

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

#15

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, December 02, 2016 8:18:43 AM
Last Modified: Friday, December 02, 2016 9:16:53 AM
Time Spent: 00:58:10
IP Address: [REDACTED]

PAGE 1: Have your say!

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

Q2: Contact information

Name Julian Richards
Region Regional NSW

Q3: Tick the box that applies to you Worker

PAGE 2: The Work Health and Safety Act 2011 (NSW)

Q4: Are the objects of the Act still valid? Yes

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

Q6: Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure? No

Q7: Are any of the objectives causing unnecessary costs for business? No,
Please explain your answer
Safety will always come at a cost.

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

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

Q10: Do you have any comments about how the strict liability provision is working?
No

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?

No

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

No

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

Yes,

Please explain your answer No comment

Q14: Are the provisions relating to prisoners working well?

Yes,

Please explain your answer No comment

PAGE 5: The Work Health and Safety Act 2011 (NSW)

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?

All matters, including prosecutions should be dealt with by the Industrial Relations Court / Commission

PAGE 6: The Work Health and Safety Act 2011 (NSW)

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

No

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

No

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

Yes

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

Yes



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

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
Inspectors would benefit from being able to demand the name and address of persons that an inspectors suspects could assist them with their inquiries relating to enforcement of the legislation, whether or not the persons are suspected of contravening the legislation. Further, inspectors would benefit from also being able to request a person date of birth, when asking for their name and address, as this would help them better identify a person, given some people share the same name and residential address. Further, it should be an offence for a person to not furnish proof of identify, when requested by an inspector - otherwise, a person can give a false name and not be held to account legally.

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? *Respondent skipped this question*

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?

Inspectors would benefit from being able to demand the name and address of persons that an inspectors suspects could assist them with their inquiries relating to enforcement of the legislation, whether or not the persons are suspected of contravening the legislation. Further, inspectors would benefit from also being able to request a person date of birth, when asking for their name and address, as this would help them better identify a person, given some people share the same name and residential address. Further, it should be an offence for a person to not furnish proof of identify, when requested by an inspector - otherwise, a person can give a false name and not be held to account legally.

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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?

Industrial relations commission/court is the best forum

PAGE 10: The Work Health and Safety Act 2011 (NSW)

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?

Best dealt with by a specialist court - industrial relations commission/court

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

Agree

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?

Agree

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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?

No,

Please explain your answer
I believe these matters should be dealt with by specialist courts - industrial relations commission/court

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

No,

Please explain your answer
I believe these matters should be dealt with by specialist courts - industrial relations commission/court

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

Yes,

Please explain your answer No comment

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

I agree with the current approach. In fact, private criminal prosecutions should be permitted.

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

Penalty notice scheme should be expanded to include ALL offences contained within the regulation

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

No

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

No

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

No comment

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

The legislation appears to have resulted in less successful prosecutions - the current law is not a great deterrent.



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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.
More prosecutions, but of course, the number has dropped significantly over the years.

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

No

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

No,

Please explain your answer
Single regulator is needed, with specialist inspectors for mining.

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

No

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

No

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

No,

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

PAGE 17: The Work Health and Safety Regulation 2011

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

No,

Please explain your answer
The definition of asbestos removal work should include "disturbance, repair and removal", not just removal....otherwise, there is a loop hole in the legislation, which would allow non-licensed entities to repair commercial asbestos roofing, for example, where removal is not always warranted - although the health risks may still be present.



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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)

Dangerous goods risk control provisions should mirror the former national dangerous goods standard and code of practice, as found in the previous NSW OHS regulation 2001. Some missing provisions include, ensuring adequate separation between dangerous goods and public places, and ensuring unauthorized access to dangerous goods is prevented.

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)

They should apply to all places, whether workplace or not.

PAGE 18: The Work Health and Safety Regulation 2011

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

Yes,

Please explain your answer No comment

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?

No

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

Yes

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

No comment

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

No comment

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

Yes

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? Yes

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

No comment

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?

Licensing should be required for the transport of asbestos above certain thresholds and the load should be placarded.

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

No comment

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?

No comment

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

No comment

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

No comment

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

No comment

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

Respondent skipped this question

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?

Agree with current process



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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?

Agree with current process

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?

Agree with current process

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?

Specialist court should be used - industrial relations commission/court

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?

No

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

No

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?

Specialist court should be used - industrial relations commission/court

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)

No

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

Expand penalty notice scheme to ALL aspects of the regulation

PAGE 25: Codes of Practice

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

None

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.

None

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.

None



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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.

Respondent skipped this question

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

No

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

No

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

Yes,

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.

Clear, specific safe approach distances for power lines



