



2018 Review of the model Work Health and Safety (WHS) laws

List of questions in the discussion paper

Question 1: What are your views on the effectiveness of the three-tiered approach - model WHS Act supported by model WHS Regulations and model WHS Codes - to achieve the object of the model WHS laws?

This three-tiered approach has worked well, some of the WHS Codes do need a review and updating however, they provide an excellent guide.

It would be very helpful to introduce a national search engine where workers can go to and search a high risk activity or work activity and the corresponding Legislation for all States / Territories and the related WHS Code(s) and standards could be sourced (rather than the whole Act / Regulation appearing. At present it can take a few days to find the exact reference in the Act, Legislation, Code and any related Standards.

The national search engine would assist in displaying or informing workers and employers the fact that the three-tiered approach is effective.

Including the Standards would further add to people's understanding and accessibility of relevant support material (I understand that including the Standards is not in your scope, however ignoring these or separating these from the WHS three-tiered approach can only be detrimental).

Question 3: Have you any comments on whether the model WHS Codes adequately support the object of the model WHS Act?

There are some excellent WHS Codes available and are really valuable for myself as a WHS Manager.

It can be very easy to find the incorrect or outdated WHS Code and refer to it for guidance.

Also, as mentioned above, some WHS Codes require review and updating e.g. in NSW....HOW TO MANAGE WORK HEALTH AND SAFETY RISKS Code of Practice December 2011

In saying that, the WHS Codes are an excellent support and guidance in praxis.

Question 5: Have you any comments on the effectiveness of the model WHS laws in supporting the management of risks to psychological health in the workplace?

The model WHS laws make an attempt or are in the genesis of addressing psychological health in the workplace. Closer alignment and / or nexus with Workers Compensation and Fair Work Legislation would be beneficial if possible as that Legislation is State / Territory based.

The States and Territories have published some excellent Fact Sheets e.g. in May 2014 South Australia published a helpful one, however very little exists as "Codes". The regulatory bodies tend to provide hyperlinks to charity and mental health organisations which doesn't adequately address workplace accountability / responsibility and duty of care.

Question 10: Have you any comments on the sufficiency of the definition of PCBU to ensure that the primary duty of care continues to be responsive to changes in the nature of work and work relationships?

and

Question 11: Have you any comments relating to a PCBU's primary duty of care under the model WHS Act?



Below is an extract / attempted explanation from SafeWork NSW for Strata PCBU clarification, it still remains unclear and actually demonstrates that the WHS Legislation / Regulations and State Regulatory Organisations don't have a grasp on this industry and the variations that exist within this industry.

What we have is a very good attempt at addressing the PCBU duty of care however it is still quite "grey" and in some situations, it doesn't adequately address the circumstances at all.

Direct consultation with industry experts is required here, I am the National WHS Manager at PICA Group (which is the largest Strata and Property Management Company in Australia), we have a number of circumstances and situations whereby the Legislation / Regulations and State Regulatory Organisations don't address the PCBU's primary duty of care in our Industry.

I am not suggesting that I am the industry expert, just that we have a few industry experts in our company and our competitors (whom we have a great relationship with) also have many experts that could assist greatly in future consultation.

STRATA TITLE BODY CORPORATE

A strata title body corporate (or owners corporation) responsible for any common areas used only for residential purposes is generally excluded from the WHS laws, unless it employs a worker.

Where the common areas are mixed residential and commercial it is likely the WHS will apply.

*It is important for members of strata title bodies corporate be aware that once they employ someone to carry out a job, then they become an employer (also called a **PCBU**) and they have a duty to ensure the health and safety of workers they engage, direct or influence.*

This means that if the work is done on the common area, then the WHS Act applies.

An example of when a strata title body corporate becomes an employer would be when it employs a person to mow the front lawn as an employee (contractors are not employees). That front lawn would become the workplace where the strata title body corporate has some WHS responsibilities.

If you are a volunteer officer of the body corporate you are expected to exercise due diligence to ensure the body corporate complies with its WHS obligations if you have workers on site, however volunteer officers cannot be prosecuted for failure to comply with health and safety duty under the WHS legislation.

Above is from <http://www.safework.nsw.gov.au/law-and-policy/employer-and-business-obligations/strata-title-body-corporate>

Question 12: Have you any comments on the approach to the meaning of 'reasonably practicable'?

This is a very fair and common sense approach, some autonomy and judgement needs to be left to the PCBU.

Question 21: Have you any comments on the continuing effectiveness of the functions and powers of HSRs in the context of the changing nature of work?



I don't support the views that have been put forward at present and in the past regarding HSRs requiring formal training. Generally if an organisation has HSR's they usually will have a WHS Coordinator or WHS Manager. These roles should be in a position to conduct internal training for their HSR's or informative education sessions over a period of time within their own organisation to establish competent HSR's.

Where an organisation doesn't have a WHS Coordinator or WHS Manager, but requires a HSR, it would be practical to engage a consultant to deliver an internal training / education session or design one for the organisation to deliver in the future.

Formal external training for HSR's would not be practical as most organisations and industries have a huge churn of people in this type of role i.e. your HSR one week may decide to move into a different role or new organisation and you need to source someone to fill the role. Paying nearly \$1,000 for the external training / course for HSR's is not reasonably practical and can be difficult logistically for organisations large or small.

It is disappointing to see that QLD is publishing that by July 2018 HSR's are required to complete a formal training session... five days in duration, approx. \$1,000 and it isn't a national Unit of Competency that can be utilised later towards a qualification / recognition of competency.

Question 34: Have you any comments on the processes and procedures relating to legal proceedings for offences under the model WHS laws?

Question 35: Have you any comments on the value of implementing sentencing guidelines for work health and safety offenders?

I fully support the process of review and continual improvement, however, in saying that... in 2018, if reviews and consultation in WHS Legislation, Regulations and Codes are required to clarify and continue to establish the legal and operating framework for people and organisations (let alone people and organisations attempting to understand, source relevant legislation and support material in order to comply) then I believe sentencing guidelines are massively premature and completely unfair when people and organisations large and small, are grappling to come to terms with what is in place at present and what changes are being made nationally and from the States and Territories.

Regards,

Andrew Moon