

Consultation RIS – 2018 Review Recommendations

Submission template

What is your name? Marie Boland

Appendix A – Recommendations likely to have nil or minor impacts

- If you do not agree that one or more of recommendations in Appendix A will have minor or no impacts, please provide your assessment of the impacts for each, supported with evidence if possible.

The Table at Appendix A in the Consultation Regulation Impact Statement provides commentary on Recommendation 5: ‘Develop a new Model Code to provide practical guidance on how PCBUs can meet the obligations associated with the principles contained in Sections 13-17 (the Principles)’ as follows:

‘This material is already contained in a model Code; **it would just be separated out into a standalone Code under this recommendation**’ (emphasis added).

With respect this misinterprets the recommendation’s purpose and intent. Perhaps the words were poorly chosen; however just in case I provide the following clarification of my intention.

The intention of this recommendation is that a tripartite process is undertaken to develop a **new** model Code of Practice which provides clarity and practical examples of how the Principles at sections 13-17 of the model WHS Act interact with the consultation requirements at section 46 of the model WHS Act (Duty to consult with other duty holders).

This recommendation’s intention is not to merely edit an existing code to separate out material that already exists.

The reason for my recommendation to develop a stand- alone code is to elevate the understanding of the importance of sections 13-17 and 46 in the context of changing business models and working arrangements and to provide clarity to those PCBUs which repeatedly asked during the consultation process for the review of the model laws ‘Where does my duty end?’. It also intends to provide clarity on how gig economy participants fit within the model WHS framework.

One of the significant regulatory advances made by the model WHS Act was to recognise that the standard employment model of employers employing employees under contracts of employment to carry out work at the employer’s place of work is no longer the overwhelming norm in Australia.

The National OHS review which led to the development of the Model WHS laws pointed out the increased incidence of home-based work, self-employment, diverse forms of subcontracting and an increase in the use of supply chain and franchising arrangements.

The model WHS Act recognised the need to protect workers from new and emerging hazards that might arise from the wide variety of work arrangements into the future. The flexibility to deal with new business models rests not only with the broad definitions of ‘PCBU’ and ‘Worker’ and the definition of ‘workplace’ but also with the operation of the Principles contained in sections 13-17 of the Model WHS Act and the consultation requirements of section 46.

Recommendation 5 anticipates a tripartite process to develop a new model code that identifies how sections 13-17 and section 46 operate in practice in the context of the various types of work arrangements now prevalent in Australia – complex supply chains, labour hire, franchising, telework, subcontracting, gig economy arrangements and new working arrangements arising from policy developments such as the National Disability Insurance Scheme.

The principles applying to duties were a key positive innovation in the model WHS Act. Feedback from the review is that PCBU's and workers recognise the importance of the principles but often don't know how to apply them into practice.

I would consider that Recommendation 5 is one of the most important recommendations that has emerged from the 2018 Review of the Model WHS Laws – it is key to addressing safety in new business models such as the gig economy, complex networks and contracting arrangements.
