

Modernising Work Health and Safety Laws in Western Australia

Submission by the Independent Education Union of Australia WA Branch

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Submission

To

**A/Director General
Safety Regulation**

**Modernising work health and safety laws in WA –
Proposals for amendments to the model work health
and safety bill**

Submitter: Angela Briant, General Secretary

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By email WHSreform@dmirs.wa.gov.au

Dear A/Director General,

The Independent Education Union of Australia WA Branch is pleased to have the opportunity to make a submission on the proposals on Modernising Work Health and Safety Laws in Western Australia.

The Independent Education Union of Western Australia (IEUA WA Branch) represents the professional interests and industrial and workplace health and safety concerns of teachers and support staff in non-government schools, early education and care services, post compulsory education and other non-government educational institutions across metropolitan and regional and remote Western Australia. The IEU has a membership of 5,000 teachers and support staff in Western Australia.

Members work in a diverse range of schools including Catholic, Islamic, Anglican, Jewish, Steiner, Lutheran, Montessori, other faith-based, community and non-denominational independent schools.

These schools range from very large schools with significant resources to extremely small rural schools with very limited resources

While the majority of members of the IEU are teachers, the membership also consists of workers engaged as learning support assistants, administrative staff, gardeners, cleaners and caterers.

Additionally, the IEU represents teachers in Early Childhood Education and post-secondary private education and training.

IEU membership nationally has doubled in size over the last ten years. The IEU is a significant national union with more than 75,000 members around Australia.

This is our submission on behalf of members of the IEUA WA Branch.

WHS Recommendation 14: Clarify that health and safety representatives are required to attend training courses

The IEU supports this proposal.

Employees elected as Health and Safety Representatives should have the right to choose what training provider they wish to do their training with. This should be an entitlement.

Further to this, payment for attending such training should be at the employees' applicable pay rate and allowances had they not been attending a training course.

We consider that in relation to choice of training the PCBU and Health and Safety Representative should agree on the dates when the Health and Safety Representative attends the training course.



WHS Recommendation 16: Right to cease unsafe work to include hazards posed to other persons

The IEU supports the right refusal to work in an environment that poses an imminent risk to an employee's health and safety.

We consider the legislation must be amended to reflect the right for an employee or employees to cease work where there is an imminent risk or harm to others.

WHS Recommendations 19 & 20: Right of entry and WHS entry permit holder may inform Regulator prior to entry

The IEU supports this facilitative amendment. We consider it is appropriate that an Entry Permit Holder provide documents relating to entry post inspection and electronically to the PCBU.

This will ensure there will not be a delayed response to a suspected safety breach at a workplace.

WHS Recommendation 23: References to the Industrial Relations Act 1979

The IEU supports the current right of entry provisions as contained in the *Industrial Relations Act 1979*.

These provisions are appropriate, clear and well understood. Therefore we consider that there is no need to include right of entry provisions in the WHS Act.

WHS Recommendations 32 & 33: Permit any person to be appointed by the Regulator to initiate a prosecution and Right for union to initiate prosecution for WHS civil penalty provision

The IEU agrees that employers need to be accountable and that the regulator be provided with the power to commence proceedings for offences under the Act.

We also support that Worksafe needs to be sufficiently staffed and resourced to be able to carry out their duties in relation to the Act and the Regulations.

The IEU also submits that in addition to the powers of the Worksafe directorate there should not be restrictions on unions prosecuting offences in relation to the sections of the Act listed below:

- Section 33 - Failure to comply with health and safety duty;
- Section 38 – Duty to notify of notifiable incidents;
- Section 47 – Duty to consult workers;
- Section 52 – Negotiations for agreement for work groups of multiple businesses;
- Section 57 – Notice to workers;
- Section 61 – Procedure for election of health and safety representatives;
- Section 70 – General obligations of persons conducting a business or undertaking;
- Section 71 – Exceptions from obligations under section 70(1);
- Section 72 – Obligation to train health and safety representatives;
- Section 75 – Health and Safety Committees;



- Section 79 – Duties of person conducting a business or undertaking;
- Section 99 – Offence to contravene a provisional improvement notice;
- Section 104 – Prohibition of discriminatory conduct;
- Section 107 – Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct;
- Section 108 – Prohibition of coercion or inducement;
- Section 109 – Misrepresentation; and
- Section 273 – Person not to levy workers

Other recommendations:

Recommendation 1: Amend Section 19 (3) to include the risk to psychological and physical health

The IEU Branch supports this amendment.

We deal with many psychological and physical health issues with our members due to the nature of their work.

This can come from their demanding workloads, such as out of regular hours of work, Co-curricular activities and lack of time for essential duties including but not limited to planning, preparation, assessment, marking and consultation.

Other issues are bullying in the workplace, duty of care to the students and aggression and violence in and outside the workplace.

It is very important to our members that this provision is strengthened in the new legislation.

Recommendation 2: That the WHS contains a provision similar to S29 of the New Zealand Health and Safety at Work Act 2015

The IEU supports this amendment, we consider that this should lead to better safety outcomes across Western Australia.

If the employer is directly liable for fines, this will provide a tangible deterrent for not employers who fail to provide a safe workplace. It will also act as an encouragement for employers to provide a safe workplace.

Simply being able to insure against liability is not a sufficient deterrent.



Recommendation 3: Penalties and fines

The IEU supports this amendment.

Fines need to reflect the seriousness of any safety breach.

Further we support the standard for a category 1 offence to be classified as gross negligence instead of recklessness.

We consider that penalties and fines will be a deterrent, and result in a focus on having a safe and healthy workplace. This should lead to cultural change and create a safe working environment.

Recommendation 4: That the WHS Act include the offence of Industrial Manslaughter similar to the Queensland WHS Act

The IEU supports this amendment.

Our view is that the introduction of this provision will improve the capacity of regulators to be able to introduce tougher sanctions and compliance with the Act.

Recommendation 6: PCBU's to facilitate attendance at Health and safety Committee meetings

The IEU supports the proposal for the Act to prescribe the facilitation of HSR's to be able to attend safety committee meetings.

This is especially important where the meetings are held outside of normal school hours, during the times teachers are rostered on class and for part-time staff who are not at the workplace for the complete working week.

Recommendation 7: Amendment sections 76 & 79 of the WHS Act to ensure that a PCBU must facilitate a HSR's attendance at Health and Safety Committee Meetings

Our response to this is consistent to our response to Recommendation 6 above.

Recommendation 8: That the WHS Act contain a section similar to 69 (1) of the *Victorian Occupational Health and Safety Act 2004*

The IEU supports this proposal.

This proposal allows for other forms of OSH training such as falls from heights, mental health, consultation provisions in the workplace and other OSH topic specific subjects.



Other considerations:

- The IEU submit that the proposed changes to the Health and Safety laws in WA will effect a positive change in the capacity of the regulator
- Sufficient resourcing for the regulator must be a priority from this review
- There are far too many deaths at work in addition to a raft of serious injuries experienced in WA workplaces; significant changes in the legislation will improve this situation markedly
- Sadly in many workplaces and specifically in the non-government school sector there has been a continuing increase in workplace stress, anxiety and depression. Current legislation does not provide sufficient provisions to halt this escalation
- We also support the proposition that where the employer fails to keep a Health and Safety Representative Register, this should be regarded as a criminal offence
- The requirement to have an up to date Asbestos Register needs strengthening, as does the policing and enforcement of the Register
- Given that a significant number of IEU members work in remote areas of Western Australia , we see the need for the WHS Act to be able to prescribe and enforce reasonable health and safety standards for these employees working and living in remote parts of the state

The IEU trust that our submissions will be noted. We consider that the recommended amendments to the legislation will go a long way towards affecting positive change.

Ultimately the amended legislation will promote safer and healthier workplaces for our members so they can go home to their partners, friends and families safe after work each day.

Yours sincerely,

A handwritten signature in blue ink that reads "Angela Briant".

Ms Angela Briant
General Secretary
IEUA WA Branch