

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

#13



COMPLETE

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IP Address: [REDACTED]

PAGE 1: Have your say!

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

Q2: Contact information

Name

Tim Fleming

Industry

Construction / Engineering / Rail

Region

Australia wide

Email Address (optional)

[REDACTED]

Q3: Tick the box that applies to you

Large business PCBU

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

Q4: Are the objects of the Act still valid?

No,

Please explain your answer
3(1)(a) should focus on elimination of high consequence risk

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

No,

Please explain your answer
Risk management has a hierarchical approach to controlling risk and ALARP does not achieve the objectives of the Act.

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
The objectives of the Act are fairly prescriptive and may restrict businesses that wish to innovate

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

Yes,

Please explain your answer
The objectives in the Act do not imply unnecessary cost, the regulations that support the Act do.

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?

Respondent skipped this question



Statutory review of the Work Health and Safety Act 2011 (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?

Administrative. All aspects of incident notification needs to be looked at to find efficiencies and remove duplicate reporting from and to multiple entities to SafeWork NSW

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?

Appropriate

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

Please explain your answer N/A

Q14: Are the provisions relating to prisoners working well?

Please explain your answer N/A

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 comment

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

Respondent skipped this question

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?

Expedience becomes relevant, but it is probably an appropriate place for it.

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

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



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

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

Yes,

If no, please provide details and examples about how this could be improved for your particular circumstances
Just refers to the regulations

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?

Yes

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?

Yes

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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



Statutory review of 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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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?

Encourage more cooperation

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

Respondent skipped this question

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

Respondent skipped this question

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

harmonization has not been achieved and hasn't reduced the burden as intended

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. Regulators do not appear aligned with their approach and policy in enforcing regulations.



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?

Yes,

If yes, please provide a detailed response. Regulators do not appear aligned with their approach and policy in enforcing regulations. There is a wide variety of ability and expertise within the regulators that provides a variety in the quality of the advice and assistance provided.

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

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

No,

Please explain your answer
There are overlaps relating to other regulators that are not referenced in WHS laws i.e. HVNL, Rail Safety etc.

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

Yes,

Please explain your answer
Regulators should be required to cooperate in such a manner that does not unnecessarily impact business

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?

Respondent skipped this question

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

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

Respondent skipped this question

PAGE 17: The Work Health and Safety Regulation 2011

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

Yes

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)

Respondent skipped this question

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)

Respondent skipped this question

PAGE 18: The Work Health and Safety Regulation 2011



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

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

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? *Respondent skipped this question*

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? *Respondent skipped this question*

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? *Respondent skipped this question*

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?

Respondent skipped this question

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)

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question



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

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? *Respondent skipped this question*
- 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? *Respondent skipped this question*
- 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? *Respondent skipped this question*
- 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? *Respondent skipped this question*
- Q75: Do you wish to comment on the Acts that have been proscribed in the Regulation for the purposes of section 271 (3) (c) (ii) of the Act? (clause 702) *Respondent skipped this question*
- Q76: Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A) *Respondent skipped this question*

PAGE 25: Codes of Practice

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

We still refer to old codes as necessary - when harmonized versions are not available.

- 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. *Respondent skipped this question*
- 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. *Respondent skipped this question*
- 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? *Respondent skipped this question*
- Q83: Is additional guidance needed for any of the subjects covered by the pre-WHS codes? *Respondent skipped this question*