

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

#20

INCOMPLETE

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PAGE 1: Have your say!

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

Q2: Contact information

Name James Miller
Industry Construction / Trade Service
Region ACT / NSW
Email Address (optional) [REDACTED]

Q3: Tick the box that applies to you Small business PCBU

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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? Yes,

Please explain your answer
I think this comes down to improved education of all participants and communication into the broader community e.g. SWMS once were 20-50 pages of guff!! It took me a long time to convince the "industry" including inspectors that this was dangerous. It was only when Mark McCabe made the push and communicated the need for simpler SWMS that a move has finally be made to educate Inspectors, then FMs, then other managers and stakeholders, of this simple change that made for huge reduction in "red tape" AND a large improvement in take-up by workers (the very subjects of WHS intent)



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

Yes,

Please explain your answer

As above, we still see persons in position of compliance regards risk management systems not accepting that "Simpler and more communicable" is far more effective to a worker than say, "Including a risk matrix" or "documenting the six step process of risk management for each task". e.g. We find videos from iPhones describing the task and the workers verbal description of the SWMS infinitely more effective at 'documenting', communicating, training and compliance checking, than any other method. This needs to be addressed particularly where protection of younger workers needs to borrow from their techno-savvy thought processes. Visual comms is also much more effective with tradespersons or similar ilk.

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

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?

No

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

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Q15: Are the organisations listed to clarify who is an emergency services worker, appropriate?

No,

Please explain your answer

For the sake of the debate; As a 30yr + worker in the roofing industry, I would think I should be more than qualified if some "emergency" involved direction by me in my specialist area. I should therefore perhaps be deemed an "Emergency Worker" if the situation arose? Conversely, if I were to be volunteering and on my first day on the job, directed some one / thing regards something no-where near my area of understanding, I would think it reasonable that I were not considered an "Emergency Worker" no matter what banner I represented?

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

Don't know

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

Don't know

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?

No

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)

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
Don't know

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 Don't know

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

Please explain your answer Don't know



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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 Don't know

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 Don't know

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

No

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?

No

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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?

No

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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?

No

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?

No

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?

No

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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?

Please explain your answer Don't know



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

Please explain your answer Don't know

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

Please explain your answer Don't know

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

No

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

No

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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?

Only that it should continue in that vein, but perhaps not 'hide' such reviews in the xmas silly season!!

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

As a business in the ACT jurisdiction, we work in and compete with NSW tradesmen especially in Queanbeyan. We send all our workers through the NSW licensing system, because the ACT has no effective trade licence system, yet time and again, we see unlicensed tradespersons doing work in NSW. Surely a WHS concern for NSW if not also a sad indictment on ACT trade quality assurance

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

Digressing to a somewhat related topic, but Workers Compensation Insurance has at least become more reasonable in it catering for cross-border situations....

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.
Don't know

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.
Don't know

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

Please explain your answer Don't know

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

Please explain your answer Don't know

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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?

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

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



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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?

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

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?

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



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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

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



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Q77: Which of the pre-WHS codes do you still use?	<i>Respondent skipped this question</i>
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.	<i>Respondent skipped this question</i>
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.	<i>Respondent skipped this question</i>
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.	<i>Respondent skipped this question</i>
Q81: Are there any parts of the pre-WHS codes that are unclear or confusing?	<i>Respondent skipped this question</i>
Q82: Are there any documents that cover the same subject matter as any pre-WHS codes, but are inconsistent with the codes?	<i>Respondent skipped this question</i>
Q83: Is additional guidance needed for any of the subjects covered by the pre-WHS codes?	<i>Respondent skipped this question</i>



