

2018 Review of the model work health and safety laws

Self Insurers of South Australia

Adelaide

19 July 2018

Background to the Review

February 2018	Discussion paper released Online discussion forums opened
February – April 2018	Consultations – all capital cities and two regional centres
May 2018 onwards	Analysis and synthesis of feedback and research
December 2018	Final report provided to Safe Work Australia Members
Early 2019	Report provided to WHS Ministers for consideration

Consultation to date

- 134 written submissions.
- 81 face to face meetings with approximately 387 attendees.
- 127 contributions to online discussions.
- Contributions from unions, employer associations, industry associations, businesses (predominantly small and medium sized) health and safety representatives, legal practitioners, academics, government agencies, non-government agencies and regulators.

What I've been asking

- What works?
- Why does it work?
- Will it continue to work as work practices and environments evolve?
- What doesn't work?
- Why doesn't it work?
- What could we do to make it work?

Poll Question

What I've heard

Legislative framework

- The model WHS laws are working well and still settling.
- Harmonisation supported by business and unions.
- Business perceive the laws are complex and overwhelming.
- Small business: “Just tell us what we need to do.”
- Calls for greater focus on psychosocial risks in laws.
- Confusion around overlap of WHS, public safety and public health issues.

What I've heard

Duties of care

- Working well, and in big business helping to drive safety from the top.
- 'Reasonably practicable' difficult to comprehend for smaller businesses. Confusion how to apply in any given situation.
- Tension between big and small business – flexibility v prescription.
- Shared duties considered appropriate, but difficult to carry out in practice. Many PCBUs still asking where their liability begins and ends in the supply chain.
- Some perceive upstream duties are 'not settled' and that upstream work or breaches are not well considered by regulators.

Poll Question

What I've heard

Consultation, representation and participation

- Businesses concerned with practicalities of consulting and coordinating with other duty holders.
- HSR framework is working well for PBCUs with 'traditional' employment arrangements; many small businesses viewed it as impractical.
- Workers and their representatives reinforced the importance of the HSR framework and examples were provided of where it was working well (and not).
- Right of entry: Unions emphasised its importance for WHS purposes; business representatives say it works well when used for genuine safety purposes, but concerns about misuse – mainly construction.

What I've heard

Compliance and enforcement

- Concern about inconsistencies in interpretation and enforcement of the law across jurisdictions.
- General call for greater clarity on what incidents are notifiable and who to notify.
- Calls for trigger to notify psychological injuries.
- Calls to review and update National Compliance and Enforcement Policy.

What I've heard

Prosecutions and legal proceedings

- Current debate on inclusion of industrial manslaughter offence in WHS laws reflected in consultation.
- Strong support for enforceable undertakings when appropriate.
- Issues raised with inconsistent sentencing among and within jurisdictions. Some support for national sentencing guidelines.
- Some say reverse onus of proof strengthens system and increases prosecutions. Others say it is 'fraught with danger' and reduces prosecutions.
- Directors' insurance for WHS fines largely not supported.

What I've heard

Regulations

- Scepticism of value of SWMS.
- Construction threshold is too low.
- White card seen as ineffective.
- Concern about competency of HRW licence holders.
- Concern about regulator's power to direct illegal asbestos removal.
- Some consider MHFs over-regulated.

Poll Question

Questions?