



**CIVIL CONTRACTORS  
FEDERATION**

*The Voice of the Industry*

# Submission

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



20 December 2016



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FEDERATION**

*The Voice of the Industry*

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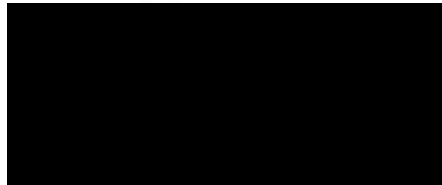
Better Regulation Division  
SafeWork NSW  
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**Statutory review of the *Work Health and Safety Act 2011***

Please find attached a submission regarding the statutory review of the *Work Health and Safety Act 2011*.

I welcome the chance to discuss further anything outlined herein.

Yours sincerely,



David Castledine B.Eng, LL.B  
Chief Executive Officer  
Civil Contractors Federation NSW

## CCF NSW SUBMISSION: STATUTORY REVIEW OF THE WORK HEALTH AND SAFETY ACT 2011

Question	Response
1. If you wish all or some of your feedback to remain confidential, please indicate below and BRD will take this into consideration.	
2. Contact information.	Civil Contractors Federation NSW
3. Tick the box that applies to you (type of submission).	Employer Association
4. Are the objects of the Act still valid?	<p>Parts (a) – (g) remain valid.</p> <p>Part (h) is conflicting.</p> <p>The intent of a nationally harmonised WHS Act has been diminished through:</p> <ul style="list-style-type: none"> <li>• Non-compulsory adoption by jurisdictions;</li> <li>• Jurisdictional amendments.</li> </ul> <p>Further consultation with <u>all</u> jurisdictions is required should national harmonisation be continued as an objective of the Act</p>
5. Are the terms of the Act appropriate for achieving the stated objectives?	Yes
6. Could the objectives of the Act be achieved in ways that do not cost business as much time, resources or financial expenditure?	Simplification of paperwork should be added as an objective.
7. Are any of the objectives causing unnecessary costs for business?	<p>Availability of compliance Standards – whilst not mandated by legislation, compliance standards may be used to establish 'reasonably practicable' / due diligence.</p> <p>Regulation of costs associated with compliance Standard may assist in achieving greater uptake / object of the Act.</p>
8. Are the NSW-specific definitions in section 4 of the Act working effectively?	No comment at this time.
9. Are these definitions clear? Please provide examples of circumstances where any definitions are not clear.	No comment at this time.
10. Do you have any comments about how the strict liability provision is working?	No comment at this time.
11. Do you have any comment regarding the provision that prevents duplication of incident notifications where they	No comment at this time.

Question	Response
must be notified to the Resources Regulator?	
12. Do you have any comment to make regarding the IRC being the forum that can receive and decide whether to disqualify a HSR?	No alteration required.
13. Are the additional provisions that have been inserted for health and safety committee's in coal mines working well?	Not applicable.
14. Are the provisions relating to prisoners, working well?	Not applicable.
15. Are the organisations listed to clarify who is an emergency services worker, appropriate?	Appropriate.
16. Are there any other organisations that should be listed?	None at this time.
17. Are there any organisations listed, that should not be?	None identified.
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?	None at this time.
19. Do you wish to comment about the IRC being the Authorising Authority for NSW?	No alteration required.
20. Do you wish to comment on the Industrial Relations Act 1996 being named as the relevant state or industrial law in NSW?	No alteration required.
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.	No comment at this time.
22. Are the classes of persons that the regulator may appoint as an inspector, working well?	No comment at this time.
23. Are the provisions for Inspectors to obtain a search warrant to obtain information about a suspected WHS breach clear?	No comment at this time.
24. Do the references to the Law Enforcement (Powers and Responsibilities) Act 2002 provide	No comment at this time.

Question	Response
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?	No comment at this time.
26. Do you wish to comment on the provisions that NSW currently provides for an Inspector to obtain a person's name and address?	185(c) to be re-instated.
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?	Remove section (3). Does not add value to process.
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?	No comment at this time.
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?	No comment at this time.
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?	No comment at this time.
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?	No alterations required
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?	No comment at this time.
33. Is the requirement for proceedings about category 3 offences to be dealt with summarily, working well?	No comment at this time.

Question	Response
34. Are the provisions of the Industrial Relations Act 1996 that relate to appeals under the Act working well?	No alterations required
35. Do you wish to comment about the provision for the secretary of a union to bring proceedings for an offence against the Act?	Sections I(a) and I(b) are sufficient. Section I(c) to be removed.
36. Do you wish to comment on the penalty notice scheme being made under the Fines Act 1996?	No comment at this time.
37. Do you wish to comment on the provisions for sharing information by the NSW WHS Regulators?	No comment at this time.
38. Do you have any comment regarding ongoing reviews of the Act?	More time required to consult with employers
39. What is/isn't working well for small business in relation to the NSW-specific provisions of the WHS laws?	No comment at this time.
40. What has/hasn't improved for PCBUs or workers operating in more than one jurisdiction?	No comment at this time.
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.	1. Consultation with industry identifies NSW and QLD regulators to have a particularly positive, collaborative approach with PCBU's to achieving safety outcomes.
	2. Yes, in relation to FSC:  Reports from industry include that FSC can be overly emphasise bureaucratic process in lieu of safety outcomes; routinely changes its emphasis seemingly at will; and can have a different interpretation of some elements of the Act to NSW.  Reports from industry include that FSC regards themselves "a law unto themselves" and take little to no consideration (i.e. consultation is minimal) of the fact contractors work in a State regime as well. Contractors however feel compelled to comply.  Due to the market construct of our industry, the large contractors working under FSC are then applying the FSC interpretations into their State based operations. This spreads the interpretation conflict into small to medium sized businesses. At times this is counter to the 'message' SafeWork NSW has on issues (for eg SWMS), and causes considerable tension. The result is an inefficient outcome which lowers safety outcomes in NSW.
42. Are there differences between how the NSW regulators are providing advice and assistance compared to the other states, territories and the	Yes. See comment above regarding FSC.

Question	Response
commonwealth? If yes, please provide a detailed response.	
43. Are the provisions that relate to two WHS regulators working well?	No comment at this time.
44. Are any additional provisions needed to provide for easier communication and exchange of information between the regulators?	No comment at this time.
45. Do you have any comments to make about the forums nominated to conduct reviews under the WHS Regulation in NSW?	No comment at this time.
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?	No comment at this time.
47. Are the above-mentioned definitions working effectively? (clause 5 and 7)	No comment at this time.
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)	No comment at this time.
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)	No comment at this time.
50. Is the above note about training for health and safety representatives helpful?	No. This would normally form part of business processes.
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.	No comment at this time.
52. Is the meaning of electrical equipment clear? (clause 144)	Yes
53. Do you wish to comment on the term 'authorised' that has been inserted by NSW? (clause 146)	Revert back to terminology used in Model WHS Regulations. Use of 'authorised' creates confusion. Licenced or registered is straight forward and does not require further clarification.

Question	Response
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)	No comment at this time.
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)	Yes, but having two causes confusion.
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)	See notes above.
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)	Suitable.
58. Do the local laws that NSW added for exemptions to clause 328 remain appropriate?	Yes, 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)	No comment at this time.
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)	This is appropriate. Most contractors who dispose of asbestos under this provision do so correctly. The removal / disposal of this provision will not discourage “cowboy” operators who dispose of asbestos illegally. The removal of this provision may actually lead to an increase of illegal asbestos disposal as it will increase the cost for the disposal of small amount of asbestos.
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)	This is appropriate
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	No comment at this time.



Question	Response
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))	No comment at this time.
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))	No comment at this time.
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))	No comment at this time.
66. Is the example under the heading 'arrangements for preventing unauthorised access to the major hazard facility' helpful? (clause 552)	No comment at this time.
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))	No comment at this time.
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))	No comment at this time.
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)	No comment at this time.
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)	No comment at this time.
71. Do you wish to comment on the period of 21 days for the internal reviewer to review the previous decision? (clause 680)	No comment at this time.
72. Do you wish to comment on the period of 21 days for the internal	No comment at this time.

Question	Response
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)	No comment at this time.
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)	Not beneficial to the process.
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)	Suitable for assisting organisations in identification of other compliance related documents.  Reference of compliance documents within this section is suitable rather than singular comments in other sections.
76. Do you wish to comment on the penalty notice offences listed in schedule 18A? (clause 702A)	No comment at this time.
77. Which of the pre-WHS codes listed above do you still use?	Moving plant on construction sites – regularly  Work near overhead powerlines - regularly
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.	Moving plant on construction sites – regularly  Work near overhead powerlines - regularly
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.	As relevant to job requirements.
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.	Working near Overhead Powerlines, Section 3 Approach distances – clarity is useful for compliance management.
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.	No comment at this time.
82. Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes	No comment at this time.

Question	Response
<p>83. Is additional guidance needed for any of the subjects covered by the pre-WHS codes?</p> <p>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.</p>	<p>No comment at this time.</p>