

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Safe Work Australia

Department of Employment Question No. EMSQ17-004170

Senator Marshall asked on 30 May 2017 on proof Hansard page 131

Question

SWA - Correspondence regarding review into WHS laws

CHAIR: Senator Xenophon's question was: who did you write to? Was it John Rau?

Senator Cash: Yes; it was.

Senator XENOPHON: I went to law school with him, but don't hold that against him.

CHAIR: Are we tabling that letter?

Senator XENOPHON: Yes; I would be grateful if you would table it.

Senator Cash: I am happy to table the letter.

Senator XENOPHON: On notice, could you table the correspondence in relation to this. It seems that you have—

Senator Cash: Yes, and as I think as has been articulated by Ms Baxter, my timeline here is 20 February—I hope it is consistent with yours. Yes, I wrote to the chair of SWA to initiate the process that had been discussed and agreed to.

Senator XENOPHON: Yes, I understand that. There is no criticism on my part, it is just that you have undertaken to do certain things, which you have done, but I am trying to understand the rationale for why the states would want to have a review of occupational health and safety in the building and construction industry, from a safety perspective, not an IR perspective.

Senator Cash: I am not going to disagree with you, Senator Xenophon. In addition, obviously, too, with all that was stated in particular—Senator Cameron is not here now but certainly by members of the Labor Party and the CFMEU—over a very long period in time in terms of debate on the ABCC and issues of safety, I myself am a little surprised in the first instance at the first response that I have received.

Senator XENOPHON: Will you still be pursuing this to try to get this inquiry up and running?

Senator Cash: Yes.

Senator XENOPHON: If you could table all relevant correspondence and where it is at, and if you could advise whether there will be any subsequent correspondence you are planning to follow this through.

Senator Cash: I will do that.

Answer

Below is a record of all correspondence relevant to the proposed review of work health and safety (WHS) laws in the building and construction industry:

20 February 2017: Minister Cash wrote to Ms Diane Smith-Gander, the Chair of Safe Work Australia (SWA) requesting that SWA conduct a review of WHS laws in the building and construction industry and for this to be included in its draft Safe Work Australia Operational Plan 2017-18. SWA members were due to consider the draft Operational Plan at a scheduled meeting on 7 March 2017, before seeking the approval of Ministers responsible for WHS in each jurisdiction ([Attachment A](#) refers).

28 February 2017: Ms Diane Smith-Gander responded to Minister Cash advising that she had written to SWA Members, providing them with a copy of the Minister's letter. She noted in the letter that the draft Operational Plan being considered by Members at their 7 March meeting would include reference to the proposed WHS laws in building and construction review ([Attachment B](#) refers).

21 March 2017: the Chair of SWA replied to Minister Cash advising that SWA Members did not agree to SWA conducting the review at this stage or its inclusion in the Operational Plan. Instead, Members requested that Minister Cash first seek agreement from state and territory Ministers responsible for WHS and workplace relations for SWA to conduct the proposed review before agreeing to its inclusion in the draft operational plan. Ms Smith-Gander agreed that SWA is the most appropriate entity to conduct the review ([Attachment C](#) refers).

30 March 2017: Minister Cash responded to the Chair of SWA, thanking her for her efforts and noting the advice ([Attachment D](#) refers).

10 April 2017: Minister Cash wrote to State and Territory Ministers seeking their agreement to include the proposed review in SWA's 2017-18 Operational Plan. Responses from Ministers are due by 30 June 2017 ([Attachment E](#) refers).

10 May 2017: The Hon Bill Johnston, Minister for Commerce and Industrial Relations, WA, responded to Minister Cash ([Attachment F](#) refers).

29 May 2017: The Hon Rachel Stephen-Smith, Minister for Workplace Safety and Industrial Relations, ACT, responded to Minister Cash ([Attachment G](#) refers).

29 May 2017: The Hon Natasha Fyles MLA, Attorney General and Minister for Justice, NT, responded to Minister Cash ([Attachment H](#) refers).

As at 19 June 2017, the Government is awaiting responses from the relevant New South Wales, Queensland, South Australian, Victorian and Tasmanian Ministers. The nature of these responses will inform the appropriate next steps, including future correspondence.



Senator the Hon Michaelia Cash
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service

Reference: MS17-001062

Ms Diane Smith-Gander
Chair
Safe Work Australia
GPO Box 641
CANBERRA ACT 2601

Dear Ms Smith-Gander

A handwritten signature in blue ink that reads 'Diane'.

Review of work health and safety laws in the building and construction industry

I am writing to request Safe Work Australia to conduct a review of work health and safety (WHS) laws in the building and construction industry. The Australian Government welcomes recent data from Safe Work Australia which shows a downward trend in fatalities and serious injuries in the building and construction industry over the past decade. To ensure that this improvement is sustained over the coming years, I consider it timely to initiate an expert review of WHS laws, as they apply to the industry.

I request that Safe Work Australia appoints a suitably qualified expert to conduct the review of the effectiveness of WHS laws in the building and construction industry in the Commonwealth and States and Territories, including into the operation and effectiveness of the Australian Government Building and Construction WHS Accreditation Scheme administered by the Federal Safety Commissioner. This expert should provide a written report to Safe Work Australia Members by the end of 2017. I ask that I be provided with a copy of the report for consideration by Government.

As you are aware, building and construction is one of the seven industry groups identified as national priorities for prevention activities under the *Australian Work Health and Safety Strategy 2012-2022* (the Strategy). I understand that Safe Work Australia is at present conducting its mid-term review of the Strategy and planning the 2018 Review of the Model WHS laws. The outcomes of a comprehensive review of WHS laws in the building and construction industry will inform those reviews.

I also request that the review be part of the Operational Plan for 2017-18 when it is considered by Safe Work Australia Members on 7 March 2017. To facilitate the rapid commencement of the review, my department can assist with developing terms of reference, governance arrangements and selecting an appropriate expert.

Yours sincerely

A handwritten signature in blue ink that reads 'Michaelia Cash'.

Senator the Hon Michaelia Cash

20 / 2 / 2017



Chair
Ms Diane Smith-Gander

Reference: MS17-001062

Senator the Hon Michaelia Cash
Parliament House
Canberra ACT 2600

Dear Minister

Thank you for your letter of 20 February 2017 requesting Safe Work Australia conducts a review of work health and safety (WHS) laws in the building and construction industry. I also note your request that a suitably qualified expert be appointed to conduct the review and that it be included in the Safe Work Australia Operational Plan 2017-18.

I have written to Safe Work Australia Members providing a copy of your letter. I have indicated to Members that I am supportive of your request. The Agency provided Members with a draft version of the 2017-18 Operational Plan on 21 February 2017, which included reference to this review. I will be seeking Members' endorsement of the draft plan at their meeting on 7 March 2017.

Following the meeting, Safe Work Australia's Chief Executive Officer, Michelle Baxter will contact your office to advise of the outcome of the discussion at the meeting.

Should Members agree to undertake the review, the Agency will work with your Department and Members to develop the terms of reference, governance arrangements and the selection of an appropriate expert.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Smith-Gander", written in a cursive style.

Diane Smith-Gander
Chair
Safe Work Australia

28 February 2017



Chair
Ms Diane Smith-Gander

Senator the Hon Michaelia Cash
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to your letter of 20 February 2017 requesting Safe Work Australia (SWA) conduct a review of work health and safety (WHS) laws in the building and construction industry and to include the review in the SWA Operational Plan 2017-18 (the Operational Plan). SWA Members considered your request at their meeting on 7 March 2017. I am writing to inform you of the outcomes from that meeting.

Members did not agree to SWA conducting the review or to include it in the Operational Plan. Instead, Members asked me to suggest to you that you seek agreement to SWA conducting the review from WHS ministers. Members indicated a preference in future for such matters to be raised directly with WHS ministers, rather than through the Chair.

Apart from the manner in which the request was made, Members also carefully considered the proposed review. In summary:

- there was general agreement that SWA was the appropriate body to conduct such a review, particularly due to its tripartite governance arrangements
- there were concerns that a review of the Federal Safety Commissioner's Accreditation Scheme is outside the remit of SWA
- it was acknowledged that a review was recently conducted into the Federal Safety Commissioner and so, should the review proceed, it would be important to ensure there was no duplication
- there was consideration given to whether a similar review of the Agriculture industry should be the priority given it has the highest incidence rates across all of the priority industries under the Strategy, and
- Members questioned the proposed funding arrangements for the review, relevantly will the Commonwealth provide additional funding to SWA should it conduct the review.

As I previously mentioned in my letter to you of 28 February 2017, I am supportive of a review into the operation of the WHS laws in the building and construction industry. Like SWA Members generally, I consider that SWA is best placed to conduct this review. Thank you for your support of SWA generally, and this acknowledgement of the important role SWA plays in national WHS matters. I hope that we are able to take the necessary steps to improve WHS outcomes for the building and construction industry.

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chair@swa.gov.au

www.swa.gov.au



Chair
Ms Diane Smith-Gander

Please contact me if you would like to discuss this matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Smith-Gander".

Diane Smith-Gander
Chair
Safe Work Australia

21 March 2017



Senator the Hon Michaelia Cash

Minister for Employment

Minister for Women

Minister Assisting the Prime Minister for the Public Service

Reference: MC17-032886

Ms Diane Smith-Gander
Chair
Safe Work Australia
GPO Box 641
CANBERRA ACT 2601

Dear Ms Smith-Gander

Review of Work Health and Safety Laws in the Building and Construction Industry

This letter is in response to your letter of 21 March 2017 concerning the proposed review of Work Health and Safety (WHS) Laws in the building and construction industry. I thank you for raising the issue with Safe Work Australia Members at the meeting on 7 March 2017 and appreciate you providing me an update on the discussions from the meeting.

I am encouraged by Members' agreement that Safe Work Australia, as the tripartite national policy body for work health and safety, is best placed to conduct such a review. I also note the Members' preference that matters of importance be first raised with ministers responsible for work health and safety in each jurisdiction, rather than bringing them to the attention of Members for initial discussion.

I have accordingly written to state and territory WHS ministers, requesting their agreement to include the proposed review in Safe Work Australia's Operational Plan for the next financial year. Should sufficient support for the review be expressed by my ministerial colleagues, the other matters raised by Members can be addressed during the process of determining appropriate terms of reference, scope and governance arrangements. As noted in my previous correspondence to you, the Department of Employment can assist with this process.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michaelia Cash'.

Senator the Hon Michaelia Cash

20/3 / 2017



Senator the Hon Michaelia Cash

Minister for Employment

Minister for Women

Minister Assisting the Prime Minister for the Public Service

Reference: MS17-006205

The Hon Matthew Kean MP
Minister for Innovation and Better Regulation
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

Safe Work Australia Draft Corporate and Operational Plans

I write as Minister for Employment to seek your approval of the *Safe Work Australia Corporate Plan 2017–2021* and the *Safe Work Australia Operational Plan 2017–2018*. I have written in similar terms to the Hon Dominic Perrottet MP, Minister for Industrial Relations.

The *Safe Work Australia Act 2008* requires the Chief Executive Officer to prepare a corporate plan every year, covering a four year period, to outline the intended outcomes and the strategies that must be followed to achieve those outcomes. An operational plan is also required every year to detail Safe Work Australia's activities to be carried out during the financial year. As required by the *Safe Work Australia Act* and the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, the operational plan also includes Safe Work Australia's operating budget.

Safe Work Australia Members, including Mr Anthony Lean from New South Wales, attended a planning day on 16 February 2017 to discuss specific activities for the 2017–18 financial year. Safe Work Australia Members endorsed the draft plans at their meeting on 7 March 2017.

The corporate and operational plans provide a commitment that all Members will work together to achieve:

- significant and continued reductions in the incidence of work-related death, injury and illness
- improved outcomes for injured workers and their employers through more effective, efficient, clearly understood and sustainable workers' compensation arrangements.

In 2017–18, Safe Work Australia will continue to focus on the following key activities:

- review, and if necessary revise, the *Australian Work Health and Safety Strategy 2012–2022* (the Strategy)
- build community awareness and knowledge of work health and safety and workers' compensation
- collect, maintain, improve and report on national work health and safety and workers' compensation data
- undertake and disseminate research and analysis on work health and safety and workers' compensation issues to identify new priorities
- monitor, evaluate and review the model work health and safety laws to address issues impeding the effective and efficient operation of the laws, and improve safety outcomes

- improve workers' compensation arrangements with a particular focus on return to work and strengthening the connection with enhanced health and safety outcomes
- finalise policy proposals for nationally consistent explosives regulation
- work with other countries or international organisations and represent Australia at relevant forums (as appropriate) to share data, information and/or knowledge and harness international learnings on work health and safety and workers' compensation matters.

I now seek your consideration and support of the corporate and operational plans by 30 June 2017. On receipt of approval by the majority of ministers, Safe Work Australia will publish the plans on its website.

I also seek your agreement to include an additional item in the operational plan - a review of work health and safety laws in the building and construction industry. Work health and safety in the building and construction industry was an issue that arose many times during the Senate debate concerning the Australian Government's legislation to amend the *Building and Construction Industry (Improving Productivity) Act 2016*. It was raised by senators from all parties, including the Opposition and cross-benchers. Accordingly I wrote to the Chair of Safe Work Australia to seek Members' agreement to conduct the review and include it in the draft operational plan for consideration by all work health and safety ministers.

While there has been a downward trend in fatalities and serious injuries in the building and construction industry over the past decade, the most recent reporting period shows an increase in the number of serious workers' compensation claims lodged in the construction industry, across seven of the nine jurisdictions. I consider this increase worthy of further investigation to ensure we can maintain the highest possible health and safety standards for all workers.

I am of the view that Safe Work Australia, as the tripartite national policy body for work health and safety, is best placed to conduct such a review. As you are aware, building and construction is one of the seven industry groups identified as national priorities for prevention activities under the Strategy. I understand that Safe Work Australia is at present conducting its mid-term review of the Strategy and is also planning for the Review of the model Work Health and Safety laws to be completed in 2018. The outcomes of a comprehensive review of work health and safety laws in the building and construction industry would inform those reviews.

Should you have any questions about the corporate and operational plans, please contact Ms Michelle Baxter, Chief Executive Officer, Safe Work Australia, on (02) 6121 7252 or at michelle.baxter@swa.gov.au. I encourage you to raise any queries regarding the proposed review of work health and safety laws in the building and construction industry with Mr Steve Kibble, Group Manager, Work Health and Safety Policy, Department of Employment, on (02) 6240 9013 or at Steve.Kibble@employment.gov.au.

Yours sincerely



Senator the Hon Michaelia Cash
10 / 6 / 2017

Encl.



Hon Bill Johnston MLA
Minister for Mines and Petroleum; Commerce and Industrial Relations;
Electoral Affairs; Asian Engagement

Our Ref: 71-00642
Your Ref: MS17-005205

Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
CANBERRA ACT 2600

Dear Minister

SAFE WORK AUSTRALIA DRAFT CORPORATE AND OPERATIONAL PLANS

Thank you for your letter of 10 April 2017 seeking my approval of the *Safe Work Australia Corporate Plan 2017-2021* and the *Safe Work Australia Operational Plan 2017-2018* (the Operational Plan).

I am pleased to offer my support for these Safe Work Australia (SWA) plans which are aimed at achieving significant and continued reductions in the incidence of work-related death, injury and illness and improving outcomes in workers' compensation arrangements for injured workers and their employers.

There is no indication of industry consultation and agreement in your letter for a separate review of work health and safety (WHS) laws in the building and construction industry. As a result of this and other factors, I oppose your proposal.

A review of the model WHS laws, as agreed by WHS Ministers, is being undertaken in 2018. This review will provide the opportunity for all industry sectors, including building and construction, to make their views known.

Thank you for the opportunity to provide my advice on these important WHS issues.

Yours sincerely

Hon Bill Johnston MLA
Minister for Mines and Petroleum; Commerce and Industrial Relations;
Electoral Affairs; Asian Engagement

10 MAY 2017



Rachel Stephen-Smith MLA

Member for Kurrajong

Minister for Community Services and Social Inclusion
Minister for Disability, Children and Youth
Minister for Aboriginal and Torres Strait Islander Affairs
Minister for Multicultural Affairs
Minister for Workplace Safety and Industrial Relations

Your ref: MS17-006205

Senator the Hon Michaelia Cash
Minister for Employment
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 10 April 2017 seeking my agreement to the draft Safe Work Australia corporate and operational plans and also requesting my agreement to add an additional item to the draft operational plan. I apologise for the delay in responding.

I support both draft plans and undertake to work constructively and collaboratively with Australian work health and safety ministers to improve national work safety and injury management arrangements. I do not however support the proposed addition, of a review of work health and safety laws in the construction industry, to the Safe Work Australia Operational Plan for 2017-18.

The expressed objectives of the proposed construction industry review are likely to be achieved by the Safe Work Australia review of the national model work health and safety laws, which is about to commence. I understand that the scope of this review will allow for close consideration of the effectiveness of existing work safety laws in the construction industry, given its high risk status and the fact that it is a priority industry targeted in the Australian Work Health and Safety Strategy.

Furthermore, I consider that a separate construction industry review would risk contributing to a fragmentation of safety laws. This would be unfortunate, given the efforts in recent years to harmonise and align work safety laws across industries as well as state and territory borders and the fact that many of the safety risks prevalent in the construction industry are not unique to it.

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@RachelSS_MLA

rachelSSMLA

Thank you for seeking my view on these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RSS', with a long horizontal flourish extending to the right.

Rachel Stephen-Smith MLA

29 MAY 2017

Cc – Steve Kibble, Group Manager, WHS Policy, Department of Employment,
steve.kibble@employment.gov.au



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MINISTER FOR JUSTICE

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Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
CANBERRA ACT 2600

Dear Senator Cash

Thank you for your letter of 10 April 2017 seeking my agreement to the draft Safe Work Australia Corporate Plan 2017-2021 and the draft Safe Work Australia Operational Plan 2017-2018.

I am pleased to provide my support of the draft Safe Work Australia Corporate Plan 2017-2021 and the draft Safe Work Australia Operational Plan 2017-2018, and look forward to the Northern Territory's continued involvement in the activities of Safe Work Australia.

However, I am unable to support the request that Safe Work Australia also conduct a review of the Work Health and Safety (WHS) laws in the building and construction industry.

I believe that it would be more appropriate for the Commonwealth to fund a national review (leveraging off the jurisdictional reviews into the building and construction industry recently completed or underway) to look at both the effectiveness and implementation of the model WHS laws in the building and construction industry and the Australian Government Building and Construction WHS Accreditation Scheme.

Funding should be provided to source external reviewers so that Safe Work Australia is not distracted from the critical review of the model WHS laws that affect all Australian workers.

Should you wish to discuss this matter further, please feel free to contact Mr Stephen Gelding on (08) 8999 5492.

Yours sincerely

NATASHA FYLES

29 MAY 2017

