

13 April 2017

Marie Boland
2018 Review Leader
Safe Work Australia
2 Phillip Law Street
Canberra ACT 2601

Via email: 2018Review@swa.gov.au

Dear Marie Boland

2018 Review of the model WHS laws.

The Australian Workers' Union (AWU) is a broad-based Union with over 85,000 members. Our members work in all headline industry categories across the nation, including in high-risk work health and safety industries such as agriculture, construction, manufacturing, oil and gas.

For this reason, along with having a substantial number of workers covered by the both federal and state based safety legislation, regulations and codes, the AWU is uniquely placed to communicate the challenges both members and health and safety representatives in multiple industries face in their workplace.

The terms of reference of the National Occupational Health and Safety Review Panel that developed the Model Work Health and Safety Act (the Act), the Model Work Health and Safety Regulations (the Regulations) and Codes of Practice (the Codes) - collectively referred to in this submission as 'the Model Laws' - included a requirement that the Panel consider the 'changing nature of work and employment arrangements'.

The AWU has worked with the Australian Council of Trade Unions (ACTU) in the development of the ACTU submission to your panel. The AWU supports the ACTU's submission including the three-tiered approach to WHS regulation.

The AWU makes and reinforces the following additional points in the spirit of the terms of reference.

Union right to prosecute.

In the absence of an effectively resourced regulator this is a fundamental requirement to ensure that workplace safety is maintained. The AWU is of the view that the legislation and regulations need to be varied to ensure that registered employee organisations can prosecute employers for serious safety breaches and reasonable legal costs can be recovered by the prosecuting Union as standard practice.

Health and Safety Representatives (HSRs) rights regarding training.

The AWU supports the ACTU view that the act needs to be amended to clarify that the consultation between the employer and HSRs regarding training should only be in regards to the operational timing of the training and not the training provider. The AWU believes that elected HSRs should be able to choose an accredited training provider of their choice. This proposal is made on the basis that the chosen provider is of a reasonable cost compared to other providers.

Ensuring that Act is drafted so that employers who use supply chains and contractors are clearly responsible for the safety of sub-contractors and labour hire.

Unfortunately, unscrupulous employers currently intentionally seek to avoid their WHS obligations in related business entities/supply chains through the use of outsourcing and labour hire.

This is clearly prevalent in the construction, agricultural and horticultural industries.

The AWU is of the view that the Act needs to be amended to make clear that head contractors and retailers are responsible for ensuring all employees and contractors in the supply chain or working on the project are clearly responsible for managing the health and safety risks of all employees in the supply chain or project.

Strengthening the requirements/capacity for the regulator to take action.

The AWU strongly supports amendments to the national compliance and enforcement policy (NCEP) to mandate prosecution referrals for a person conducting a business or undertaking (PCBU) that repeatedly does the wrong thing. The AWU believes that where the regulator has found a PCBU failed to meet its obligations to provide a safe workplace with regards to critical safety matters three times in a 12 month period, the PCBU should automatically be referred to the Commonwealth Director of Public Prosecutions for consideration of prosecution.

The AWU understands that every case must be considered on its merits and individual circumstances are an important factor. However, the AWU believes that many businesses factor in the low risk of prosecution when ignoring the advice of the regulator with regards to safety.

Ensuring personal liability for directors whose companies breach WHS laws, including dealing with insurance products that indemnify directors, and the ability for companies to phoenix and avoid fines.

The AWU supports the WHS Act being amended to expressly prevent directors from insuring against fines. This practice undermines the basic principles of justice and does nothing to encourage directors to ensure the business they oversee is conducted in accordance with the legalisation.

The AWU also supports the WHS Act being amended to make it clear that companies / directors that are being prosecuted cannot sell their businesses during this time without obtaining the written consent of ASIC.

The AWU understands that this would also require changes to the company law, however it would prevent unscrupulous employers from simply selling their business off and absolving themselves of their moral and legal obligations.

Industrial Manslaughter

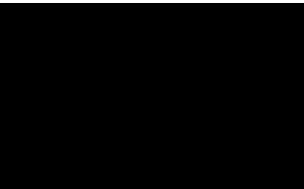
The AWU supports the ACTU proposal to make industrial manslaughter a criminal offence similar to the regime that was implemented by the Queensland Parliament.

The AWU acknowledges that this proposal may be highly contentious and strongly opposed by employer groups. Whilst the AWU supports the principles of this approach, any protracted debate in respect to this provision should be allowed to impede the passing of the other necessary amendments discussed above.

The AWU trusts that this outlines our position with regards the 2018 review of the model WHS laws.

Please contact our National Organiser, Shane Roulstone on [REDACTED] or [REDACTED] if you wish to discuss this matter.

Yours Sincerely



Daniel Walton
NATIONAL SECRETARY