

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

#24

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 19, 2016 1:48:04 PM
Last Modified: Monday, December 19, 2016 2:02:23 PM
Time Spent: 00:14:19
IP Address: [REDACTED]

PAGE 1: Have your say!

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

Q2: Contact information

Name

Ms Elizabeth Greenwood

Email Address (optional)

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?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

The strict liability provision is working well - an improvement on the previous provision.

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

Respondent skipped this question

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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?

The current constitution of the IRC is one that does not include a judicial officer. All of its members consist of commissioners, none of whom are legally qualified. The Chamber submits that all of the IRC's jurisdiction in relation to workplace health and safety that relates to criminal proceedings should be transferred to the District Court (where there are specialist criminal judges who have the necessary skills and experience to properly apply the principles of criminal law) and all remaining administrative functions of the IRC in relation to workplace health and safety be transferred to either to the New South Wales Civil and Administrative Tribunal ("NCAT") or to the Fair Work Commission ("FWC"). The chamber also submits that matters relating to certification should be transferred either to NCAT or the FWC.

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

No,

Please explain your answer

The Chamber is aware of a degree of confusion as to jurisdiction that has arisen from the geographical area test having been replaced with an activities based test and submits that the legislation needs to clarify which regulator is the correct one in particular circumstances.

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?

Respondent skipped this question

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

Respondent skipped this question

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?

The Chamber is not aware of this type of proceeding having been brought in the District Court, but nevertheless submits that the District Court (as opposed to a specialist tribunal) is the most appropriate forum for this type of proceeding, especially as any appeal can then be heard by the Supreme Court, if required.

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

The FWC already has jurisdiction for workplace health and safety matters insofar as they relate to bullying. Given that the FWC already has the framework in place for dealing with rights of entry for workplace relations matters, the Chamber submits that the IRC's jurisdiction should be transferred to the FWC.

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

Given its view in relation to question 19, the Chamber submits that jurisdiction relating to public vehicles and carriers should be referred federally with the remaining provisions to be repealed with mirror provisions to be included in the Government Sector Employment Act 2013 (with jurisdiction to be referred to NCAT).



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

Respondent skipped this question

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

Respondent skipped this question

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
The Chamber is aware of occasions where jurisdictional disputes over who has control of a site where a fatality has occurred has led to unnecessary delay in the investigation (notwithstanding the existence of a Memorandum of Understanding) and submits that there needs to be legislative direction on who has control over a scene in such circumstances.

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?

Yes,

Please explain your answer
The Chamber submits that the Act needs to be amended to include a provision that requires that a copy of the warrant be served upon the person in management or control of the premises.

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?

In relation to the provision relating to the failure to prove that the name or address they provide is correct the Chamber submits that, first of all, the maximum penalty of \$10,000.00 is unduly harsh and that the phrase "without reasonable excuse" that is contained in subsection 185(4), needs to be retained.

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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?

The Chamber submits that the District Court should remain as the forum for these types of matters.

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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?

The Chamber submits that the District Court seems to be the appropriate forum for this type of matter.

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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?

The Chamber submits that the most appropriate forum for this type of administrative matter is NCAT.

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?

The Chamber submits that the most appropriate forum for this type of administrative matter is NCAT.

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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

The Chamber is not aware of any proceedings for an offence against the WHS laws (except category 3 offences) being brought in the Local Court. The Chamber submits that this jurisdiction, except for category 1 offences, should be confined to the District Court and that jurisdiction for category 1 offences should be transferred to the Supreme Court (and not remain with the District Court).

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

No,

Please explain your answer

The Chamber is not aware of any category 3 offences being dealt with summarily.

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

No,

Please explain your answer

The Chamber submits that the jurisdiction for appeals should be confined to the District Court.

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

The Chamber strongly urges for this provision to be repealed. New South Wales is the only jurisdiction within Australia that allows for the secretary of a union to bring proceedings for an offence. It is the Chamber's view that the power to bring proceedings for an offence against the Act should be confined to the regulator. In addition, the Chamber submits that any provision allowing the secretary of an industrial organisation to claim a moiety should also be repealed.

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

The Chamber submits that these provisions should be utilised more often so that less reliance is placed on the provisions that enable prosecutions to be brought.



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

Respondent skipped this question

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 PCBU's or workers operating in more than one jurisdiction?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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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?

Respondent skipped this question



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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)

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

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

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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 PCBUs, helpful?

Respondent skipped this question

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?

Respondent skipped this question

PAGE 21: The Work Health and Safety Regulation 2011

Q58: Do the local laws that NSW added for exemptions to clause 328 remain appropriate?

Respondent skipped this question



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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

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?

The Chamber is not aware of any circumstances that would warrant a change to the current provisions.

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)

The Chamber is not aware of any circumstances that would warrant a change to the current provisions.

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



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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

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 prescribed 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?

Respondent skipped this question

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?

Respondent skipped this question



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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

