

**CCIQ SUBMISSION**

**Improving the model Work Health and Safety Laws**

**CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND**

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**Chamber of Commerce & Industry Queensland**

# Introduction

The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to Safe Work Australia on the Issues Paper and Consultation Regulation Impact Statement for improving the model Work Health and Safety Laws. CCIQ is supportive of providing stakeholders with the opportunity to have their say on the model WHS laws which aim to improve the health and safety of all Australian workers and support organisations to better prevent and manage workplace risks over the coming years. CCIQ would like to provide the below feedback on the model laws to ensure the balance between employer and employee obligations under the Act, Regulations, and Codes of Practice are equally balanced.

# The model WHS Act

*3.1 What areas in the model WHS Act, other than those identified by COAG and addressed below, have positively or negatively impacted on your organization and how could they be improved?*

**Health and Safety Representatives**

Queensland business has highlighted the broad operative range of provisions relating to the execution of certain functions of Health and Safety Representatives (HSRs) under the Work Health and Safety Act 2011 (the “Act”). Specifically, business has criticized HSRs as being able to seek assistance from any person within the workplace when exercising a power or performing a function as per Section 68 subsection 2(g) and corresponding Sections 3A (a) and (b) of the Act. As entry permit holders already have access to workplaces, and HSRs are able to report any issues arising to Inspectors, HSRs need not retain the right to seek assistance of any person within the workplace in exercising a power or performing a function. CCIQ believes the inclusion of provisions such as these in the Act amounts to a duplication of functions, and thus unnecessarily increases costs for employers, particularly in relation to training.

**Health and Safety Representative - training**

Under the current legislative framework, HSRs are entitled to an initial course of training of five days, which must also be an approved course. CCIQ believes the Act need not prescribe the length of training that is required for HSRs to effectively perform their functions, and that it is adequate that HSRs attend an approved course, the length of which should remain at the employers’ discretion. This will encourage greater employer flexibility, reduced costs, and increased workplace productivity.

**Health and Safety Representative - direction to cease unsafe work**

CCIQ believes HSR’s need not adopt the right to cease unsafe work. As this right currently resides with the individual worker (who retains a statutory right to direct the cessation of work on safety grounds) it is suggested that such a provision remain omitted from Queensland’s WHS legislative framework to avoid unnecessary duplication. This also achieves the effect of acknowledging that individual workers are best placed to make decisions regarding unsafe work practices and don’t become complacent in relying on direction from a HSP.

**Provisional Improvement Notices**

CCIQ calls for the removal of Section 93 Work Health and Safety Act 2011 as it operates to restrict actions taken by an employer to remedy a situation to only those methods that are specified within an issued provisional improvement notice (PIN). Specifically, it is unclear whether improvements need to be made to bring up to standard what is required under the relevant WHS laws or in the manner specified in the PIN. Section 93 fails to specify whether employers are awarded the discretion to make improvements to rectify the situation by following alternative methods. CCIQ believes other provisions within the Act, such as general duty to consult and issue resolution, effectively ensure that methods taken to remedy are acceptable and appropriate, without restricting actions to only those specified within the PIN.

**Entry by Entry Permit Holders**

CCIQ believes the requirement of entry permit holders to give 24 hours’ notice of entry should continue. This should be the minimum allowable standard to ensure the Act conforms to provisions outlined in the Fair Work Act. Allowing immediate entry for suspected contraventions is too broad and has led to misuse. Further, where multiple WHS entry permit holders attend a workplace in the same instance, permit holders should be required to submit individual reports. CCIQ argues that a failure to submit individual reports should attract punitive measures such as revocation of the permit holder’s permit. Additionally, CCIQ encourages the Office of Safe Work Queensland to recommend a tightening of laws with respect to suspected abuses of WHS right of entry. To achieve this, CCIQ recommends granting Persons Conducting Business or Undertaking the right to report suspected abuses of right of entry to the Regulator.

**Workplace Health and Safety Committees**

CCIQ recommends a review of Sections 75-79 in relation to Health and Safety Committees (HSCs). Firstly, the use of the term workplace in the abovementioned sections should be amended to more accurately describe those instances where HSCs operate across more than one workplace. Additionally, in the interests of legislative simplification, the prescribed requirement to establish a formal HSC should be left at requiring at least five workers to request its creation. Otherwise, workers can still elect HSRs, and existing consultation in a business with less the five workers is viewed by business to be more than adequate.

# Director’s liability under the model WHS laws

*3.2 What impact (positive or negative) has they on officers had on your organization?*

*3.3 Which aspects of the duty (if any) should be changed?*

CCIQ believes Director’s liability laws have generally had a positive impact on small business as they have worked to raise awareness of health and safety obligations in the workplace. However, CCIQ believes it is important to highlight uncertainties that have arisen for SMEs with respect to Director’s liability under the model WHS laws. For example, confusion regarding who is and is not an ‘officer’ as per the Act has, in some circumstances, been misinterpreted to include managers and supervisors. Further, SMEs have reported some misperceptions as to the roles and responsibilities of an ‘officer’ in the workplace due to it being an unfamiliar concept amongst SMEs. Overall however, CCIQ believes Safe Work Australia has produced several quality documents in this space particularly ‘Health and Safety Duty of an Officer under Section 27’ which goes a long way in negating the bulk of such uncertainty. Therefore, CCIQ does not recommend any specific changes to provisions relating to Director’s liability.

# The model WHS Regulations

*4.1 Which areas of the model WHS Regulations are concerns for you and how could they be improved?*

Overwhelming, the feedback from SMEs with respect to the model WHS Regulations is that they are lengthy, complex, and time-consuming, thus amounting to more red tape for small business. This has had the effect of discouraging business owners from fully engaging with their obligations under the Regulations, therefore lessening the chances of compliance and increasing the number of SMEs engaging external consultants to interpret the Regulations.

Further, the Regulations contain a number of duplicative provisions regarding Codes of Practice, and also repetitive requirements to implement controls such as risk assessment, training, information supervision, and signage across multiple hazard areas such as noise, hazardous chemicals, and hazardous manual tasks.

CCIQ believes the Regulations accompanying the Work Health and Safety Act 2011 increase the compliance burden on businesses already wrestling with significant compliance requirements. Such small business realities sit directly at odds with the Federal and State Government’s broader red tape reduction agenda. CCIQ contends that greater simplification of the model WHS Regulations will not only increase small business compliance with Work Health and Safety across the board but more meaningfully, will improve safety as businesses spend more time on actions and systems to improve their performance rather than demonstrating compliance.

*4.2 Which areas of the model WHS Regulations (if any) are more burdensome than beneficial?*

*4.3 How could these requirements be changed and what impact would this have?*

See record retention requirements / practical compliance difficulties below.

*4.4 Which areas of the model WHS Regulations (if any) are unnecessarily prescriptive and therefore limiting compliance options?*

*4.5 How could these requirements be changed and what impact would this have?*

CCIQ believes the following sections of the Act are unnecessarily prescriptive and should be removed to ensure legislative consistency and avoid duplication:

* **Section 21** – CCIQ argues there is no need to specify minimum days of an approved training program. The requirement for ‘approved’ training is adequate in this instance as this allows for oversight and authorization by the Regulator. CCIQ believes a loosening of restrictions with respect to minimum training requirements will increase flexibility in the way training can be delivered.
* **Section 60(2)** – The section contained in the Act regarding eligibility to vote is replicated in the Regulations and therefore need not be included in the former.
* **Section 353** – CCIQ believes this section is unnecessarily prescriptive with respect to hazardous chemicals and should be removed as specific signage for hazardous chemicals is covered through placarding requirements.

Lastly to note, there is further double up in Subdivision 3 of Hazardous Chemicals regarding emergency planning and safety equipment in that these are also covered in general requirements.

**Practical compliance difficulties**

*4.6 Which areas of the model WHS Regulations are difficult to comply with or unworkable in practice?*

*4.7 How could these requirements be changed and what impact would this have?*

The most difficult and unworkable aspects for SMEs contained in the WHS Regulations are the various record keeping requirements required. For example, there is significant variation in requirements ranging from 28 days to 30 years, depending on the subject. CCIQ has received feedback from Queensland business that the variation in requirements leads to confusion, making compliance harder and therefore less likely and/or more expensive. Similarly, the requirements to maintain some monitoring records for up to 30 years is particularly onerous for SMEs to manage.

CCIQ believes greater consistency in record keeping requirements would make compliance easier for SMEs and therefore more likely. Also, simplified record keeping procedures would reduce the need for SMEs to seek external advice to interpret SME obligations. CCIQ urges Safe Work to explore the notion of a single retention period as a possible option to alleviate restrictions of the present requirements.

# The model WHS Codes of Practice

*5.1 What role should approved Codes of Practice have in the legislative framework?*

*5.2 Which model Codes of Practice do you use and how do you use them?*

*5.3 What improvements could be made to the model Codes of Practice to make them more useful?*

*5.4 Does it make any difference to you if guidance is presented in a Code of Practice or in other formats such as guides or fact sheets?*

*5.5 Is the level of detail in the model Codes of Practice appropriate? Please provide any examples of where material in a model Code is overly complex?*

Queensland businesses remain concerned about the overall complexity and costs associated with understanding and complying with the WHS system, regulations, and Codes of Practice. Broadly speaking, there remain difficulties relating to the practical application of these regulations and Codes of Practice across very different and diverse business industry sectors. There is strong support for further simplification of the Act, Regulations, and Codes of Practice as a key indication of improvement to the model Work Health and Safety laws.

Specifically with respect to Codes of Practice, CCIQ believes they should ultimately be used to provide simple and easy guidance to SMEs on how to assess risk in the workplace. The current framework necessitates a complex interaction between Regulations and Codes, resulting in duplication and decreased clarity on roles and responsibilities with respect to risk in the workplace. For example, where a Regulation specifies the need to manage a particular risk in the workplace, the Code of Practice should be the document relied upon to accurately and easily guide business owners to understand how to effectively meet the ‘reasonably practicable’ requirement as espoused in the Regulation.

With respect to providing guidance in the form of fact sheets, CCIQ highlights the potential for confusion in replicating information on various topics in various formats. For example, a search on scaffolding provides a Fact Sheet and a Code of Practice. Where multiple documents are available they need to be carefully named to clarify any differences, or where a Code is available, fact sheets and guidance notes may need to be revoked.

Lastly, Codes of Practice also need to be useful to those who review them. The majority of businesses agree that the Business Manager/Owner and/or Workplace Health and Safety Officer currently review the regulations and Codes of Practice in their business. Two in five businesses indicated that Senior Management undertake this role, and around one in five indicated that this was undertaken by the WHS Manager and/or HSRs. It is essential that SWA consider the target audience when drafting the regulations and COP to ensure maximum understanding and compliance. It is essential that SWA consider the target audience when drafting the regulations and Codes of Practice to ensure maximum understanding and compliance.

CCIQ urges Safe Work Australia to ensure Codes of Practice are workable, simple, concise and easy to understand, do not include punitive measures, are consistent with the requirements set forth in the Regulations, and ensure one Code of Practice is allocated to each issue.

# Summary

The overwhelming feedback received from Queensland business with respect to Work Health and Safety Laws signifies that SMEs remain largely concerned about the WHS obligations of employers versus those of employees, the overall complexity of Queensland’s WHS system, interpreting the legislation, regulation and codes of practice as they apply to business operations, and lastly, the level of Government assistance to ensure compliance with WHS legislation.

Nevertheless, CCIQ is supportive of ongoing efforts to ensure the harmonisation and national consistency of WHS laws, as it is an effective mechanism for the continuous reduction of WHS red tape for SMEs. In saying this, Government must remain mindful in its efforts to nationally harmonise WHS practices to ensure it does not increase the regulatory burden on SMEs.

Lastly, CCIQ firmly believes a national strategy to enhance the responsibilities of employees in relation to their own actions in achieving workplace health and safety outcomes will achieve improved safety outcomes for SMEs overall. In this light, CCIQ commends the Queensland Government on their decisive action and implementation of business-focused initiatives, and look forward to continued progress toward greater employer/employee balance.