

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

#22



**COMPLETE**

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PAGE 1: Have your say!

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

Q2: Contact information

Name	Ken McKell
Industry	Meat Industry
Region	Sydney
Email Address (optional)	[REDACTED]

Q3: Tick the box that applies to you

Employer association

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Q4: Are the objects of the Act still valid?

Please explain your answer  
All parties have a role to play in reducing the incidence of injury or illness to all persons in the work environment. WH&S is an ongoing issue and a proactive approach is needed to meet the objectives of the Act and Regulations.

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

No,  
Please explain your answer  
There needs to be clearer definitions and a clearer distinction of the role of 'PCBUs' and 'Officers'.

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

Yes,  
Please explain your answer  
Yes. Businesses should be better assisted by providing clearer advice, education and the availability of incentives in order to improve health and safety and reduce the risk of injury.

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

Yes,  
Please explain your answer  
Legislation is very confusing and prescriptive for business, particularly small business. There needs to be a reduction in 'red tape' as well as clearer legislative provisions. What is needed is a greater focus and application on practical assistance for businesses and workers.

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

Yes

[REDACTED]

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

No,

Please explain your answer: provide examples where the definitions are not clear.  
Requires a clearer definition of 'Industrial Court' and 'Local Authority'.

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

Consistency of decisions by the Courts and the Commission must be ensured subject to the circumstances of the matter before them. The onus should always be on the prosecution to prove that a director or manager was in breach of the legislation including a clear explanation of what the defendant could or should have done.

PAGE 3: The Work Health and Safety Act 2011 (NSW)

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

N/A

PAGE 4: The Work Health and Safety Act 2011

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

No comment (N/C)

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

*Respondent skipped this question*

**Q14: Are the provisions relating to prisoners working well?**

*Respondent skipped this question*

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

Yes

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

No

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

No

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

No

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

No

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

No

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

If no, please provide details and examples about how this could be improved for your particular circumstances  
This is currently not a provision of the Act. If it were to be inserted, the definition of 'authorised person' should not include anyone other than a member of staff of the regulator in order to avoid the risk of abuse of this power.

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

Please explain your answer N/C

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

No,

Please explain your answer  
The inspector needs to reveal what the suspected breach/es is/are and on what basis.

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

No,

Please explain your answer  
Such powers should be specified in the Act or Regulations in order to make it easier for businesses and workers.

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

No

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

There should be an explanation in the Act or Regulations as to why a residential address is necessary.

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

It should not be an offence to refuse to give their residential address to an inspector. A police officer.

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

N/C

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

N/C

PAGE 11: The Work Health and Safety Act 2011 (NSW)

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

N/C

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

N/C

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

Please explain your answer N/C

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

Please explain your answer N/C

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

Please explain your answer N/C

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

It is not necessary for the secretary of a union to bring proceedings for an alleged offence because the regulator (or inspector) can adequately pursue such matters.

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

N/C

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

N/C

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

N/C

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

There needs to be continual assistance and flexibility for small business in relation to WH&S compliance. A greater focus by the regulator on assistance rather than prosecution should be applied for all businesses.

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

N/C

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

Yes,

If yes, please provide a detailed response.  
There are still differences in relation to WH&S regulations and codes of practice between jurisdictions, which need consistency (e.g. working from heights).

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

Yes,

If yes, please provide a detailed response.  
Other State regulators have provided funding for projects and activities for businesses, employer organisations and unions. NSW needs to reintroduce the WorkCover Assist program, or similar program. The tripartite Industry Reference Groups (IRG's) also need to be reestablished. The IRG's provided a proactive beneficial networking and interactive forum for all industries and the NSW regulator. It was also a positive and beneficial communication tool. Similar structures are operating in most other States.

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

Please explain your answer N/C

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

Please explain your answer N/C

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

N/C

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**Q46: 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.  
N/C

PAGE 17: The Work Health and Safety Regulation 2011

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

Please explain your answer N/C

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

N/C

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

N/C

PAGE 18: The Work Health and Safety Regulation 2011

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

Yes,

Please explain your answer  
However, wording should be added to mention that if there is no agreement between the HSR and the PCBU then the matter is finalised and cannot be referred to a third party.

PAGE 19: The Work Health and Safety Regulation 2011

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

Please explain your answer or provide examples of situations where the information has been needed.  
N/C

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

Please explain your answer N/C

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

N/C

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

N/C

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

Yes



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

PAGE 20: The Work Health and Safety Regulation 2011

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

PAGE 21: The Work Health and Safety Regulation 2011

Q58: Do the local laws that NSW added for exemptions to clause 328 remain appropriate? Please explain your answer N/C

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

N/C

PAGE 22: The Work Health and Safety Regulation 2011

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

N/C

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

N/C

PAGE 23: The Work Health and Safety Regulation 2011

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

n/a

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

n/a



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

n/a

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

n/a

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

N/C

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

N/C

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

N/C

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

N/C

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

N/C

PAGE 24: The Work Health and Safety Regulation 2011

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

N/C

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

N/C

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

N/C

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

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

N/C

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

N/C





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PAGE 25: Codes of Practice

Q77: Which of the pre-WHS codes do you still use?	<i>Respondent skipped this question</i>
Q78: How often do you use the pre-WHS codes you have listed? Please explain how often you use each code you named for the question above.	<i>Respondent skipped this question</i>
Q79: What parts of the pre-WHS codes have you looked up in the last 18 months? Please describe the situation and whether the part you looked up was useful, or not, and why.	<i>Respondent skipped this question</i>
Q80: What parts of the pre-WHS codes do you or persons you represent find useful? Please describe which parts are useful, when and how these are useful to you or persons you represent.	<i>Respondent skipped this question</i>
Q81: Are there any parts of the pre-WHS codes that are unclear or confusing?	<i>Respondent skipped this question</i>
Q82: Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes?	<i>Respondent skipped this question</i>
Q83: Is additional guidance needed for any of the subjects covered by the pre-WHS codes?	<i>Respondent skipped this question</i>



