section 2.1 of AS:4343:2005 (Pressure equipment—Hazard levels), except:
 - (i) LP Gas fuel vessels for automotive use, and
 - (ii) serially produced vessels,
- (c) lifts, including escalators and moving walkways,
- (d) amusement devices covered by section 2.1 of AS:3533.1:2009 (Amusement rides and devices—Design and construction), except devices specified in subclause (1C),
- (e) gas cylinders.

(1C) Subclause (1B) (d) does not apply to the following:

- (a) class 1 devices,
- (b) playground devices,
- (c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure,
- (d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves,
- (e) inflatable devices that are sealed,
- (f) inflatable devices that do not use a non-return valve.

Questions you may wish to answer about chapter 1 of the Regulation:

- 47. Are the above-mentioned definitions working effectively? (clause 5 and 7)
- 48. 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)
- 49. 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)

REGULATION CH 2 - REPRESENTATION AND PARTICIPATION

This chapter expands on matters from part 5 and part 7 of the Act and sets out the rights and duties of PCBUs, workers and workers' representatives when determining work groups, electing, removing and training of health and safety representatives and the resolution of health and safety issues. Requirements for workplace entry by WHS permit holders are prescribed and the rights and duties of union representatives in the process, outlined.

NSW has added a note about training for health and safety representatives below clause 21 as follows:

Note: This clause prescribes courses of training to which a health and safety representative is entitled. In addition to these courses, the health and safety representative and the person conducting the business or undertaking may agree that the representative will attend or receive further training.

Questions that you may wish to answer about chapter 2 of the Regulation are:

- 50. Is the above note about training for health and safety representatives helpful?

REGULATION CH 3 – GENERAL RISKS AND WORKPLACE MANAGEMENT

PCBUs/duty holders have a duty to manage risks to health and safety, by identifying hazards, applying and maintaining measures against a hierarchy of risk controls and reviewing the control measures. The management of risk is not absolute; rather it is so far as is reasonably practicable. This involves suitable and adequate training and the provision of instruction to workers.

Note: This review is intended to focus on parts of the Regulation that specifically relate to the NSW context, therefore **we do not propose any questions in relation to chapter 3 of the Regulation.**

REGULATION CH 4 – HAZARDOUS WORK

This chapter addresses hazardous work, such as noise, hazardous manual tasks, confined spaces, falls and high risk work and imposes duties upon PCBUs when workers are exposed to these in the workplace. These duties are also extended to designers and manufacturers of plant and suppliers and importers of the plant.

Clause 143 of the model Regulations has a jurisdictional note as follows:

A jurisdiction may insert transitional and savings provisions for the licensing of demolishers pending the Regulation of demolishers under the Occupational Licensing National Law.

In NSW, the requirements for notice of demolition work continue to apply from chapter 10 of the *Occupational Health and Safety Act 2000* as though it has not been repealed. NSW has inserted a note under clause 143 to clarify where the provisions can be found as follows:

* * * * *

Note: Not adopted in NSW. See clause 64 of Schedule 18B (Savings and transitional provisions).

Schedule 18B

...

64 Demolition work

- (1) Chapter 10 (Licensing of certain businesses) of the OHS Regulation (except clause 319 (2)) continues to apply as if it had not been repealed to and in respect of demolition work and restricted demolition work within the meaning of that Chapter.
- (2) Chapter 10 of the OHS Regulation, as continued in force by subclause (1), may be enforced under the OHS Act as if that Act and the Regulations under that Act had not been repealed. ...

NSW has made a minor amendment to the definition in clause 144, so it now reads as follows:

144 Meaning of “electrical equipment”

- (1) In this Part, electrical equipment means any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that:
 - (a) is used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra-low voltage, or
 - (b) is operated by electricity at a voltage greater than extra-low voltage, or
 - (c) is part of an electrical installation located in an area in which the atmosphere presents a risk to health and safety from fire or explosion, or
 - (d) is, or is part of, an active impressed current cathodic protection system within the meaning of AS 2832.1:2004 (Cathodic protection of metals—Pipes and cables).

- (2) In this Part, electrical equipment does not include any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is part of a motor vehicle if:
 - (a) the equipment is part of a unit of the vehicle that provides propulsion for the vehicle, or
 - (b) the electricity source for the equipment is a unit of the vehicle that provides propulsion for the vehicle.
- (3) In this clause, motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

In the meaning of electrical work NSW has replaced ‘licensed or registered’ with ‘authorised’ as follows:

146 Meaning of “electrical work”

- (1) In this Part, *electrical work* means:
 - (a) connecting electricity supply wiring to electrical equipment or disconnecting electricity supply wiring from electrical equipment, or
 - (b) installing, removing, adding, testing, replacing, repairing, altering or maintaining electrical equipment or an electrical installation.
- (2) In this Part, *electrical work* does not include the following:
 - (a) work that involves connecting electrical equipment to an electricity supply by means of a flexible cord plug and socket outlet,
 - (b) work on a non-electrical component of electrical equipment, if the person carrying out the work is not exposed to an electrical risk,

Example. Painting electrical equipment covers and repairing hydraulic components of an electrical motor.
 - (c) replacing electrical equipment or a component of electrical equipment if that task can be safely performed by a person who does not have expertise in carrying out electrical work,

Example. Replacing a fuse or a light bulb.
 - (d) assembling, making, modifying or repairing electrical equipment as part of a manufacturing process,
 - (e) building or repairing ducts, conduits or troughs, where electrical wiring is or will be installed if:
 - (i) the ducts, conduits or troughs are not intended to be earthed, and
 - (ii) the wiring is not energised, and
 - (iii) the work is supervised by an authorised electrician,
 - (f) locating or mounting electrical equipment, or fixing electrical equipment in place, if this task is not performed in relation to the connection of electrical equipment to an electricity supply,
 - (g) assisting an authorised electrician to carry out electrical work if:
 - (i) the assistant is directly supervised by the authorised electrician, and
 - (ii) the assistance does not involve physical contact with any energised electrical equipment,
 - (h) carrying out electrical work, other than work on energised electrical equipment, in order to meet eligibility requirements in relation to becoming an authorised electrician.
- (3) In this clause, *authorised electrician* means a person who is authorised under the [Home Building Act 1989](#) to do electrical wiring work.

NSW has excluded work done by a person under the relevant local legislation as follows:

152 Application of Division 4

This Division does not apply to work carried out:

- (a) by or on behalf of an electricity supply authority on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to generate, transform, transmit or supply electricity, or
- (b) by a person accredited to provide contestable services within the meaning of Part 3 of the [Electricity Supply \(Safety and Network Management\) Regulation 2014](#), but only while the accredited person is providing the contestable services or carrying out other work authorised by an electricity supply authority.

NSW has inserted information about the local legislation in a note under clause 164 as follows:

Notes:

- 1 This clause commences on 1 January 2013 (see clause 2 (2)).
- 2 Residual current devices are also regulated under the [Electricity \(Consumer Safety\) Act 2004](#).

NSW has inserted information about the local legislation in a note under clause 166 as follows:

Note: The [Electricity \(Consumer Safety\) Act 2004](#) and the [Electricity Supply \(Safety and Network Management\) Regulation 2008](#) also apply to the person conducting the business or undertaking.

Questions you may wish to answer about the Regulation chapter 4 are as follows:

51. 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? If information is needed, please provide examples of situations where the information has been needed.
52. Is the meaning of electrical equipment clear? (clause 144)
53. Do you wish to comment on the term 'authorised' that has been inserted by NSW? (clause 146)
54. Do you wish to comment on the exclusion that applies to an electricity supply authority, or a person accredited and providing contestable services? (clause 152)
55. Is the note that advises that residual current devices (RCD's) are also regulated under the [Electricity \(Consumer Safety\) Act 2004](#), helpful? (clause 164)
56. Is the note that advises the [Electricity \(Consumer Safety\) Act 2004](#) and the [Electricity Supply \(Safety and Network Management\) Regulation 2008](#) also apply to the PCBU, helpful? (clause 166)

REGULATION CH 5 – PLANT AND STRUCTURES

Obligation holders highlighted in chapter 4 are again called up in chapter 5 with duties imposed on designers and manufacturers of plant as well as suppliers and importers of the plant including guarding, operator controls, emergency stops and warning devices. PCBUs installing, constructing or commissioning plant or structures must comply with information and relevant health and safety instructions from the designer or manufacturer. The registration of certain items of plant and structures is required under this chapter.

NSW has inserted additional professional organisations for the definition of a competent person to undertake major inspections of registered mobile cranes and tower cranes under clause 235 as follows:

235 Major inspection of registered mobile cranes and tower cranes

...

(4) In this clause, a *competent person* is a person who:

(a) complies with both of the following:

(i) has acquired through training, qualification or experience the knowledge and skills to carry out a major inspection of the plant, and

(ii) is:

(A) registered under a law that provides for the registration of professional engineers, or

(B) a member (or is qualified to be a member) of Engineers Australia with the status of Chartered Professional Engineer, or

(C) entered on the National Professional Engineers Register administered by the Institution of Engineers Australia.

(b) is determined by the regulator to be a competent person.

Questions you may wish to answer about the competent person in chapter 5 are as follows:

57. Are the professional organisations or associations provided for determining a competent person to conduct a major inspection of registered mobile cranes and tower cranes appropriate? (clause 235)

REGULATION CH 6 – CONSTRUCTION WORK

Duties for construction work and high risk construction work are imposed by chapter 6 with duties imposed on designers of commissioned constructions and persons who construct a structure. PCBUs constructing or commissioning plant or structures must comply with information and relevant health and safety instructions from the designer or manufacturer. These duties relate to safe work method statements, excavation work and trenches, written WHS management plan, signage obligations, as well as general construction induction training and issuing of construction induction cards as well as ensuring compliance with other regulations.

Note: This review is intended to focus on parts of the Regulation that specifically relate to the NSW context, therefore **we do not propose any questions in relation to chapter 6 of the Regulation.**

REGULATION CH 7 – HAZARDOUS CHEMICALS

Further information about the duties of importers and manufacturers of hazardous materials is provided in this chapter. These duties relate to classification, packaging and labelling, safety data sheets and disclosure of chemical identities. Complimentary duties are also imposed upon suppliers about packaging and labelling, safety data sheets and prohibiting supply of certain carcinogenic substances. Duties are also imposed upon owners, builders and operators of certain pipelines.

As NSW has included schedule 1 of the Act, which applies to dangerous goods and high risk plant at non-workplaces, the table in clause 328 details the quantities that, when exceeded, mean the provisions of the Act apply at non-workplaces. **NSW has specified** the following local laws that provide exclusions to this clause:

- the [Gas Supply Act 1996](#)
- the [Petroleum \(Offshore\) Act 1982](#)
- the [Pipelines Act 1967](#)
- the [Dangerous Goods \(Road and Rail Transport\) Act 2008](#)

The clause as a whole reads as follows:

Note: Most of the obligations in this Part apply to persons conducting businesses or undertakings at a workplace. However, some obligations apply to persons in different capacities, for example importers and suppliers of hazardous chemicals.

328 Application of Part 7.1

(1) This Part applies to:

- (a) the use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace, and
- (b) a pipeline used to convey a hazardous chemical.

(1A) This Part applies to the handling or storage of dangerous goods listed in Column 2 of the Table to this subclause, other than at a workplace, if the quantity of the dangerous goods is more than the relevant threshold referred to in Column 3 of that Table.

Table

Column 1 Item	Column 2 Dangerous goods	Column 3 Threshold quantities
1	Liquefied Petroleum Gas (LP gas) (dangerous goods Class 2.1)	If the LP gas is stored in packages outside a building, and connected by piping to appliances within the building that contain the gas—500 L (water capacity)
2	Compressed gas of Class 2.1 (excluding LP gas), Class 2.2 or compressed oxygen if:	(a) each is in one or more containers in an aggregate capacity not exceeding 50 L, and (b) the dangerous goods as a whole form part of a welding set or are used or intended to be used with a portable flame torch. Compressed oxygen or air that is used or intended to be used for medical
3	Dangerous goods Class 3	250 L
4	Pool Chlorine and spa sanitising agents	100 kg or L
5	Sodium Hypochlorite designated by UN Number 1791	100 L
6	Dangerous goods Class 9	100 kg or L

7	Dangerous goods Packing Group 1	5 kg or L
8	C1 combustible liquids	1000 L
9	Dangerous goods Class 2.3	Nil kg or L
10	Any dangerous goods other than those stated above	100 kg or L

- (2) This Part does not apply to a pipeline that is regulated under the [Gas Supply Act 1996](#), the [Petroleum \(Offshore\) Act 1982](#) or the [Pipelines Act 1967](#).
- (3) This Part does not apply to hazardous chemicals and explosives being transported by road, rail, sea or air if the transport is regulated under any of the following:
- the [Dangerous Goods \(Road and Rail Transport\) Act 2008](#) and the Regulations under that Act,
 - the document entitled “*International Maritime Dangerous Goods Code*” published by the International Maritime Organization, copies of which are available for inspection at the offices of the regulator,
 - the document entitled “*Technical Instructions for the Safe Transport of Dangerous Goods by Air*” published by the International Civil Aviation Organization, copies of which are available for inspection at the offices of the regulator,
 - the document entitled “*Dangerous Goods Regulations*” published by the International Air Transport Association, copies of which are available for inspection at the offices of the regulator.
- (4) This Part does not apply to the following hazardous chemicals in the circumstances described:
- hazardous chemicals in batteries when incorporated in plant,
 - fuel, oils or coolants in a container fitted to a vehicle, vessel, aircraft, mobile plant, appliance or other device, if the fuel, oil or coolant is intended for use in the operation of the device,
 - fuel in the fuel container of a domestic or portable fuel burning appliance, if the quantity of fuel does not exceed 25 kilograms or 25 litres,
 - hazardous chemicals in portable firefighting or medical equipment for use in a workplace,
 - hazardous chemicals that form part of the integrated refrigeration system of refrigerated freight containers,
 - potable liquids that are consumer products at retail premises.
- (5) This Part, other than the following clauses and Schedule 7, does not apply to substances, mixtures or articles categorised only as explosives under the GHS:
- clause 329,
 - clause 330,
 - clause 339,
 - clause 344,
 - clause 345.
- (6) This Part does not apply to the following:
- food and beverages within the meaning of the Food Standards Australia New Zealand Food Standards Code that are in a package and form intended for human consumption,
 - tobacco or products made of tobacco,
 - therapeutic goods within the meaning of the [Therapeutic Goods Act 1989](#) of the Commonwealth at the point of intentional intake by or administration to humans,
 - veterinary chemical products within the meaning of the Agvet Code at the point of intentional administration to animals.
- (7) In subclause (6) (d), **Agvet Code** means the Agricultural and Veterinary Chemicals Code set out in the Schedule to the [Agricultural and Veterinary Chemicals Code Act 1994](#) of the Commonwealth.

NSW has added the *Pesticides Act 1999* in clause 354, which provides an exemption to the requirement for identification of physical or chemical reaction as follows:

354 Identification of risk of physical or chemical reaction

- (1) A person conducting a business or undertaking at a workplace must identify any risk of a physical or chemical reaction in relation to a hazardous chemical used, handled, generated or stored at a workplace.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

- (2) Subclause (1) does not apply if the hazardous chemical undergoes the physical or chemical reaction in a manufacturing process or as part of a deliberate process or activity at the workplace.

- (3) A person conducting a business or undertaking at a workplace must take all reasonable steps to ensure that a hazardous chemical is used, handled, generated or stored so as not to contaminate food, food packaging or personal use products.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

Examples. Personal use products:

- cosmetics,
- face washer.

- (4) Subclause (3) does not apply to the use of a hazardous chemical for agricultural purposes when used in accordance with the [Pesticides Act 1999](#).

Questions you may wish to answer about chapter 7 of the Regulation are as follows:

58. Do the local laws that NSW added for exemptions to clause 328 remain appropriate?

59. Do you wish to comment on the *Pesticides Act 1999* being specified to provide for an exemption, meaning identification of physical or chemical reaction is not required when the chemical is being used for agricultural purposes? (clause 354)

REGULATION CH 8 - ASBESTOS

The NSW Government recognises that asbestos is an issue that causes substantial concerns in the community, and heartache for those who have suffered the terrible effects that it causes. chapter 8 of the Regulation prohibits carrying out, or directing or allowing a worker to carry out work involving asbestos other than in circumstances permitted under the regulations. The chapter also prescribes for authorisation of work and sets out the qualifications to undertake such work, expanding on sections 43 and 44 of the Act.

Provisions in the WHS laws are supported in NSW by requirements and allowances for work involving the transport and disposal of asbestos or asbestos waste under the *Protection of the Environment Operations Act 1997 (The POEO Act)*.

To prevent duplication of requirements, **clause 419 of the Regulation exempts a PCBU from the requirement to have a licence** when undertaking work involving the transport and disposal of asbestos or asbestos waste, when it is done in accordance with the POEO Act as shown below:

419 Work involving asbestos or ACM—prohibitions and exceptions

- (1) A person conducting a business or undertaking must not carry out, or direct or allow a worker to carry out, work involving asbestos.
Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.
- (2) In this clause, work *involves* asbestos if the work involves manufacturing, supplying, transporting, storing, removing, using, installing, handling, treating, disposing of or disturbing asbestos or ACM.
- (3) Subclause (1) does not apply if the work involving asbestos is any of the following:
 - (a) genuine research and analysis,
 - (b) sampling and identification in accordance with this Regulation,
 - (c) maintenance of, or service work on, non friable asbestos or ACM, fixed or installed before 31 December 2003, in accordance with this Regulation,
 - (d) removal or disposal of asbestos or ACM, including demolition, in accordance with this Regulation,
 - (e) the transport and disposal of asbestos or asbestos waste in accordance with the [*Protection of the Environment Operations Act 1997*](#),
 - (f) demonstrations, education or practical training in relation to asbestos or ACM,
 - (g) display, or preparation or maintenance for display, of an artefact or thing that is, or includes, asbestos or ACM,
 - (h) management in accordance with this Regulation of in situ asbestos that was installed or fixed before 31 December 2003,
 - (i) work that disturbs asbestos during mining operations that involve the extraction of, or exploration for, a mineral other than asbestos,
 - (j) laundering asbestos contaminated clothing in accordance with this Regulation.
- (4) Subclause (1) does not apply if the regulator approves the method adopted for managing risk associated with asbestos.
- (5) Subclause (1) does not apply to the following:
 - (a) soil that a competent person has determined:
 - (i) does not contain any visible ACM or friable asbestos, or
 - (ii) if friable asbestos is visible—does not contain more than trace levels of asbestos determined in accordance with AS 4964:2004 (*Method for the qualitative identification of asbestos in bulk samples*),
 - (b) naturally occurring asbestos managed in accordance with an asbestos management plan prepared under clause 432.

To ensure that persons who have been convicted or found guilty of offences relating to unlawful disposal of hazardous substances are not granted a licence to undertake asbestos removal or conduct assessments for asbestos removal licenses, **NSW has inserted a reference** requiring persons to provide a declaration on their history under the POEO Act in the following clause:

492 Application for asbestos removal licence or asbestos assessor licence

- (1) An application for an asbestos removal licence or asbestos assessor licence must be made in the manner and form required by the regulator.
- (2) The application must include the following information:
 - (a) the name and address of the applicant,
 - (ab) if required by the regulator of an applicant who is an individual, a photograph of the applicant in the form required by the regulator,
 - (b) any other evidence of the applicant's identity required by the regulator,
 - (c) the class of licence to which the application relates,
 - (d) if, in the case of an asbestos removal licence, the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name,
 - (e) a declaration that the applicant does not hold an equivalent licence under a corresponding WHS law,
 - (f) if the applicant is an individual:
 - (i) a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or this Regulation or under any corresponding WHS law, and
 - (ii) details of any conviction or finding of guilt declared under subparagraph (i), and
 - (iii) a declaration as to whether or not the applicant has been convicted or found guilty of any offence in relation to the unlawful disposal of hazardous waste under the [*Protection of the Environment Operations Act 1997*](#), and
 - (iv) details of any conviction or finding of guilt declared under subparagraph (iii), and
 - (v) a declaration as to whether or not the applicant has ever entered into an enforceable undertaking under the Act or under any corresponding WHS law, and
 - (vi) details of any enforceable undertaking declared under subparagraph (v), and
 - (vii) if the applicant has previously been refused an equivalent licence under a corresponding WHS law, a declaration giving details of that refusal, and
 - (viii) if the applicant has previously held an equivalent licence under a corresponding WHS law, a declaration:
 - (A) describing any condition imposed on that licence, and
 - (B) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the applicant had been disqualified from applying for any licence, and
 - (C) giving details of any suspension, cancellation or disqualification,
 - (g) if the applicant is a body corporate, the information referred to in paragraph (f) in relation to:
 - (i) the body corporate, and
 - (ii) each officer of the body corporate,
 - (h) in the case of an application for an asbestos removal licence—the additional information referred to in clause 493 or 494, as applicable,
 - (i) in the case of an asbestos assessor licence—the additional information referred to in clause 495.

Note: See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or this Regulation.

- (3) The application must be accompanied by the relevant fee.

NSW has inserted references to local laws for information and matters to be taken into account when a person applies for a licence relating to asbestos removal or assessor work as follows:

497 Decision on application

- (1) Subject to subclause (3), the regulator must grant an asbestos removal licence or asbestos assessor licence if satisfied about:
 - (a) the matters referred to in subclause (2), and
 - (b) the additional matters referred to in clause 498 or 499, as applicable.
- (2) The regulator must be satisfied about the following:
 - (a) the application has been made in accordance with this Regulation,
 - (b) the applicant does not hold an equivalent licence under a corresponding WHS law unless that licence is due for renewal,
 - (c) if the applicant is an individual, the applicant:
 - (i) resides in this jurisdiction, or
 - (ii) resides outside this jurisdiction and circumstances exist that justify the grant of the licence,
 - (d) if the applicant is a body corporate, the applicant's registered office:
 - (i) is located in this jurisdiction, or
 - (ii) is located outside this jurisdiction and circumstances exist that justify the grant of the licence,
 - (e) the applicant is able to ensure that the work or other activities to which the licence relates are carried out safely and competently,
 - (f) the applicant is able to ensure compliance with any conditions that will apply to the licence.
- (3) The regulator must refuse to grant a licence if satisfied that:
 - (a) the applicant is disqualified under a corresponding WHS law from holding an equivalent licence, or
 - (b) the applicant, in making the application, has:
 - (i) given information that is false or misleading in a material particular, or
 - (ii) failed to give any material information that should have been given.
- (4) If the regulator decides to grant the licence, it must notify the applicant within 14 days after making the decision.
- (5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under clause 496, the regulator is taken to have refused to grant the licence applied for.

Note: A refusal to grant a licence (including under subclause (5)) is a reviewable decision (see clause 676).

500 Matters to be taken into account

- (1) For the purposes of clause 497 (2) (e) and (f), the regulator must have regard to all relevant matters, including the following:
 - (a) any offence under the Act or this Regulation or under a corresponding WHS law of which the applicant has been convicted or found guilty,
 - (b) any offence in relation to the unlawful disposal of hazardous waste under the [*Protection of the Environment Operations Act 1997*](#) of which the applicant has been convicted or found guilty,
 - (c) any enforceable undertaking the applicant has entered into under the Act or a corresponding WHS law,

- (d) in relation to any equivalent licence applied for or held by the applicant under the Act or this Regulation or under a corresponding WHS law:
 - (i) any refusal to grant the licence, and
 - (ii) any condition imposed on the licence, if granted, and
 - (iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence,
 - (e) the record of the applicant in relation to any matters arising under the Act or this Regulation or under a corresponding WHS law.
- (2) For the purposes of clause 497 (2) (e) and (f), if the applicant is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subclause (1), in relation to:
- (i) the body corporate, and
 - (ii) each officer of the body corporate.

Questions you may wish to answer about chapter 8 of the Regulation are as follows:

- 60. Do you wish to comment on the exemption 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*? (clause 419)
- 61. Do you wish to comment on 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 license, working well? (clauses 497 and 500)

As we have noted above, asbestos is an important issue in NSW, and the NSW government makes addressing this, and ensuring there are balanced and appropriate Regulations a priority.

As previously mentioned, this review is intended to have a scope that is limited to discussing provisions that are NSW-specific. For this reason, we ask that you consider that **a comprehensive review of the harmonised model WHS laws will be conducted during 2018. This will provide more opportunities to raise concerns and discuss how the model provisions are working**, and will include asbestos.

If you wish to comment on penalty notice provisions for asbestos, please see question 76 – [Do you wish to comment on the penalty notice offences listed in schedule 18A? \(clause 702A\)](#)

REGULATION CH 9 – MAJOR HAZARD FACILITIES

Chapter 9 regulates the operation of major hazard facilities (MHF) and requires that the operator of a facility or proposed facility at which hazardous chemicals are stored do not exceed the specified threshold quantities outlined in schedule 15. MHFs must be licenced and establish the requirements for authorisation of the workplace as per section 41 of the WHS Act.

NSW-specific provisions are contained in clauses 530, 552, 557, 561 and 599, which are as follows:

530 This Chapter does not apply to certain facilities

- (1) This Chapter does not apply in relation 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.
- (2) This Chapter does not apply in relation to:
 - (a) a port operational area under the control of a port authority, or
 - (b) a pipeline to which the [Gas Supply Act 1996](#) or the [Pipelines Act 1967](#) applies, or
 - (c) (Repealed)
 - (d) (Repealed)
 - (e) a mine or a petroleum site.

(3) In this clause:

port authority means a body established under Part 2 or 4 of the [Ports and Maritime Administration Act 1995](#).

port operational area means the land and sea, including the fixed facilities and vessels, located in any area defined in Schedule 1 to the Ports and Maritime Administration Regulation 2007 and includes any berths adjacent to such an area, but does not include any long-term storage areas where dangerous goods are usually kept for more than 5 days.

552 Content

A safety case outline provided under clause 551 must include the following:

- (a) a written plan for the preparation of the safety case, including key steps and timelines, with reference being made to each element of the safety case,
- (b) a description of the methods to be used in preparing the safety case, including methods for ensuring that all the information contained in the safety case is accurate and up to date when the safety case is provided to the regulator,
- (c) details of the resources that will be applied to the preparation of the safety case, including the number of persons involved, their relevant knowledge and experience and sources of technical information,
- (d) a description of the consultation with workers that:
 - (i) occurred in the preparation of the safety case outline, and
 - (ii) will occur in the preparation of the safety case,
- (e) a draft of the emergency plan prepared or to be prepared under clause 557,
- (f) a summary of any arrangements that are to be made in relation to the security of the major hazard facility.

Example. Arrangements for preventing unauthorised access to the major hazard facility.

557 Emergency plan

- (1) The operator of a determined major hazard facility must prepare an emergency plan for the major hazard facility that:
 - (a) addresses all health and safety consequences of a major incident occurring, and
 - (b) includes all matters specified in Schedule 16, and
 - (c) provides for testing of emergency procedures, including the frequency of testing.Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.
- (2) In preparing an emergency plan, the operator must consult with:
 - (a) the following bodies:
 - (i) Fire and Rescue NSW, and
 - (ii) if the facility is within a rural fire district within the meaning of the [Rural Fires Act 1997](#)—the NSW Rural Fire Service, and
 - (b) in relation to the off-site health and safety consequences of a major incident occurring—the local authority.
- (3) The operator must ensure that the emergency plan addresses any recommendation made by the emergency service organisations consulted under subclause (2) in relation to:
 - (a) the testing of the emergency plan, including the manner in which it will be tested, the frequency of testing and whether or not the emergency service organisations will participate in the testing, and
 - (b) what incidents or events at the major hazard facility should be notified to the emergency service organisations.
- (4) The operator must have regard to any other recommendation or advice given by a person consulted under subclause (2).
- (5) The operator must:
 - (a) keep a copy of the plan at the major hazard facility, and
 - (b) give a copy of the plan to:
 - (i) the emergency service organisations consulted under subclause (2), and
 - (ii) any other relevant emergency service organisations.Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.
- (6) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations consulted under subclause (2) before applying for a licence for the major hazard facility.
Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.
- (7) The operator must immediately implement the emergency plan if:
 - (a) a major incident occurs in the course of the operation of the major hazard facility, or
 - (b) an event occurs that could reasonably be expected to lead to a major incident.Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.

- (8) The operator must notify the emergency service organisations consulted under subclause (2) of the occurrence of an incident or event referred to in subclause (3) (b).

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
- (b) in the case of a body corporate—\$18,000.

Note: This clause applies in addition to clause 43.

561 Content

- (1) The operator must prepare the safety case in accordance with the safety case outline prepared or altered under this Division.
- (2) A safety case must contain the following:
 - (a) a summary of the identification conducted under clause 554, including a list of all major incidents identified,
 - (b) a summary of the safety assessment conducted under clause 555,
 - (c) a summary of the major hazard facility's emergency plan,
 - (d) a summary of the major hazard facility's safety management system,
 - (e) a description of any arrangements made in relation to the security of the major hazard facility,
 - (f) a description of the consultation with workers that took place under clause 575 in the preparation of the safety case,
 - (g) the additional matters specified in [Schedule 18](#).
- (3) The safety case must include any further information that is necessary to ensure that all information contained in the safety case is accurate and up to date.
- (4) A safety case must demonstrate:
 - (a) that the major hazard facility's safety management system will, once implemented, control risks arising from major incidents and major incident hazards, and
 - (b) the adequacy of the measures to be implemented by the operator to control risks associated with the occurrence and potential occurrence of major incidents.
- (5) The operator must include in the safety case a signed statement that:
 - (a) the information provided under subclauses (1) and (2) is accurate and up to date, and
 - (b) as a consequence of conducting the safety assessment, the operator has a detailed understanding of all aspects of risk to health and safety associated with major incidents that may occur, and
 - (c) the control measures to be implemented by the operator:
 - (i) will eliminate the risk of a major incident occurring, so far as is reasonably practicable, and
 - (ii) if it is not reasonably practicable to eliminate the risk of a major incident occurring—will minimise the risk so far as is reasonably practicable, and
 - (iii) in the event of a major incident occurring—will minimise its magnitude and the severity of its health and safety consequences so far as is reasonably practicable, and
 - (d) all persons to be involved in the implementation of the safety management system have the knowledge and skills necessary to enable them to carry out their role safely and competently.
- (6) If the operator is a body corporate, the safety case must be signed by the most senior executive officer of the body corporate who resides in this jurisdiction.

599 Status of major hazard facility licence during review

- (1) This clause applies if the regulator gives the operator written notice of its decision to refuse to renew the licence.
- (2) If the operator does not apply for an external review, the licence continues to have effect until the last of the following events:
 - (a) the expiry of the licence,
 - (b) the end of the period for applying for an external review.
- (3) If the operator applies for an external review, the licence continues to have effect until the earlier of the following events:
 - (a) the operator withdraws the application for review,
 - (b) the Civil and Administrative Tribunal makes a decision on the review.
- (4) The licence continues to have effect under this clause even if its expiry date passes.

Questions that you may wish to answer about chapter 9 of the Regulation are as follows:

62. Do you wish to comment on the exclusion 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? (clause 530(1))
63. Do you wish to comment on the exclusion that means chapter 9 does not apply to a port operational area under the control of a port authority? (clause 530(2)(a))
64. Do you wish to comment on the exclusion that means chapter 9 does not apply to a pipeline to which the *Gas Supply Act 1996* or the *Pipelines Act 1967*? (clause 530(2)(b))
65. Do you wish to comment on the exclusion that means chapter 9 does not apply to a mine or petroleum site? (clause 530(2)(e))
66. Is the example under the heading 'arrangements for preventing unauthorised access to the major hazard facility' helpful? (clause 552)
67. Do you wish to comment on the requirement to consult with Fire & Rescue NSW in preparing an emergency plan for a major hazard facility? (clause 557(2)(a)(i))
68. Do you wish to comment on the requirement to consult with the NSW Rural Fire Service in preparing an emergency plan for a major hazard facility? (clause 557(2)(a)(ii))
69. Do you wish to comment on the requirement for the operator of a major hazard facility, to provide the content for a safety case, as stated in schedule 18? (clause 561)
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 renew a MHF license? (clause 599)

REGULATION CH 10 – MINES

Note: The chapter for mines has not been adopted in NSW. Provisions similar to what would have been included in chapter 10 are contained in the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014. **This is not part of the current statutory review and will be reviewed separately, at a different time.** Queries about this can be referred by clicking [contact the Resources Regulator here](#).

REGULATION CH 11 – GENERAL

This chapter identifies reviewable decisions made by the regulator and the process for granting exemptions under certain chapters of the Regulation.

NSW has provided 21 days for the decision of internal reviewer and decision on internal review in clauses 680 and 681 as follows:

680 Decision of internal reviewer

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as practicable and within 21 days after the application for internal review, or the additional information requested under subclause (3), is received.
- (2) The decision may be:
 - (a) to confirm or vary the reviewable decision, or
 - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) The internal reviewer may ask the applicant to provide additional information in support of the application for review.
- (4) The applicant must provide the additional information within the time (being not less than 7 days) specified by the internal reviewer in the request for information.
- (5) If the applicant does not provide the additional information within the required time, the reviewable decision is taken to have been confirmed by the internal reviewer at the end of that time.
- (6) If the reviewable decision is not varied or set aside within the 21 day period referred to in subclause (1), the reviewable decision is taken to have been confirmed by the internal reviewer.

681 Decision on internal review

Within 21 days after the application for internal review, or the additional information requested under clause 680 (3), is received, the internal reviewer must give the applicant written notice of:

- (a) the decision on the internal review, and
- (b) the reasons for the decision.

NSW has inserted information to allow for the Civil and Administrative Tribunal to hear applications for external review in clause 683 as follows:

683 Application for external review

- (1) An eligible person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) (an external review) of a decision made, or taken to have been made, on an internal review.
- (2) The application must be made within:
 - (a) 28 days after the day on which the decision first came to the eligible person's notice, or
 - (b) any longer time the Civil and Administrative Tribunal allows.

NSW inserted a note under clause 699(a) as follows:

699 Incident notification—prescribed serious illnesses

For the purposes of section 36 of the Act, each of the following conditions is a serious illness:

- (a) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:
 - (i) with micro-organisms, or
 - (ii) that involves providing treatment or care to a person, or
 - (iii) that involves contact with human blood or body substances, or
 - (iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products,

Note: The [Public Health Act 2010](#) also imposes obligations relating to the notification of certain medical conditions.

- (b) the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
 - (i) Q fever,
 - (ii) Anthrax,
 - (iii) Leptospirosis,
 - (iv) Brucellosis,
 - (v) Hendra Virus,
 - (vi) Avian Influenza,
 - (vii) Psittacosis.

NSW has specified a number of Acts to allow for easier exchange of information relating to the enforcement or administration of other laws. These are provided in clause 702 as follows:

702 Confidentiality of information—exception relating to administration or enforcement of other laws

The following Acts are prescribed for the purposes of section 271 (3) (c) (ii) of the Act:

- (a) a corresponding WHS law
 - (a1) [Coroners Act 2009](#)
- (b) [Crimes Act 1900](#)
- (c) [Crimes \(Administration of Sentences\) Act 1999](#)
- (d) [Criminal Procedure Act 1986](#)
- (d1) [Dams Safety Act 2015](#)
- (e) [Dust Diseases Tribunal Act 1989](#)
- (f) [Environmental Planning and Assessment Act 1979](#)
- (g) [Explosives Act 2003](#)
- (h) [Fire Brigades Act 1989](#)
- (h1) [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)
- (i) [Local Government Act 1993](#)
- (j) [Mine Subsidence Compensation Act 1961](#)
- (k) [Mining Act 1992](#)

- (k1) [National Vocational Education and Training Regulator Act 2011 of the Commonwealth](#)
- (l) [Occupational Health and Safety Act 2004 of Victoria](#)
- (m) [Occupational Safety and Health Act 1984 of Western Australia](#)
- (m1) [Petroleum \(Onshore\) Act 1991](#)
- (n) [Protection of the Environment Operations Act 1997](#)
- (o) [Public Health Act 2010](#)
- (o1) [Radiation Control Act 1990](#)
- (p) [Rural Fires Act 1997](#)
- (p1) [State Emergency and Rescue Management Act 1989](#)
- (p2) [Surveying and Spatial Information Act 2002](#)
- (p3) [Water Act 1912](#)
- (q) [Water Management Act 2000](#)
- (r) [Workers Compensation Act 1987](#)
- (s) [Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987](#)
- (t) [Workers' Compensation \(Dust Diseases\) Act 1942](#)
- (u) [Workplace Injury Management and Workers Compensation Act 1998](#).

NSW has provided for certain breaches of the Act and Regulation to be penalty notice offences. These have been determined in accordance with principles set and agreed by SWA members.

NSW penalty notice offences are specified in schedule 18A, as provided by clause 702A of the Regulation as follows:

702A Penalty notice offences and penalties

- (1) For the purposes of section 243 of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 18A is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is:
 - (i) in the case of a penalty payable by an individual—the amount specified in relation to the offence in Column 2 of that Schedule, and
 - (ii) in the case of a penalty payable by a corporation—the amount specified in relation to the offence in Column 3 of that Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 18A is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

Penalty notice offences in schedule 18A are as follows:

Schedule 18A Penalty notice offences		
Offences under the Act		
Column 1 Provision	Column 2 Penalty (\$)— Individuals	Column 3 Penalty (\$)— Corporations
Sections 38 (7), 75 (1), 97 (1) and 273	\$600	\$3000
Sections 70 (1) (c), (d) and (e) and (2), 72 (7), 79 (3) and (4) and 193	\$720	\$3600
Section 74 (1)	\$240	\$1200
Offences under this Regulation		
Column 1 Provision	Column 2 Penalty (\$)— Individuals	Column 3 Penalty (\$)— Corporations
Clauses 22, 46, 66 (2) and (5), 68 (1), 77 (5), 85 (1)–(3), 150 (1) and (2), 165 (1), 182 (4), 224, 253, 254, 295 (1), 296, 301, 302, 303 (3), 304 (2)–(4), 308, 312, 313 (3), 316, 387, 388, 409, 415 (2), 425, 426, 427, 429 (5), 432 (5), 438, 451 (5), 464 (3), 465, 466 (1) and (3), 482 (3) and 529	\$432	\$2160
Clauses 48 (2), 50 (1), 67 (4), 69, 72, 154, 155, 159, 160, 238 (2), 434, 449, 450, 458 (1) and (3) and 555 (4)	\$720	\$3600
Clauses 50 (2), 76 (2), 77 (2)–(4), 85 (4), 94 (1), 96, 97, 98 (1), 111, 124, 125, 126, 127 (1), 139, 142 (1), 150 (3), 165 (2), 170, 175, 180, 181 (2)–(4), 182 (2), (3) and (5), 226, 228, 229, 230, 237, 260 (3)–(5), 262 (1), 273 (3) and (4), 275 (1), 282 (1), 287, 288 (1), 303 (1), (2) and (4), 304 (5), 313 (1), (2) and (4), 326, 378, 390, 391 (3), 418, 423, 444, 445 (3) and (4), 461, 505 (1), 506, 507, 512, 513 (1), 525, 572 (4), 587 (1), 588, 593, 594 (1) and 607	\$144	\$720

Questions you may wish to answer about chapter 11 of the Regulation are as follows:

71. Do you wish to comment on the period of 21 days for the internal reviewer to review the previous decision? (clause 680)
72. 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? (clause 681)
73. 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? (clause 683)
74. Is the note advising that the *Public Health Act 2010* also imposes obligations relating to the notification of certain medical conditions, helpful? (clause 699)
75. 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)
76. Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A)

CODES OF PRACTICE

Codes of practice are the third and final tier and therefore are an important part to consider in this statutory review. Section 274 of the Act provides for the minister to make a code of practice (code). A code is not legally enforceable in the way that the Act and Regulation is. A code also cannot introduce requirements that are not prescribed in the Act or regulations. Instead a code is designed to provide duty holders with guidance about how they can practically comply with their legislative obligations. Codes can be referenced when an Inspector issues an improvement or prohibition notice, but are also different to guides in that they have a special legal standing. This special status is provided in the Act, and allows codes to be used as evidence of compliance, or failure to comply, in legal proceedings. This does not prevent duty-holders from complying with the requirements of the Act or Regulation in other ways, however codes provide evidence of what is known about specific hazards, and what controls are reasonably practicable, in situations where a code provides relevant information.

In the same way that there is a model Work Health and Safety Act and model Work Health and Safety Regulations, there are model codes. Consistent with the terms of reference for this review, the focus of this section will be on codes of practice that are not model codes (e.g. NSW-specific codes). Not focusing on the model codes for this discussion makes sense because the model codes have all been made in the last five years; therefore they are very recent documents. More importantly, the model codes are developed and maintained by processes under the IGA, therefore any comments received on those codes would need to be considered in relation to the national framework and the processes for developing and reviewing codes under the IGA.

This review will focus on the current NSW-specific codes. These are codes that were developed by NSW before the commencement of harmonisation; we refer to them as the pre-WHS codes. There are currently 20 pre-WHS codes that remain relevant in NSW. These were developed under former NSW occupational health and safety laws, but were in force when the WHS Act commenced on 1 January 2012, and are now taken to have been made under the WHS Act.

The WHS Act has requirements that must be met, before the minister can approve, vary or revoke any codes under the Act. Because the current NSW-specific codes were developed before the commencement of harmonisation, they were not developed in accordance with the current requirements for national consultation, however as they are now taken to have been made under the WHS Act, there is a requirement that variations to any of the codes must involve consultation between:

- the governments of the Commonwealth and each state or territory
- unions
- employer organisations.

The above is worth noting as it will be considered, when developing recommendations regarding the NSW-specific codes. This should not affect anyone wishing to comment on any of the pre-WHS codes where genuine comments on these codes are invited. The information received from this consultation will be analysed to inform decisions about what action, if any, is taken in relation to each pre-WHS code. **Unless there is a need for action to be taken in relation to any of the pre-WHS codes, it is currently planned to leave these codes as they are.** This is because it is preferable to have the existing NSW codes as model codes, and that the NSW codes are updated when consultation occurs to make them model codes. NSW is not able to decide that our existing codes will become model codes unless a majority of other jurisdictions agree to make the pre-WHS codes into model codes. It is because of this, that a number of the pre-WHS codes have not become model codes. SafeWork NSW has raised this concern with SWA, but thus far there has not been agreement that allows NSW codes to become model codes.

To assist with the third and final tier of this discussion paper, **clear information is required about the NSW pre-WHS codes that remain in force.** Please consider the codes and where appropriate, provide comment on the questions posed below. This will identify whether there is an urgent need to update any of the codes. Evidence and strong arguments that are presented will enable NSW to make more informed recommendations, and make stronger arguments for our codes to become model codes.

There are 20 pre-WHS codes that remain applicable in NSW under the WHS laws. They are listed below with links provided:

	Title	Descriptor	Date
1.	Amenity tree industry code of practice	Provides practical guidance on safety requirements for the amenity tree industry.	31/07/98
2.	Cash in transit code of practice	Provides guidance to prevent injury and illness to persons engaged in Cash-in-Transit (CIT) operations.	14/02/03
3.	Collection of domestic waste code of practice	Guidance to prevent injury and illness to people engaged in, and persons affected by, the collection of domestic waste.	29/07/05
4.	Control of work-related exposure to hepatitis and HIV (blood-borne) viruses code of practice	Practical guidance to employers and workers on the suitable methods to control risks in blood-borne viruses.	15/10/95
5.	Cutting and drilling concrete and other masonry products code of practice	Provides practical advice on the use of saws and drills and associated equipment used in the cutting and drilling of concrete and other building structural materials.	29/11/96
6.	Formwork code of practice	Advice on preventing injury to people engaged in erecting and dismantling formwork and associated equipment.	27/03/98
7.	Moving plant on construction sites code of practice	This assists in deciding measures to prevent risks to workers and other people on construction sites where moving plant is used.	16/01/04
8.	Overhead protective structures code of practice	Industry guidance on the design, supply, installation and use of overhead protective structures.	16/12/94
9.	Safe handling of timber preservatives and treated timber code of practice	Provides guidance to ensure the health and safety of workers handling timber preservatives and timber treated with preservatives.	20/09/93
10.	Safe use and storage of chemicals (including pesticides and herbicides) in agriculture code of practice	Provides a guide to farmers and workers in agricultural industries on how to conform with the relevant legislation relating to the use and storage of chemicals. This includes pesticides and herbicides.	28/04/06
11.	Safe use of bulk solids containers and flatbed storage including silos, field bins and chaser bins code of practice	Intended to help prevent injuries in the use of bulk storage containers and flatbed storage.	22/09/06
12.	Safe use of pesticides in non-agricultural workplaces code of practice	Promotes safe and healthy practices in the use, storage and transport of pesticides by end users.	29/06/06
13.	Safe use of synthetic mineral fibres code of practice	Use this to meet the requirements of the Occupational Health and Safety (Synthetic Mineral Fibres) Regulation 1993.	23/04/93
14.	Safe work on roofs part 1 commercial industrial code of practice	Provides employers, self-employed persons and employees with practical advice on safe work on roofs for commercial and industrial buildings.	06/09/09
15.	Safety aspects in the design of bulk solids containers including silos, field bins and chaser bins code of practice	Provides guidance on safety aspects of the design of all types of bulk solids storage containers above four tonne or four cubic metre capacity.	26/08/05

	Title	Descriptor	Date
16.	Safety in forest harvesting operations code of practice	Provides guidance to prevent injury to people engaged in the manual or mechanical felling of trees and related activities.	18/10/02
17.	Sawmilling industry code of practice	This helps in the prevention of injury to people employed in NSW sawmills.	24/04/97
18.	Technical guidance code of practice	This should be followed unless there is an alternative course of action, which achieves the same or a better standard of health and safety.	21/09/01
19.	Tunnels under construction code of practice	Practical guidance for safe tunnel construction.	27/11/06
20.	Work near overhead power lines code of practice	Provides information to protect people from the risks arising when working near overhead power lines and associated electrical apparatus.	22/09/06

Questions that you may wish to answer about the pre-WHS codes are as follows:

77. Which of the pre-WHS codes listed above do you still use?
78. 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.
79. 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.
80. 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.
81. Are there any parts of the pre-WHS codes that are unclear or confusing?
If yes, please state which codes, which parts and what is unclear or confusing.
82. Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes
83. Is additional guidance needed for any of the subjects covered by the pre-WHS codes?
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.

APPENDIX 1 – QUESTIONS YOU MAY WISH TO ANSWER

1. [If you wish all or some of your feedback to remain confidential, please indicate below and BRD will take this into consideration.](#) 11
2. [Contact information.](#) 11
3. [Tick the box that applies to you \(type of submission\).](#) 11
4. [Are the objects of the Act still valid?](#) 13
5. [Are the terms of the Act appropriate for achieving the stated objectives?](#) 13
6. [Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure?](#) 13
7. [Are any of the objectives causing unnecessary costs for business?](#) 13
8. [Are the NSW-specific definitions definitions in section 4 of the Act working effectively?](#) 14
9. [Are these definitions clear? Please provide examples of circumstances where any definitions are not clear.](#) 14
10. [Do you have any comments about how the strict liability provision is working?](#) 14
11. [Do you have any comment regarding the provision that prevents duplication of incident notifications where they must be notified to the Resources Regulator?](#) 15
12. [Do you have any comment to make regarding the IRC being the forum that can receive and decide whether to disqualify a HSR?](#) 17
13. [Are the additional provisions that have been inserted for health and safety committee's in coal mines working well?](#) 17
14. [Are the provisions relating to prisoners, working well?](#) 17
15. [Are the organisations listed to clarify who is an emergency services worker, appropriate?](#) 17
16. [Are there any other organisations that should be listed?](#) 17
17. [Are there any organisations listed, that should not be?](#) 17
18. [Do you have any comment to make regarding the District Court being the forum that can receive applications about civil proceedings in relation to discriminatory, coercive and misleading conduct?](#) 17
19. [Do you wish to comment about the IRC being the Authorising Authority for NSW?](#) 18
20. [Do you wish to comment on the *Industrial Relations Act 1996* being named as the relevant state or industrial law in NSW?](#) 18
21. [Is the definition of 'authorised person' working well? If no, please provide details and examples about how this could be improved for your particular circumstance.](#) 18
22. [Are the classes of persons that the regulator may appoint as an inspector, working well?](#) 19
23. [Are the provisions for Inspectors to obtain a search warrant to obtain information about a suspected WHS breach clear?](#) 20
24. [Do the references to the *Law Enforcement \(Powers and Responsibilities\) Act 2002* provide suitable powers for the WHS Inspector and NSW Police to cooperate and obtain information about a suspected WHS breach?](#) 20
25. [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?](#) 20
26. [Do you wish to comment on the provisions that NSW currently provides for an Inspector to obtain a person's name and address?](#) 20
27. [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?](#) 20

28. Do you have any comment to make regarding the District Court being the forum that can receive applications by the regulator, about noncompliance with notices?	21
29. Do you wish to 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?	22
30. Do you wish to comment about the IRC being the nominated external body to receive and decide an application for review of a reviewable decision made by the regulator?	22
31. Do you wish to comment about the IRC 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?	22
32. Is the forum for proceedings for an offence against the WHS laws (except category 3 offences) being the Local Court or the District Court in its summary jurisdiction, working well?	24
33. Is the requirement for proceedings about category 3 offences to be dealt with summarily, working well?	24
34. Are the provisions of the <i>Industrial Relations Act 1996</i> that relate to appeals under the Act working well?	24
35. Do you wish to comment about the provision for the secretary of a union to bring proceedings for an offence against the Act?	24
36. Do you wish to comment on the penalty notice scheme being made under the <i>Fines Act 1996</i>?	25
37. Do you wish to comment on the provisions for sharing information by the NSW WHS Regulators?	25
38. Do you have any comment regarding ongoing reviews of the Act?	26
39. What is/isn't working well for small business in relation to the NSW-specific provisions of the WHS laws?	26
40. What has/hasn't improved for PCBUs or workers operating in more than one jurisdiction?	26
41. Are there differences between how the NSW regulators are applying the legislation compared to other states, territories and the commonwealth? If yes, please provide a detailed response.	26
42. Are there differences between how the NSW regulators are providing advice and assistance compared to the other states, territories and the commonwealth? If yes, please provide a detailed response.	26
43. Are the provisions that relate to two WHS regulators working well?	28
44. Are any additional provisions needed to provide for easier communication and exchange of information between the regulators?	28
45. Do you have any comments to make about the forums nominated to conduct reviews under the WHS Regulation in NSW?	29
46. Do any parts or sections of schedule 4 require updating? 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.	29
47. Are the above-mentioned definitions working effectively? (clause 5 and 7)	33
48. 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)	33
49. 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)	33
50. Is the above note about training for health and safety representatives helpful?	33
51. 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? If information is needed, please provide examples of situations where the information has been needed.	36
52. Is the meaning of electrical equipment clear? (clause 144)	36
53. Do you wish to comment on the term 'authorised' that has been inserted by NSW? (clause 146)	36

54. Do you wish to comment on the exclusion that applies to an electricity supply authority, or a person accredited and providing contestable services? (clause 152)	36
55. Is the note that advises that residual current devices (RCD's) are also regulated under the <i>Electricity (Consumer Safety) Act 2004</i>, helpful? (clause 164)	36
56. Is the note that advises the <i>Electricity (Consumer Safety) Act 2004</i> and the Electricity Supply (Safety and Network Management) Regulation 2008 also apply to the PCBU, helpful? (clause 166)	36
57. Are the professional organisations or associations provided for determining a competent person to conduct a major inspection of registered mobile cranes and tower cranes appropriate? (clause 235)	37
58. Do the local laws that NSW added for exemptions to clause 328 remain appropriate?	40
59. Do you wish to comment on the <i>Pesticides Act 1999</i> being specified to provide for an exemption, meaning identification of physical or chemical reaction is not required when the chemical is being used for agricultural purposes? (clause 354)	40
60. Do you wish to comment on the exemption 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 <i>Protection of the Environment Operations Act 1997</i>? (clause 419)	44
61. Do you wish to comment on 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 license, working well? (clauses 497 and 500)	44
62. Do you wish to comment on the exclusion 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 <i>Offshore Petroleum and Greenhouse Gas storage Act 2006</i> of the Commonwealth? (clause 530(1))	48
63. Do you wish to comment on the exclusion that means chapter 9 does not apply to a port operational area under the control of a port authority? (clause 530(2)(a))	48
64. Do you wish to comment on the exclusion that means chapter 9 does not apply to a pipeline to which the <i>Gas Supply Act 1996</i> or the <i>Pipelines Act 1967</i>? (clause 530(2)(b))	48
65. Do you wish to comment on the exclusion that means chapter 9 does not apply to a mine or petroleum site? (clause 530(2)(e))	48
66. Is the example under the heading 'arrangements for preventing unauthorised access to the major hazard facility' helpful? (clause 552)	48
67. Do you wish to comment on the requirement to consult with Fire & Rescue NSW in preparing an emergency plan for a major hazard facility? (clause 557(2)(a)(i))	48
68. Do you wish to comment on the requirement to consult with the NSW Rural Fire Service in preparing an emergency plan for a major hazard facility? (clause 557(2)(a)(ii))	48
69. Do you wish to comment on the requirement for the operator of a major hazard facility, to provide the content for a safety case, as stated in schedule 18? (clause 561)	48
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 renew a MHF license? (clause 599)	48
71. Do you wish to comment on the period of 21 days for the internal reviewer to review the previous decision? (clause 680)	52
72. 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? (clause 681)	52
73. 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? (clause 683)	52
74. Is the note advising that the <i>Public Health Act 2010</i> also imposes obligations relating to the notification of certain medical conditions, helpful? (clause 699)	52
75. 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)	52

76. Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A)	52
77. Which of the pre-WHS codes listed above do you still use?	55
78. 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.	55
79. 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.	55
80. 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.	55
81. Are there any parts of the pre-WHS codes that are unclear or confusing? If yes, please state which codes, which parts and what is unclear or confusing.	55
82. Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes	55
83. Is additional guidance needed for any of the subjects covered by the pre-WHS codes? 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.	55

