

16 April 2018

Marie Boland  
Independent Reviewer  
Safe Work Australia

Dear Ms Boland

### **SUBMISSION: 2018 REVIEW OF THE MODEL WHS LAWS**

Thank you for the opportunity to submit comments on the above. The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) represents the concerns of small businesses and family enterprises in Australia. ASBFEO reviews key policies, legislation and industry practices that impact on the small business sector.

The key issue with the model WHS laws is the discrepancies in the adoption of the law by the states and territories. Small businesses simply wish to know what they need to do to comply in each jurisdiction. However, small business struggle to comply with 24 different and complex Codes of Practice, in particular when they contain differences in compensation.

The aim of the model law was to provide a base line consistency. However, Western Australia does not use the model, although they are considering implementing some elements, and Victoria will not implement the laws as they stand.<sup>1</sup> The Northern Territory<sup>2</sup> and Queensland<sup>3</sup> currently have small business safety programs and toolkits, while New South Wales has small business incentives (rebates<sup>4</sup>) to help reduce the burden of WHS compliance obligations.

It is also unclear to small business if Code requirements are for guidance, optional or mandatory. Some Codes may not be mandatory but a court will refer to them in its decisions, particularly to award penalties.

Small businesses have limited resources. The majority do not have a separate WHS department or even a dedicated employee. It may be, and often is, the business owner who takes on this role. Small business spends on average five hours a week complying with government regulatory requirements.<sup>5</sup> The current tiered model approach to WHS creates further regulatory burden, in particular where relevant information is scarce and complex.

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<sup>1</sup> [Safe Work Australia](#)

<sup>2</sup> [NT WorkSafe, Small Business Safety Program](#)

<sup>3</sup> [WorkCover QLD, Injury Prevention & Safety Small Business](#)

<sup>4</sup> [SafeWork NSW, Small Business Rebate](#)

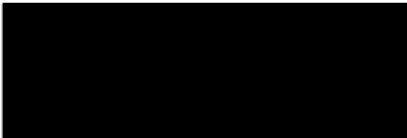
<sup>5</sup> [Productivity Commission, 2013, 'Regulator Engagement with Small Business'](#)

This is particularly acute when these standards cost an average of \$300 each to access and view.<sup>6</sup> For example, the *Model Code of Practice on Managing Risks of Hazardous Chemicals*, references in excess of 20 standards, which would cost a small business at least \$6,000.<sup>7</sup> The *Managing the Risk of Falls at Workplaces Code of Practice* references 17 standards, at a cost of over \$3,800.<sup>8</sup> We suggest that if a Code mandates a reference to a standard, it must be made free and easily accessible.

To enable compliance and reduce the regulatory burden on small business, jurisdictions need to implement consistent regulations. The regulations must be easy to access and provide greater certainty and practical relevance.

I trust that these comments further assist you and would be happy to discuss any of these matters with you. Please feel free to contact Jill Lawrence, on 02 6263 1558 [Jill.Lawrence@asbfeo.gov.au](mailto:Jill.Lawrence@asbfeo.gov.au).

Yours sincerely,



**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman

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<sup>6</sup> [Sydney Morning Herald, 'Free access to Australian standards no longer available in public libraries'](#)

<sup>7</sup> [Safe Work Australia, Model Codes of Practice](#)

<sup>8</sup> [Safe Work Australia, Model Codes of Practice](#)