

Collated feedback for Safe Work Australia's WHS review of the Model WHS laws

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Dear Review Secretariat,

The Australasian University Safety Association is committed to improving and reviewing the current WHS model laws. We have gathered feedback from our members about the current laws and what can be done to improve them.

Attached is a table with feedback from our members. We hope that this feedback will assist in improving the model laws and are looking forward to hearing the outcome of the review once completed.

Yours Sincerely



Stephen Ween
AUSA president

Questions asked	Responses received
<p>1. What is currently working with the current model WHS laws and Regulations? Please state your reasons for why these items are currently working</p>	<ul style="list-style-type: none"> ▪ Ability to develop procedures that are consistent with most states and territories. ▪ Provision of a legal framework to assist in driving H&S in organisations ▪ Clearer definitions of workers have encouraged conversation about the safety of volunteers and post graduate students as workers. Supervisors of these workers are now thinking about how to protect their workers, of all types, from harm at work. Clearer definition of Due diligence, the PCBU and its officers, instead of simply the employer. The top level of University executives are now discussing their roles and responsibilities more seriously. It has encouraged discussion and consideration of Who is an officer and what that means for them. Simple, clear penalties for breaches. It is very clear to officers, what the penalties for breaches will be. While an educative approach is preferred in Universities, we can appreciate the need for penalties as an additional layer of persuasion to comply. Harmonisation, in the states which have adopted the model laws. This has made it much easier for safety professionals, but more importantly, Academic staff to understand WHS requirements when they move interstate. Given the nature of University employment, this is particularly important, with many staff moving interstate regularly. No longer requiring risk assessments to be reviewed on a time based approach has allowed attitudes to change. We are now seeing more engagement in reviewing of risk assessments during incident and changes to the workplace. ▪ The introduction of officer has provided accountability for management of safety within the workplace to the appropriate level of control within the organisation. The expanded definition of worker to encompass those who are undertaking work at the workplace and the requirement for broader consultation has ensured consistency in providing safe systems of work across all levels of the organisation. The new addition of issue resolution has provided a robust and consistent process in resolving of safety matters at all levels of the organisation. Introduction of the risk management process has provided a consistent approach at all levels of the organisation in management of risk. Introduction of reasonably practicable has given all levels of an organisation a criteria to establish if the decisions made on control of risk can or should be used taking into consideration operational and enterprise factors. Introduction of Emergency planning into the Regulation brings together the consideration of mitigating factors during consideration of risk. It also mandates consideration of emergency preparedness into management of safety within an organisation.

Questions asked	Responses received
<p>2. What is not currently working with the current model WHS laws and Regulations? Please state your reasons for why these items are currently working.</p>	<ul style="list-style-type: none"> ▪ The definition of an Officer is not well clarified with too many grey areas particularly where a council or board is concerned. ▪ Harmonisation needs to be adopted in all states. There should be penalties for states which do not adopt the model laws. ▪ Repealed legislation documented Person in control as well as workplace area. The person in control being the owner although could through contract, lease or other arranged be another person. The current PCBU with Management or control provides no guidance on who this duty applies to, or what is meant by control. REMOVAL OF STEP 2 FROM RISK MANAGEMENT COP 2007 : ASSESS AND PRIORITISE RISK - previously organisations were able to mandate undertaking documented risk assessments based on requirements identified within the repealed legislation and code. As this Step has been removed the requirement, although mandated by the organisation, can be and has been challenged at all levels where workers were familiar with legislated requirements. The benefits of documenting this requirement are: assists Officers in demonstrating due diligence, assists in monitoring and review, assists in the development of further instruction tools and can be admissible in a court of law. REMOVAL OF WHSO: Within the repealed legislation there was a requirement for a WHSO if there were 30 or more employees. Upon removal of the requirements the organisation has experienced a demonstration of limited safety related knowledge from Contractors undertaking works. WHSO's through knowledge and experience provided organisations with advice, implementation and management of safety matters. Although acknowledged as a gap and re-introduced within the current Qld legislation (Amendment Act) the requirement is not mandated.
<p>3. Do you have examples of existing or emerging gaps in the model WHS laws? Are there any remaining, emerging or re-emerging work health and safety hazards or risks that are not effectively covered by the model WHS legislation.</p>	<ul style="list-style-type: none"> ▪ The current model laws do not have any provision for industrial manslaughter as has been recently introduced in Qld legislation. ▪ It is not clear as to how international legislation applies to Qld organisations engaged in international work. This applies to all aspects of legislation. ▪ The current code of practice for labelling hazardous substances considers only hazardous chemicals and not other hazardous materials such as biohazardous or radiological materials. ▪ No significant gaps have been identified, where they cannot be addressed under a hazard management approach.

Questions asked	Responses received
<p>4. Have you any comments on whether the current framework strikes the right balance between the model WHS Act, model WHS Regulations and model Codes to ensure that they work together effectively to deliver WHS outcomes?</p>	<ul style="list-style-type: none"> ▪ We feel that the balance is quite good. Taking a hazard management approach to minimise regulation and clarifying specific hazards in the model Codes has made the regulations lighter and easier to understand and comply with. ▪ Yes, I believe it is the right balance. The art is in the implementation and the creation of a pro-active H&S culture that is not driven primarily by fear of prosecution. ▪ An improvement within Qld legislation through the WHS Amendment act has been the re-introduction of restoring the status of codes of practice as existed under the repealed Workplace Health and Safety Act 1995 to require the safety measures in a code to be followed unless equal to or better than measures can be demonstrated.
<p>5. Are any provisions in the model WHS laws especially difficult for organisation to comply with?</p>	<ul style="list-style-type: none"> ▪ Definitions of officers. ▪ We are not aware of any. ▪ The prescriptive nature of the consultation obligations can be tedious but I agree that the requirement to consult on consultation mechanisms should remain.