



ATTORNEY-GENERAL  
MINISTER FOR JUSTICE

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Parliament House  
State Square  
Darwin NT 0800

Ms Marie Boland  
Independent Reviewer  
2018 Review of the model WHS laws

Via email address: [2018Review@swa.gov.au](mailto:2018Review@swa.gov.au)

Dear Ms Boland

**NT Submission to the 2018 Review of the Model WHS Legislation**

The Northern Territory Government welcomes the opportunity to make a submission to the 2018 Review of the model Work Health and Safety (WHS) laws. Overall, the model WHS legislation has worked well since it commenced in the Northern Territory on 1 January 2012. As the harmonised legislation has matured over the last six years, it is now appropriate to consider whether amendment and refinement will improve the operation of the laws and influence further improvements to worker health and safety in the Northern Territory and other harmonised jurisdictions.

First, the Northern Territory Government would like to acknowledge the significant effort towards harmonisation since the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (the IGA) was made in 2008. However, the Northern Territory Government believes that IGA has now run its course and would like to see a new IGA negotiated to cover work health and safety post-harmonisation. The new IGA would ideally recognise the value of ongoing tri-partite participation in Safe Work Australia and ensure that funding arrangements include sponsorship to cover social partners' attendance at meetings.

Negotiation for a new IGA should consider whether full harmonisation is still a key national priority or whether the current harmonisation of key concepts and the vast majority of legislation is sufficient. It should also consider whether existing processes and voting arrangements are becoming a barrier to the development of robust information products.

The Northern Territory considers that there are no areas of the model WHS laws which require critical or immediate reform but that the review should consider whether Guides should be given a similar legislated evidentiary status as approved Codes of Practice; making amendments to reduce potential for scope creep; and conducting a full review of the model WHS Regulations to improve their structure and coherence.

### **Model Codes of Practice**

The process to develop and approve model WHS Codes of Practice is more lengthy and difficult in practice than was anticipated. This has resulted in a number of planned Codes being recast as Guides, which provide useful information but lack the legislated evidentiary status of approved Codes of Practice. Some jurisdictions amended their legislation to change the requirements for the development and approval of Codes set by the model *Work Health and Safety Act*.

Following a 2014 Council of Australian Governments' review it was recommended that in future the development of national guidance material should take the form Guides, rather than approved Codes of Practice unless Safe Work Australia identifies a need based on rigorous criteria. This raises questions about the status of approved model Codes of Practice and whether national or jurisdictional Guides would be just as acceptable to a court as evidence of what is known about a hazard or risk.

In 2015, the Northern Territory conducted public consultation to gauge support for making a number of changes to Northern Territory WHS legislation. One proposed change would allow the Northern Territory to develop and adopt Codes of Practice without following the national process outlined in the model WHS Act. The written submissions strongly opposed making such a change and supported maintaining model Codes of Practice developed through the tri-partite process.

As a small jurisdiction, the Northern Territory has not had the opportunity to test the admissibility of Guides versus approved model Codes of Practice as evidence in a prosecution of an offence against the mirror *Work Health and Safety (National Uniform Legislation) Act*. Larger jurisdictions may have more insight about whether there is a need to capture and give status to Guides (or to withdraw the status of Codes) in the model WHS Act following the move away from developing approved model Codes of Practice.

### **Scope Creep**

The boundaries between general public health and safety and workplace health and safety could be better articulated and clarified in the model WHS laws. There is currently some ambiguity about the application of the model WHS laws to sport and recreation activities and to general safety. Setting clear and robust boundaries for the scope and application of the model WHS laws would help to ensure that WHS Regulators are not positioned and seen as the arbiters of general safety in each jurisdiction and can focus their (often limited) resources to workplace health and safety.

### **Structure and coherence of the model Regulations**

The model WHS Regulations are significantly longer than the previous regulations that applied in the Northern Territory. This is due to a number of external documents that were called up in the old regulations, namely Australian Standards and National Occupational Health and Safety Commission (NOHSC) Codes of Practice, being incorporated into the body of the model WHS Regulations.

As a result, in general businesses no longer need to purchase Australian Standards to identify their obligations under the model WHS Regulations.

The model WHS Regulations set out in detail the process duty holders are required to follow when undertaking a risk assessment of hazards in the workplace. In addition to the general risk management approach, the model WHS Regulations require specific control measures to be implemented in respect of certain hazards. However, even though the model WHS Regulations are organised into Chapters based around a single or a family of similar hazards, they can be difficult to follow and understand.

The length and structure of the model WHS Regulations can make it difficult for a business to determine which Regulations do and do not apply to their workplace. Some examples are:

- Part 7.1 deals with managing hazardous chemicals. All businesses must consider this Part because it includes general duties about hazardous chemicals in a workplace but a significant portion is only relevant to manufacturers, suppliers and importers of hazardous chemicals. The note at the start of Part 7.1 indicates that the majority of the Part applies to persons conducting a business or undertaking (PCBUs) at a workplace with some specific obligations applying to manufacturers, importers and suppliers. The Part is then organised with the specific obligations first, followed by the general obligations. It would make more sense for Part 7.1 to be reorganised so that the general duties are covered first as they apply to all PCBUs including manufacturers, suppliers and importers.
- Chapter 8 deals with asbestos and covers the management of asbestos in a workplace, asbestos removal, health monitoring and licencing requirements. The duties in Chapter 8 are not set out in an intuitive manner and the duties for different duty holders are intermingled, requiring the Chapter to be read in its entirety to ensure a duty holder is certain of their obligations. This Chapter could be organised in a more logical manner to make it easier to follow.
- Chapter 9, which includes 78 Regulations or 11% of the model WHS Regulations as well as four of the 18 schedules to the model WHS Regulations, deals with managing a major hazard facility. Major hazard facilities generally involve hazardous chemicals in very large quantities therefore these sections are applicable to relatively few businesses. In the Northern Territory there are currently only nine licenced major hazard facilities. Consideration should be given to moving the content relating to major hazard facilities to create a separate model WHS (Major Hazard Facility) Regulations.

## **Recommendations**

The Northern Territory makes the following recommendations to the 2018 Review of the model Work Health and Safety laws:

1. That a full review of the structure and content of the model WHS Regulations be conducted.
2. That the boundaries between general public health and safety and workplace health and safety be better articulated and clarified in the model WHS laws.

3. That the evidentiary status of approved model Codes of Practice versus national or jurisdictional Guides be examined.
4. That a new Inter-Governmental Agreement be negotiated to cover work health and safety post-harmonisation.

Yours sincerely



NATASHA FYLES

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