

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

#25



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 19, 2016 1:58:33 PM
Last Modified: Monday, December 19, 2016 3:28:03 PM
Time Spent: 01:29:30
IP Address: [REDACTED]

PAGE 1: Have your say!

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

Q2: Contact information

Name Hugh McMaster
Industry Road Transport
Region Sydney
Email Address (optional) [REDACTED]

Q3: Tick the box that applies to you Employer association

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

Q4: Are the objects of the Act still valid?

Yes,

Please explain your answer
ARTIO NSW supports the objects, that is to provide a nationally consistent framework to secure healthy and safe workers and workplaces. ARTIO NSW believes these objects remain valid. To give effect to this objective, as a matter of principle, ARTIO NSW supports the removal of any distinguishing features of the legislative and regulatory framework governing WHS in NSW.

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,

Please explain your answer
There are costs to business that arise from managing its affairs in a compliant manner. However, it would be trite for any employer representative to assert there is excessive red tape because that ignores the potential costs of less red tape, including the social and economic costs of higher death and injury rates, workers' compensation premium increases, business interruption and loss of reputation as a good employer.

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

No,

Please explain your answer
Please see previous answer.



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

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

Yes,

Please explain your answer
ARTIO NSW supports the retention of NSW specific definitions because they relate to the institutional framework that is peculiar to NSW.

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, but as a matter of principle ARTIO NSW believes that offences under the Act should fall within the strict liability category because the notion of 'reasonable practicality' also applies to WHS laws in NSW.

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?

ARTIO NSW has no comments on any aspect of NSW WHS law relating to mines.

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?

ARTIO NSW supports the retention of the Industrial Relations Commission (IRC) as the appropriate forum to receive and make decisions regarding a health and safety representative.

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

Please explain your answer No comment.

Q14: Are the provisions relating to prisoners working well?

No,

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,

Please explain your answer
ARTIO NSW believes it is appropriate to nominate all NSW-based emergency services organisations in the Act as it provides clarity and adds certainty.

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

None that ARTIO NSW is aware of.

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

No.



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

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?

ARTIO NSW is satisfied that the District Court is the appropriate court to receive the applications referred to above.

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?

ARTIO NSW believes the IRC should continue to be the Authorising Authority in relation to WHS entry permit matters in NSW.

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

ARTIO NSW supports a specific reference to the Industrial Relations Act 1996 (IR Act) in the Act because it provides specific guidance as to how the IRC can exercise its powers and functions.

PAGE 7: The Work Health and Safety Act 2011 (NSW)

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
No comment.

PAGE 8: The Work Health and Safety Act 2011 (NSW)

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

Please explain your answer No comment.

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

Please explain your answer No comment.

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

Please explain your answer No comment.

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

Please explain your answer
ARTIO NSW has no specific comments except to say that because powers to issue a search warrant are vested in the NSW Police, it is appropriate that the Act specifically refers to NSW law in relation to law enforcement. Any powers vested in an Inspector arising from the issuing of a search warrant should be consistent under national WHS law and, therefore, should only vary in relation to who has authority to issue a search warrant.

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

ARTIO NSW supports such provisions on the grounds that such powers should be nationally consistent.



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

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?

Only that this provision should be consistent with national WHS law.

PAGE 9: The Work Health and Safety Act 2011 (NSW)

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?

ARTIO NSW is satisfied that the District Court is the appropriate court to hear applications for any injunction related to non-compliance with notices.

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?

ARTIO NSW is satisfied that the District Court is the appropriate court to hear applications for any injunction related to non-compliance with notices.

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?

ARTIO NSW is satisfied that the IRC is the appropriate jurisdiction to receive and decide an application for a review of an reviewable decision..

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?

ARTIO NSW is satisfied that the IRC is the appropriate jurisdiction to hear an application for review of such a decision.

PAGE 12: The Work Health and Safety Act 2011 (NSW)

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 No comment.

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

Please explain your answer No comment.

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

Please explain your answer No comment.



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

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

ARTIO NSW supports an amendment to Section 230 of the Act to deny the secretary of a union to bring proceedings for an offence against the Act. ARTIO NSW believes that the secretary of a union still has rights to take action which may lead to a prosecution but this should take place through a submission to the regulator or an Inspector with appropriate written authority as provided for in Sections 230 (1) (a) and (b). ARTIO NSW believes Section 230 should be amended so that it is consistent with Section 230 of the Work Health and Safety Act 2011 Cth. This means ARTIO NSW supports the removal of the the following sections: 230 (1) (c); 230 (1A); 230 (3) and 230 (6).

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

No comment.

PAGE 13: The Work Health and Safety Act 2011 (NSW)

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

No comment.

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

ARTIO NSW supports current arrangements whereby regular reviews of the Act take place approximately every 5 years to ensure the Act retains relevance. ARTIO NSW also supports an inquiry process which is efficient and which requires those responsible to table a report to each House of Parliament within 12 months of the expiry of the period of 5 years after the date of assent of the Act.

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?

No specific comment, however it is important for Commonwealth, State and Territory governments to work together to create a nationally uniform legislative and regulatory regime to to maximum extent possible. This is particularly important in an industry like road transport given the significant proportion of businesses which are located in more than one jurisdiction. This also benefits the road transport industry's customers who, along with providers of transport and logistics services, have the opportunity to manage compliance in a more nationally uniform policy and regulatory framework. It is also important to note that governments throughout Australia have supported initiatives aimed at creating a nationally uniform policy and regulatory framework in relation to road law. This has led to the creation of the National Transport Commission (NTC) which provides advice on national transport policy and legislation and, in 2014, the National Heavy Vehicle Regulator, which compliments the NTC in ares related to the National Heavy Vehicle Law.

Q41: 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. ARTIO NSW is not aware of any differences, however ARTIO NSW believes there is a risk of this occurring for two main reasons. Firstly, historically, legislation at the jurisdictional level was different which means that a range of legacy issues are likely to persist relating to training, culture, the institutional framework and precedent. Secondly, individuals interpret the law and regulations differently. ARTIO NSW supports the development and delivery of a nationally uniform training regime, albeit one which recognises differences due to factors such as the existence of jurisdictional based legislation in areas such as environmental or industrial law and law enforcement.



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

Q42: 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.
No comment.

PAGE 14: The Work Health and Safety Act 2011 (NSW)

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

Please explain your answer No comment.

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

Please explain your answer No comment.

PAGE 15: The Work Health and Safety Act 2011 (NSW)

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

No comment.

PAGE 16: The Work Health and Safety Act 2011 (NSW)

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.
No comment.

PAGE 17: The Work Health and Safety Regulation 2011

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

Please explain your answer No comment.

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

No comment.

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

No comment.

PAGE 18: The Work Health and Safety Regulation 2011

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

Yes,

Please explain your answer
ARTIO NSW believes the Note adds clarity to parties with responsibilities under the Act.



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

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.
No comment.

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

Please explain your answer. No comment.

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

No comment.

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

No.

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

Please explain your answer. No comment.

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?

Please explain your answer. No comment.

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?

Please explain your answer. No comment.

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,

Please explain your answer
ARTIO NSW's comments are confined to the Dangerous Goods (Road and Rail Transport) Act 2008. (Part 7.1 in Section 328).

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



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

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?

ARTIO NSW supports strong laws related to the transport and disposal of asbestos. ARTIO NSW is satisfied that the POEO Act is the appropriate legislative instrument for the licensing of road transport operators involved in the transport and disposal of asbestos and, accordingly, an exemption from WHS regulations is warranted.

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)

ARTIO NSW supports the retention of a requirement that individuals, including a body corporate and each officer of a body corporate involved in asbestos removal provide a declaration regarding compliance or otherwise with the POEO Act. Related sections in the POEO Act dealing with decisions on an application and matters to be taken into account in making a decision are also supported by ARTIO NSW.

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?

No comment.

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

No comment.

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

No comment.

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

No comment.



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

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

No comment.

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 comment.

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

No comment.

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

No comment.

Q74: Is the note in clause 699, advising that the Public Health Act 2010 also imposes obligations relating to the notification of certain medical conditions, helpful? Please explain your answer No comment.

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

No comment.

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

ARTIO NSW believes that wherever possible penalties should be consistent with other jurisdictions which have WHS legislation which is part of the WHS national framework, otherwise, ARTIO NSW has no comment.

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.

N/A.

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.

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.

N/A.

Q81: 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.

N/A.



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

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

Please explain your answer N/A.

Q83: 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.
No comment.

