

Our reference: QSBC-5475

21 September 2022

Work Health and Safety Act 2011 review  
Office of Industrial Relations  
**via email:** [REDACTED]

### **Re: Work Health and Safety Act 2011 review**

It is my aim as Queensland Small Business Commissioner, together with my supporting office (collectively referred to as the QSBC) to enhance the operating environment of small businesses through collaborative advocacy, fast and fair assistance, and sharing information.

The QSBC welcomes the opportunity to provide feedback on the *Work Health and Safety Act 2011* (WHS Act) review (the review). The QSBC supports the right to safe work, and for small businesses to be assisted and empowered to implement effective and contemporary work health and safety practices. We acknowledge the commitment from the Queensland Government's Office of Industrial Relations to regularly review, and work to continuously improve, the effectiveness of the WHS Act.

There are approximately 450,000 small businesses in Queensland<sup>1</sup> who represent more than 97% of Queensland businesses<sup>2</sup> and employ around 42% of the private sector workforce<sup>3</sup>. As such, we recommend that any reforms stemming from the review strongly consider the needs of small businesses, their capabilities, and their capacity. It is important to note that small businesses employ a significant number of Queenslanders and do not have the resources and specialist capabilities of many larger businesses.

With respect to the review's Terms of Reference (TOR), the QSBC provides the following feedback:

#### **1. Consider and report on any need for amendments to ensure:**

##### **a. provisions relating to health and safety representatives are effective and operating as intended.**

The QSBC's view is that these provisions are geared toward large businesses and worker representative groups who have more resources and specialist industrial relations and work health and safety capabilities. As Queensland small businesses represent the majority of businesses and employ almost half the private sector workforce the review of these provisions must take into consideration their needs, capabilities and capacities.

With this in mind, we recommend the provisions be simplified, streamlined, and written in plain English while still ensuring a robust safety framework. In short, the provisions should be

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<sup>1</sup> ABS 8165 Counts of Australian Business, including entries and exits as of 30 June 2020, Australian Bureau of Statistics, Canberra.

<sup>2</sup> ABS 8165 Counts of Australian Business, including entries and exits as of 30 June 2020, Australian Bureau of Statistics, Canberra.

<sup>3</sup> ABS 8155 (Unpublished data) Queensland Treasury.

able to be readily understood without the need for specialist skills or verbose explanatory notes. Aside from that, we do not have any feedback on the operation of any specific provisions.

**b. workers are appropriately represented and assisted in the workplace for the purpose of health and safety matters.**

As per the feedback provided for 1.a, the QSBC suggests that any review of these provisions take into consideration the needs, capabilities, and capacities of small businesses.

**c. the effectiveness of the legislative framework for review and stay provisions with enforcement notices under the WHS Act.**

The QSBC has taken a digital-first approach to its dispute assistance and resolution service. For example, applications to the QSBC for dispute assistance and mediation are all made via simple, online-only forms. The QSBC also uses plain English, and non-legalistic language in all our support materials and website content. This ensures that the process to seek dispute assistance, and the process to resolve a dispute, is easily understood.

Feedback from small businesses who have engaged with our office confirms that these approaches are effective, efficient, and small business friendly. There have been no significant problems with a digital only approach and feedback is often conveyed by small businesses that they wish other government agencies would modernise their approach in a similar way.

With these learnings in mind, the QSBC recommends that the administrative process for the review of decisions (under Part 12 of the WHS Act) be modernised and that support materials (including website content) be streamlined and simplified significantly. Arrangements should be framed in a way that encourages the parties to work together to identify solutions that will consistently support safety in the context of the workplace within which the issues have arisen.

For example, the form to seek an external review by the Queensland Industrial Relations Commission (Form 74 – Application for WHS review) could be converted into an online form and the language made less combative (e.g., remove ‘applicant versus respondent’). This should be framed within materials that encourage the parties to work together, negotiate and mediate to find safety solutions that work for the given workplace.

**d. provisions relating to the issue and dispute resolution are effective and operating as intended.**

As per the feedback provided for 1.c, the QSBC recommends that the administrative processes for issue resolution (under sections 80-82 of the WHS Act) and disputes (under sections 102A-102G of the WHS Act) be modernised to reflect more contemporary approaches to resolving issues and building trust between the parties. This must be supported by materials (including website content) that are streamlined, simplified and written in plain English.



**2. Any other matters relating to the WHS Act's overall effectiveness and performance in ensuring a balanced framework to secure health and safety of workers and workplaces and consider whether any legislative or administrative amendments are required.**

The QSBC regularly hears from small business about the burden of the collective weight of regulation and red tape. For example, a Queensland small business owner with two employees has to not only operate their business but must also manage all the other obligations (e.g., payroll, human resources, regulatory licences and permits, work health and safety, taxation, lease, equipment etc.). These other obligations take away from time spent actually running the business, and can often require a greater time commitment than the running of the business.

This feedback is supported by recent survey results from the Chamber of Commerce and Industry Queensland (CCIQ), where 88% of micro and small businesses said that they experience a moderate to major impact from complying with government regulation<sup>4</sup> (at all levels). Work health and safety was identified as placing the highest burden of regulatory compliance on business by a government agency<sup>5</sup>.

The QSBC has also been contacted by small business industry representatives specifically in relation to the WHS Act and its subordinate legislation, including the Codes of Practice. While the small business community fully supports the need for effective and contemporary work health and safety requirements, some industry representatives have expressed concern to the QSBC that the operation of the WHS Act is geared toward larger businesses and specialists with the results of consultation often not reflecting the needs, capabilities, and capacities of small businesses.

Larger businesses often have dedicated work health and safety employees (or even whole teams, units or divisions), technical specialists and/or can afford to outsource these requirements to industry experts to implement WHS Act requirements relevant to their business. Whereas small businesses, which represent over 97% of the businesses in Queensland, have limited time, capability and capacity to implement WHS Act requirements and may lack the resources to engage external specialists.

These industry representatives have particularly noted that with each new requirement, new Code of Practice (such as the psychosocial hazards in the workplace code of practice), and other reforms (such as the introduction of industrial manslaughter laws), the operation of the WHS Act has become increasingly complex and laborious. Industry representatives have diligently conveyed suggestions for improvements to the operating environment for small business in this regard. For example, that there should be scalable requirements that account for a business' size and true risk profile, streamlined obligations generally, clearer rules that do not need interpretation, more checklists built into codes of practice and in supporting information, and better support and supporting materials for small businesses.

The QSBC strongly recommends that the legislative framework and the underlying administrative and regulatory practices be streamlined, simplified, and written in plain English. While the harmonised WHS Act has moved to a risk-based model and the Codes of Practice provide guidance; many small businesses simply need and want a basic checklist approach to ensure they are complying with the WHS Act and any relevant Codes of Practice. The QSBC is aware of some of the support materials and processes which have been developed, including the [Safety fundamentals: a small business toolkit](#) and the related small business support program, and

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<sup>4</sup> Red Tape Survey 2021: Measuring the regulatory burden facing Queensland businesses. Chamber of Commerce and Industry Queensland, Brisbane.

<sup>5</sup> Red Tape Survey 2021: Measuring the regulatory burden facing Queensland businesses. Chamber of Commerce and Industry Queensland, Brisbane.



suggest that this approach could be incorporated into Codes of Practice, particularly elements such as the checklist, to help small businesses to comply quickly and effectively.

Overall, the QSBC recommends that any reforms stemming from the review take into consideration the needs, capabilities and capacities of Queensland small businesses. The reforms must streamline and simplify work health and safety requirements to reduce the complexity where possible while still ensuring a robust, balanced, and modern safety framework.

Thank you once again for the opportunity to provide feedback. If you have any questions, please contact Rebekah Godbold, Principal Policy Officer on [REDACTED] or via email at [REDACTED].

Yours sincerely



Maree Adshead  
**Small Business Commissioner**

