

**Senate Standing Committee on Education Employment and Workplace
Relations**

QUESTIONS ON NOTICE

Question 1

Senator ABETZ: Be entitled to natural justice etcetera, to have their case fully heard. Now, has the department or has the Minister at any stage indicated what the economic benefit would be to the Australian economy of harmonised OH&S laws?

Ms Carapellucci: There was a regulation impact statement prepared in relation to the model bill that was considered by Workplace Relations Minister's Council when they signed off on the bill, and that did show a net benefit to the economy.

Senator ABETZ: And how much? Are you able to tell us?

Ms Carapellucci: Can I take that on notice and come back to you very quickly?

Senator ABETZ: Yes, of course. And who undertook that analysis? Was it Treasury? Was it your department?

Answer:

The Decision Regulation Impact Statement for a Model Occupational Health and Safety Act dated 9 December 2009 was prepared by Access Economics Pty Limited for Safe Work Australia. This estimated a net benefit to the nation of \$180.7 million per year.

Question 2

Ms Carapellucci: The regulation impact statement was prepared by Safe Work Australia and it was signed off by the Office of Best Practice Regulation in accordance with the COAG guidelines.

Senator ABETZ: All right. Now, who did Safe Work's appraisal rely on to get that information? Or to get that figure?

Ms Carapellucci: I think they engaged Access Economics to do the economic analysis, but generally in the preparation of these regulation impact statements it is pretty much a cooperative effort. So the consultants generally do the more technical economic type analysis and the agency staff do the qualitative.

Senator ABETZ: Can you take on notice for us when that impact statement and study was undertaken by access economics? Whether it was undertaken prior to Western Australia, for example, saying it will not be part of the scheme? Whether it was undertaken prior to New South Wales developing its mutant, if I can use that term, legislation? And also whether it was done prior to the model regulations coming to the fore? Because I would have thought all those matters would have a substantial impact on the economic benefits that will be derived. Because in an ideal world, if it was completely harmonised, with just a few jurisdictional notes, with a sensible set of regulations attached to it, one might be able to argue the figure. But as it is unravelling and with some of the regulations, at least the draft regulations, you could see a huge economic impact negatively in relation to the cost of doing business. So, I just want to get the robustness and the validity of that assessment, given what we now know and whether all those factors were taken into account.

Answer:

The Decision Regulation Impact Statement for a Model Occupational Health and Safety Act dated 9 December 2009 was prepared by Access Economics Pty Limited.

The Consultation Regulation Impact Statement was released for public comment on 28 September 2009 until 9 November 2009 together with:

- an exposure draft of the model OHS Act;
- key administrative regulations; and
- a discussion paper.

The key administrative regulations covered the following topics:

- Election of health and safety representatives;
- Training for health and safety representatives;
- Issue resolution;
- Incident notification; and
- Workplace entry by OHS entry permit holders.

The Regulation Impact Statement was developed after the change of Government in Western Australia on 6 September 2008, and after the Western Australian Government indicated that it did not support some of the recommendations of the review panel that had been agreed by the Workplace Relations Ministers' Council. (Western Australia's position was indicated in a media release of 18 May 2009 issued by the then Western Australian Minister for Commerce, the Hon Troy Buswell MP).

The Regulation Impact Statement was developed before the New South Wales Parliament made amendments to the New South Wales Work Health and Safety Bill. Those amendments were made by the Legislative Council on 27 May 2011 and passed by the Legislative Assembly on 1 June 2011.

The Regulation Impact Statement was developed after some of the draft model regulations were released for public comment, as noted above, but before the rest of draft model regulation package was released for public comment in December 2010.

Question 3

Senator ABETZ: Yes, and therefore no final RIS has gone to the federal minister and one would therefore assume to any of the state and territory ministers either. Is that a fair assumption?

Ms Carapelluci: As I said, I am not aware whether they have the same version that is currently with the Office of Best Practice Regulation.

Senator ABETZ: Could you please make urgent inquiries for us, because I think this is very important especially for senators as well. Before we are asked to vote on this legislation we would like to see the final RIS as well to inform ourselves of its information. I must say it is passing strange that a ministerial conference is being asked to sign off on this matter without the final RIS having been finalised, if I can use that terminology.

Answer:

As outlined in the extract below from the communiqué of the Workplace Relations Ministers' Council meeting of 10 August 2011, Ministers agreed to advise their

decision with respect to approval of the draft model Work Health and Safety Regulations upon consideration of the final Regulation Impact Statement.

The 85th meeting of the Workplace Relations Ministers' Council (WRMC) held in Sydney on 10 August 2011 saw the majority of Ministers endorse in principle the draft model Work Health and Safety (WHS) Regulations and the first stage Codes of Practice. The Council noted that the NSW Government is strongly committed to harmonisation but requires additional time to consult with NSW Ministerial colleagues whose portfolios are impacted by the changes. The Council also noted that the Victorian Government supports the principle of harmonisation subject to satisfactory assessment of the regulatory impacts and benefits to Victoria. All Ministers agreed to advise their decision with respect to approval of the draft model WHS Regulations and the first stage Codes of Practice upon consideration of the final Regulation Impact Statement as expeditiously as possible out of session; along with any further approval processes that need to be undertaken in individual jurisdictions.

Question 4

Senator ABETZ: And the right to silence has been and can you correct me if I am wrong, that is still protected in New South Wales – the right to silence.

Mr Lis: In New South Wales?

Senator ABETZ: Occupational health and safety.

Ms Carapelluci: I am not sure specifically about New South Wales but I do recall that these provisions do exist in a number of jurisdictions now. It kind of fell about 50/50 as to those that abrogated the right to silence and those that did not. This is how it has fanned out.

Senator ABETZ: If what I have in front of me is correct, it says New South Wales, Queensland, South Australia and Victoria do have the right to silence which is four out of the nine so that is about half/half. If you could take on notice for us if it is not too much work as to the right of silence and which jurisdictions had that and whether the New South Wales and Queensland legislation under the model laws does allow for the right to silence.

Ms Carapelluci: My understanding is that Queensland and New South Wales have passed these provisions as they are in the model bill but we can confirm that for you.

Senator ABETZ: If you could double check for me.

Answer:

All jurisdictions require a person to answer questions or furnish information to an OHS inspector or the Regulator in specified circumstances. New South Wales, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory all abrogate the privilege against self incrimination. The South Australian legislation provides that a person is not required to provide information if it would incriminate them of an offence. The Victorian and Queensland legislation also provides that an individual may refuse to provide information on the grounds that it may incriminate them. The Commonwealth OHS Act is currently silent on the issue, and therefore the privilege against self-incrimination is considered to remain.

The Work Health and Safety Acts passed by the NSW and Queensland Parliaments on 6 and 7 June 2011 (respectively) included provisions mirroring sections 155 and 171 of the model Work Health and Safety Act.

The Bills introduced by South Australia, the Australian Capital Territory and the Commonwealth also include provisions mirroring these sections.

Question placed after the hearing:

Please respond to the concerns raised by Croplife Australia (Submission 4) and Accord (Submission 11) about the new labelling requirements in the Work Health and Safety Bill 2011.

Answer:

The submissions to the Senate Inquiry on the Commonwealth Work Health and Safety (WHS) Bill from CropLife Australia and ACCORD, raise concerns about the labelling requirements.

The Commonwealth WHS Bill does not include provisions relating to the labelling of hazardous chemicals, or prescribe how chemicals are to be labelled. Specific requirements in relation to hazardous chemicals, including labelling, are included in the draft model WHS Regulations, which are yet to be finalised.

The model WHS hazardous chemical regulations have been based on the National Standard for the Control of Workplace Hazardous Chemicals (National Standard) which uses the United Nations' Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The National Standard derives from a number of reviews and extensive public consultation going back as far as 2002.

The approach to hazardous chemicals reflected in the model WHS Regulations has been developed through Safe Work Australia processes, having regard to the views of all stakeholders represented on Safe Work Australia. There has also been significant consultation between Safe Work Australia, the Department and interested stakeholders, including CropLife and ACCORD. The approach taken in the model WHS regulations has the strong support of the state and territory representatives on Safe Work Australia.

In recognition of the issues raised by industry representatives, the approach includes a long transition period to maximise the benefits and minimise the costs to industry.