

# Modernising Work Health and Safety Laws in Western Australia

## Submission by Regional Power t/as Horizon Power

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## Horizon Power Submissions (including all recommendations)

Enter your comments on specific recommendations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the WHS Act other than those covered by the recommendations of the MAP.

#	Recommendation	Clauses	Comments
1	Amend the Objects of the WHS Act (WA) to foster cooperation and consultation in the development of health and safety standards.	3(1)(c).	<p>With the communication, consultation and cooperation being a fundamental component that drives continual improvements leading to the safety &amp; health of work the amendment needs to focus on cooperation and consultation between employers and employees. There is little value in narrowing the focus of this amendment to incorporate the communication between employers and unions.</p> <p>Only a minor quantity of employees within Horizon Power are estimated to be union members. Narrowing the focus to the above amendments will not cater for the majority of worker and the important relationships for them, which is with their employer.</p> <p>Horizon Power would submit that section 3(1)(c) should be amended reflecting an and maintaining the importance of fostering cooperation and consultation between employers and employees.</p> <p>Horizon Power supports the recommendation as per the amendment we have stated.</p>
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	Horizon Power supports the amendments with no changes.
3	Include the formulation of policies and the coordination of the administration of laws relating to work health and safety in the Objects of the WHS Act.	3(1).	Horizon Power supports the amendments with no changes.
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	Horizon Power supports the amendments with no changes.
5	Amend the definition of <b>import</b> to include importation from another state or territory into Western Australia.	4.	Horizon Power supports the amendments with no changes.
6	Amend the meaning of <b>supply</b> to include the loan of an item.	6(1).	Horizon Power supports the amendments with no changes.

#	Recommendation	Clauses	Comments
7	Amend the meaning of <b>person conducting business or undertaking</b> to ensure only <b>workers</b> and <b>officers</b> who are 'natural persons' are excluded.	5(4).	<p>Horizon Power submits that amending this definition is unnecessary and for the meaning of PCBU remain as it was originally adopted in the 2011 Model. This will ensure a greater alignment with the requirements within other states.</p> <p>In the interests of harmonisation Horizon Power does not support the amendments as per recommendation 7.</p>
8	Include a new duty of care on the providers of workplace health and safety advice, services or products.	New clause to be added to Division 3, Part 2 and new definitions to be added to section 4.	<p>Horizon Power is in opposition to extend duty care requirements to safety professionals employed by a PCBU. The introduction of this amendment is likely de-value the duty of care of the PCBU and causes a great deal of confusion over control of a worksite. In most cases safety professional employed by a PCBU are not in control of the workplace whereby they offer advice and support to those who are in control. In some cases this the PCBU may not adhere to the advice or recommendation detail being provided subsequently unintended issues.</p> <p>Horizon Power determines this additional, and potentially conflicting, duty of care will cause issues when used in parallel with the primary duty of care of the PCBU.</p> <p>Elected health and safety representatives who provide health and safety information and advice would be incumbent to this duty as it is currently proposed. Within Horizon Power working groups it is already challenging to secure nomination for keen employees to stand to become a Health and Safety representative. Horizon Power consider number of employees willing to stand for election as a health and safety representative because of the exposure to this duty.</p> <p>This proposal will likely lead to an increase in costs associated with receiving the safety and health advice from consultant and service providers which impact small business owners as they transition to comply with the new legislative environment.</p> <p>Horizon Power deems the primary duty of care for the PCBU to be sufficient rendering this amendment to be superfluous.</p> <p>Horizon Power does not support recommendation 7.</p>

#	Recommendation	Clauses	Comments
9	Amend the meaning of <b>serious injury or illness</b> to include immediate treatment as an in-patient without reference to a hospital.	36(a).	<p>The serious of an injury or illness is not always determined by the amount of days/nights admitted into a medical treatment facility. With capability of outpatient care increasing instigated by freeing hospital beds serious injuries or illnesses can be treated via out patient care.</p> <p>Other states have not needed to instil this definition to determine serious injury or illness.</p> <p>Horizon Power determines this changes to be unnecessary as they are not consistent with other states, however supports the amendments.</p>
10	Include incapacity to work for 10 or more days as a category of <b>serious injury or illness</b> .	36.	<p>The serious of an injury or illness is not always determined by the amount of days/nights admitted into a medical treatment facility. With capability of outpatient care increasing instigated by freeing hospital beds serious injuries or illnesses can be treated via out patient care.</p> <p>Other states have not needed to instil this definition to determine serious injury or illness.</p> <p>Horizon Power determines this changes to be unnecessary as they are not consistent with other states, however supports the amendments as per recommendation 10.</p>
11	Amend the heading 'Negotiations for agreement for work group' to Negotiations for determination for work group'.	52 (heading only).	<p>Horizon Power has determined the proposed amendments will increase clarity and support the intention of section 52.</p> <p>Horizon Power supports recommendation 11 with no changes.</p>
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	<p>Horizon Power has identified benefit for safety representatives to exercise only specified functions or powers beyond the work group for which they have been elected to represent. This specificity of function or power must be directly related to an immediate and imminent exposure to a hazard affecting another work group, whereby the health and safety representative of the other work group is unavailable when the exposure has occurred.</p> <p>Horizon Power however, ascertains these requirements would need to be clear.</p> <p>Horizon Power supports recommendation 12 as per the amendment we have stated.</p>

#	Recommendation	Clauses	Comments
13	Change the approving authority for courses to be attended by a health and safety representative (HSR) from the <b>regulator</b> to the Work Health and Safety Commission.	72(1)(a).	Horizon Power supports recommendation 13 with no changes.
14	Ensure the PCBU's obligation to ensure a health and safety representative (HSR) attends approved training is a 'requirement' rather than an 'entitlement'.	72(1)(b).	Safety & Health representatives once elected need the required training to specific standards to ensure the safety & health value of their appointments. Employees, Workgroups and Employees all benefit from these roles and the training should not be determined as an entitlement.  Horizon Power supports recommendation 13 with no changes.
15	Require that a health and safety committee must include a representative from management with sufficient seniority to authorise the decisions and recommendations of the committee.	New clause to be added to section 76.	Horizon Power supports the general premise that the health and safety committee, where possible, has a suitably senior representative from management as a member as this ensures greater communication, cooperation, consultation and understanding of health and safety matters and concerns at the workplace. However to prescribe Senior Management in legislation is not necessary. It will remove flexibility from employers. Management form wider teams whereby they will escalate decisions that can't be made within the committees then they can be managed within the teams to resolve. What is more important is that there is equal or less members in proportion to the employee members.  There already a duty of the PCBU to ensure consultation, cooperation to prescribe it further is not necessary.  Horizon Power does not support recommendation 15.

#	Recommendation	Clauses	Comments
16	Include the common law right for a worker to cease unsafe work where there is a risk posed to another person by the work.	84	<p>“A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.”</p> <p>188. Section 19(2) of the WHS Act (WA) refers, within the primary duty of care that:</p> <p>“A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of business or undertaking.”</p> <p>Further, the duties of workers provided in section 28(b), in addition to the provisions of section 28(a) to “take reasonable care for his or her own health and safety”, state that the worker must “take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons”.</p> <p>Horizon Power determines that a worker must feel supported when decisions to cease work are made and are needing to be upheld. We would rather our workers take the action and not get the decision correct rather than to continue to work when it is unsafe.</p> <p>Horizon Power supports recommendation 16 with no changes although this is not what the model legislation has incorporated there is consistency with what is currently practiced and applied.</p>
17	Include the right to seek review of an issue arising out of the cessation of unsafe work by the Work Health and Safety Tribunal (WHST).	89, 229.	Horizon Power supports recommendation 17 only where on the first instance a regulatory inspector has been unable to resolve a matter. This amendment must allow application to the WHST as a result of stopping work.
18	Add a requirement that a HSR is notified where a request to review a provisional improvement notice by an inspector is sought by a PCBU or person.	New clause to be added to section 100.	Horizon Power supports the amendments with no changes but would like to comment this is not play within other states.

#	Recommendation	Clauses	Comments
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	<p>The WHS Act (WA) should provide its primary focus and objectives on the development of direct and productive workplace-based mechanisms for the participation, consultation and resolution of issues between the PCBU and the employees (and their health and safety representative) at the workplace.</p> <p>Horizon Power determines that such a section prescribed in legislation will undermine the employers ability to form the working relationships necessary to improve safety and health in the workplace. On the basis the relationship between PCBU and worker is most valuable when it comes to safety, a third party is likely to not compliment this relationship.</p> <p>Horizon Power determines that right of entry of trade unions should solely remain within the Fair Work Act and not be incorporated into the safety legislation.</p> <p>Most of Horizon Power employees are not union members and this heavy hitting requirement is accommodating a very small proportion of our employees.</p> <p>Horizon Power does not support recommendation 19</p>

#	Recommendation	Clauses	Comments
20	Adopt the intent of South Australian provisions for right of entry, permitting a workplace entry permit holder (EPH) to inform the Regulator of the intended entry, and associated changes.	New clauses inserted in section 117.	<p>The WHS Act (WA) should provide its primary focus and objectives on the development of direct and productive workplace-based mechanisms for the participation, consultation and resolution of issues between the PCBU and the employees (and their health and safety representative) at the workplace.</p> <p>Horizon Power determines that such a section prescribed in legislation will undermine the employers ability to form the working relationships necessary to improve safety and health in the workplace. On the basis the relationship between PCBU and worker is most valuable when it comes to safety, a third party is likely to not compliment this relationship.</p> <p>Horizon Power determines that right of entry of trade unions should solely remain within the Fair Work Act and not be incorporated into the safety legislation.</p> <p>Most of Horizon Power employees are not union members and this heavy hitting requirement is accommodating a very small proportion of our employees.</p> <p>Horizon Power does not support recommendation 20</p>
21	Insert the Registrar of the Western Australian Industrial Relations Commission as the <b>authorising authority</b> for the WHS entry permit system.	4, 116, 131, 132, 134, 135, 149, 150 and 151.	<p>Horizon Power determines that right of entry of trade unions should solely remain within the Fair Work Act and not be incorporated into the safety legislation.</p> <p>On this basis of not supporting recommendation 19 &amp; 20, Horizon Power does not support recommendation 21</p>
22	Insert the <b>WHS Tribunal</b> as the authorising authority for revocation of WHS entry permits and resolution of disputes about right of entry.	138, 139, 140 and 142.	Horizon Power supports recommendation 22 with no changes.
23	Replace references to the defined phrase <b>relevant state or territory industrial law</b> with the <i>Industrial Relations Act 1979</i>	4, 116, 124, 131(2)(c)(ii), 133(c)(ii), 137(1)(b)(ii), 137(1)(d)(ii), 138(2), 150(b), 150(c)(ii)	Horizon Power supports recommendation 23 with no changes.
24	The <b>Registrar</b> to be included as an eligible party to apply to the <b>WHS Tribunal</b> to revoke a WHS permit, or deal with a dispute about a WHS entry permit.	138(1), 142(4).	Horizon Power supports recommendation 24 with no changes.
25	Modify the power of inspectors to require production of documents and answers to questions without the prerequisite of physical entry to the workplace.	171, Division 3 of Part 9 (heading) and Subdivision 4 of Division 3 of Part 9 (heading).	Horizon Power supports recommendation 24 with no changes. The need for Inspectors to obtain information on safety & health related issues should not be hindered by the prerequisite of obtaining access to a work location first.



#	Recommendation	Clauses	Comments
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171.	<p>Horizon Power has identified the mutual benefits of an Inspector being able to record interviews during the process if collecting evidence and statements, however a recording shall not be permissible where the Inspector has not first declared the intent to record to the interview and this has been formalised.</p> <p>Horizon Power supports recommendation 12 as per the amendment we have stated.</p>
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193.	Horizon Power supports recommendation 27 with no changes.
28	Include the power for the Regulator to request an independent evaluation consistent with current practice.	New clause to be added to Division 2, Part 8.	Horizon Power does not support this recommendation 28 but would support the provisions being included within industry-specific Regulations thereby limiting the application to reflect current practice.
29	For consistency with the <i>Coroner's Act 1996</i> , remove the power of an inspector to attend any inquest into the cause of death of a worker and examine witnesses.	160(f) and 187.	Horizon Power supports recommendation 27 with no changes.
30	Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.	New sub-clause to be added to section 216.	<p>Enforceable undertakings are an important enforcement mechanism as an alternative to prosecution that can provide benefits to the organisation and the wider community that would not be otherwise achieved through the application of punitive approaches to enforcement.</p> <p>Undertakings have the potential to lead to significantly improved safety outcomes. Where an undertaking is entered into, it can provide finality and certainty and foster a collaborative approach to safety. That is, it avoids the potential of an adversarial prosecution, in which the outcome is inherently uncertain, the process can be time consuming and a Court is ultimately limited in what outcomes it can deliver.</p> <p>An enforceable undertaking, rather than a prosecution, should only be accepted if it demonstrates benefits to the workplace, to the industry and to the community.</p> <p>Horizon Power does not support recommendation 30.</p>
31	Include a worker's union as an <b>eligible person</b> who is able to apply for certain decisions to be reviewed.	223.	Horizon Power does not support recommendation 31. Special inclusions prescribing outcomes for lower majority memberships should not be included within the Safety & Health Legislation.

#	Recommendation	Clauses	Comments
32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	<p>Horizon Power wants to ensure that the regulator is the only party that can enforce the regulations. Any third party introduced is to enforce regulations is strongly opposed.</p> <p>Horizon Power does not support recommendation 32</p>
3	Include a union as a party that can bring proceedings for breach of a WHS civil penalty provision.	New paragraph to be added to 260.	<p>Horizon Power wants to ensure that the regulator is the only party that can enforce the regulations. Any third party introduced is to enforce regulations is strongly opposed.</p> <p>The introduction of third parties with the power to initiate prosecutions would add a layer of unnecessary complexity in the enforcement of work health and safety laws; create a clear risk of conflicts of interest for employee organisations which initiate prosecutions; could be misused to advance political or industrial agendas which would impact on the integrity of the prosecutor and on public confidence in its function to enforce the laws; and impact on the quality of analysis in prosecutorial decision making.</p> <p>Horizon Power does not support recommendation 33</p>
34	Remove the requirement that codes of practice cannot be approved, varied or revoked by the Minister without prior consultation with the Governments of the Commonwealth and each state and territory.	274(2)(b).	Horizon Power supports recommendation 34 with no changes.
35	Streamline and modernise dangerous goods safety laws, and adopt Schedule 1 of the model WHS Bill.	Section 3 references to 'dangerous goods' and Schedule 1.	Horizon Power supports recommendation 35 with no changes. Horizon Power determines the updating of both legislation will be a benefit to all parties.
36	Establish the Work Health and Safety Commission (WHSC) as the tripartite consultative body for Western Australia.	Schedule 2 to include clauses establishing the WHSC.	<p>The Commission consists of employers, employees, and government representatives with expertise and knowledge in occupational safety and health matters. Importantly, the Commission liaises with WorkSafe that administers and enforces safety and health laws in WA.</p> <p>Horizon Power supports recommendation 36 with no changes.</p>
37	Replace the Mining Industry Advisory Committee with the Mining and Critical Risk Advisory Committee (MACRAC)	Include a section establishing the MACRAC in Schedule 2.	Horizon Power supports recommendation 37 with no changes.
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	Horizon Power supports recommendation 38 with no changes.

#	Recommendation	Clauses	Comments
39	Establish the Work Health and Safety Tribunal as the external review body for work health and safety matters.	Include new Part/Schedule.	CCIWA supports recommendation 39 to establish the Work Health and Safety Tribunal as the body for undertaking external reviews of decisions by the Regulator, for the resolution of work health and safety issues and for matters  Horizon Power does not support any extension of the jurisdiction of the WHST beyond what is currently established.  Horizon Power does not support recommendation 39
40	Add clauses specifying administrative and procedural matters for reviews conducted by the Work Health and Safety Tribunal	New clauses to be added to section 229.	Horizon Power supports recommendation 40 with no changes
41	Provide the Work Health and Safety Tribunal (WHST) with power to direct the <b>Registrar</b> to investigate and report on matters.	51G(1) of the OSH Act to be incorporated into the WHS Bill.	Horizon Power supports recommendation 41 with no changes
42	Include a clause that mirrors the exclusion of work health and safety matters from the definition of <b>industrial matters</b> in the <i>Industrial Relations Act 1979</i> .	Equivalent of 51G(3) of the OSH Act.	Horizon Power supports recommendation 42 with no changes
43	Extend the current conciliation powers of the Work Health and Safety Tribunal (WHST) to include all matters that may be referred, other than Regulator enforcement activities.	51J of the OSH Act to be incorporated into the WHS Bill.	Horizon Power supports recommendation 43 with no changes
44	Insert the <b>WHS Tribunal</b> as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	Horizon Power supports recommendation 44 with no changes
	<i>Add your comments by creating new rows</i>		