

16 April 2018

Our ref: KB-ILC

Marie Boland
Independent Reviewer

Sent via online registration: <https://engage.swa.gov.au/review-consultation>

Dear Independent Reviewer

2018 Review of the model WHS laws

Thank you for the opportunity to provide comments on the 2018 review of the model WHS laws. Queensland Law Society appreciates being consulted on this review.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

We have not commented on each area raised in the Discussion Paper but make a few comments in respect of individual areas. Should the review lead to any legislative change, we would appreciate the opportunity review an exposure draft.

Question 9: 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?

We consider that an emerging issue concerning WHS hazards and risks is the increased use of different work arrangements and ways in which work is performed. WHS legislation should capture all situations where work is being performed and as such, policy makers need to be cognisant of emerging industries such as the "gig" and "sharing" economies. Though the numbers of "workers" participating in these arrangements is still small comparative to the Australian workforce as a whole, these industries are growing and often attract low income workers, recent immigrants and other minorities. These people should be able to work in environments that are safe.

We recommend that consideration be given to the current definitions of "worker" and "person conducting a business or undertaking" in light of these new economies and, that new and increased resources be directed to this area to allow for appropriate monitoring and investigation of what are non-traditional workplaces and employers/providers.

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?

Again, we recommend that the definition of a PCBU be reviewed to take into consideration people who are offering work on digital platforms and potentially, the platform provider where appropriate criteria can be established.

Question 14: Have you any comments on whether the definition of 'worker' is broad enough to ensure that the duties of care continue to be responsive to changes in the nature of work and work relationships?

We refer to our previous answer about ensuring that participants in the gig/sharing economy are adequately covered by the model WHS laws.

Question 25: Have you any comments on the effectiveness, sufficiency and appropriateness of the functions and powers of the regulator (ss 152 and 153) to ensure compliance with the model WHS laws?

We note that the Discussion Paper discusses the recent review in Queensland in respect of inspectors' powers and functions. In our submission to the Best Practice Review of Workplace Health and Safety Queensland (**enclosed**), we called for further resources to be dedicated to investigations and submitted that investigations needed to be progressed in a more timely manner to achieve better outcomes for all parties involved.

In addition, we note that recent legislation introduced in Queensland to amend work health and safety laws and related areas such as labour hire licensing, saw provisions that allowed inspectors to have extremely broad powers of entry, seizure of information and documents and compulsion which breached fundamental legislative principles. We would caution the review against recommending similar provisions be introduced into the model WHS laws and suggest that an appropriate balance can be achieved between worker safety and established legal rights.

Question 26: Have you any comments on the effectiveness, sufficiency and appropriateness of the functions and powers provided to inspectors in the model WHS Act to ensure compliance with the model WHS legislation?

As stated above, we consider that in Queensland, the functions and powers provided to inspectors to ensure compliance may be appropriate, however, the data shows that there is insufficient numbers of attendances at workplaces and subsequent investigations.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to k.brodnik@qls.com.au.

Yours faithfully


Ken Taylor
President