

Modernising Work Health and Safety Laws in Western Australia

Submission by the Safety Institute of Australia, WA Branch

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31 August 2018

The A/Director General, Safety Regulation
Department Of Mines, Industry Regulation and Safety
WHS Reform
Locked Bag 14
Cloisters Square WA 6850

Dear Acting Director General,

Re: SUBMISSION ON WHS REFORM

The Safety Institute of Australia ('SIA') thank you for the opportunity to submit comments (attached) on the proposed changes to the West Australian Work Health and Safety legislation. Since the announcement of the public comments period the SIA have encouraged members to learn about and discuss the changes at several SIA events and in communications.

The Safety Institute of Australia is the national association for the health and safety profession. Our vision is for safe and healthy workers in productive workplaces, and we pursue this vision by working to build the skills, knowledge and capability of the health and safety profession, and being a voice for that profession. We join with many corporate and strategic partners who share our goals and work with us to achieve them.

Our members are people who work at all levels within Australian companies in a variety of health and safety roles, from those who work at the shop floor level to implement safe and healthy work practices, right through the company to senior executive heads of health safety and environment.

The West Australian Branch has a series of sub committees and groups that do their part to create an annual events program incorporating a state conference as well as training and networking events, write submissions to government on key health and safety policy, and engage in partnerships with organisations that share our vision.

We look forward to learning about the outcome of the public comments period, and developing the State and National safety performance. If we can be of further assistance, please do not hesitate to contact me.

Yours sincerely

Dr Marcus Cattani
Chair Safety Institute of Australia (WA Branch)

#	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).	We support the recommendation to develop the safety standards of the State, in particular by fostering the constructive cooperation between stakeholders, to improve WHS performance. We recognise that each organisation is different and therefore emphasise that constructive cooperation is critical to the implementation of the Act. The Act includes changes which have the potential for a range of outcomes, from fostering cooperation to antagonising relationships, if not properly managed. We recommend that supporting guidance is provided to raise awareness and the implications of these changes.
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	
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).	

#	Recommendation	Clauses	Comments
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	The new legislation presents an opportunity to reflect on the effectiveness of the previous or equivalent roles and design the new roles to address strengths and weaknesses in them. It would be a lost opportunity if the new roles were established without due consideration of the effectiveness of the previous ones, and the association between all roles, to ensure effectiveness. Similarly, the structure of the roles and teams which report to the Chief roles should be developed by consulting with stakeholders. There is an opportunity to design the departments function based on risk of harm rather than a legislative prescriptive approach. There is a need to define the new roles.
5	Amend the definition of import to include importation from another state or territory into Western Australia.	4.	
6	Amend the meaning of supply to include the loan of an item.	6(1).	
7	Amend the meaning of person conducting business or undertaking to ensure only workers and officers who are 'natural persons' are excluded.	5(4).	

#	Recommendation	Clauses	Comments
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>The PCBU duty of care would apply to external providers of WHS advice, service or products and the duties of workers would apply to internally provided WHS advice or service, therefore we question why an additional duty of care is required.</p> <p>The intent of the new duty of care appears to be concerned with the reduction of malpractice of providers of WHS services which we support. As the peak body for OHS professionals in Australia and a signatory to the INSHPO Singapore accord, an international agreement which defines the role, skills and knowledge of various levels of OHS practitioners/professionals. The SIA have established processes to certify OHS practitioners/professionals. The Certification processes require individuals to have appropriate qualifications and experience and commit to continual professional development. Therefore we believe adding a requirement in the Act for providers of WHS Advice to be “Certified” will be more effective at reducing the rates of the illness and injury to Western Australian workers.</p>
9	Amend the meaning of <i>serious injury or illness</i> to include immediate treatment as an in-patient without reference to a hospital.	36(a).	

#	Recommendation	Clauses	Comments
10	Include incapacity to work for 10 or more days as a category of <i>serious injury or illness</i> .	36.	We do not support this recommendation. We support the harmonisation of WHS definitions. In other States general WHS legislation does not include this definition.
11	Amend the heading 'Negotiations for agreement for work group' to Negotiations for determination for work group'.	52 (heading only).	
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	In general we agree this is a positive recommendation, as an initiative to increase consultation across an organisation or site. We are conscious though that there may be a risk of an organisation with a poor WHS culture to limit the number of HSR's if one person could act across several workgroups, thus reducing the number of HSR's that they need to have trained.
13	Change the approving authority for courses to be attended by a health and safety representative (HSR) from the <i>regulator</i> to the Work Health and Safety Commission.	72(1)(a).	We agree with this recommendation, with the assumption that the existing standards are maintained or improved.

#	Recommendation	Clauses	Comments
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).	We support this recommendation. We add that the HSR's should attend a suitable regular refresher training course or event to ensure their knowledge is current..
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.	We support the intent of this recommendation. We suggest that a 'reasonably practicable' clause is added to ensure that Committee meetings continue to be held, to engage and consult with workers, rather than being cancelled because of the unavailability of the "designated" manager. In addition organisations tend to allocate varying levels of authority to the various levels of management, with decisions being escalated as required dependent upon the level of authority required for the decision at hand. Some suggestions initiated in a Committee meeting may be beyond the authority of the manager in attendance, and will need to be escalated, therefore, a "where practicable" clause is required as part of this recommendation.
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	We support this clause.
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.	We support this clause.

#	Recommendation	Clauses	Comments
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.	We support this clause.
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	Whilst the intent is understood, our members have experienced misuse of the right of entry provisions in other states that already have this provision, which have not contribute to the improvement of safety conditions/performance. Members expressed concern about reducing the notification period, and did not support a reduction in the notice period. Union right of entry must require at least 24 hours notification. Members do not support a lower level of penalty for contravening WHS entry permit conditions in WA than the other states that have adopted the model.
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.	To ensure the proper execution of the right of entry, we support the requirement for the permit holder to inform the Regulator of their intent to enter, to give the Regulator an opportunity to have an Inspector (where available) accompany the EPH.

#	Recommendation	Clauses	Comments
21	Insert the Registrar of the Western Australian Industrial Relations Commission as the authorising authority for the WHS entry permit system.	4, 116, 131, 132, 134, 135, 149, 150 and 151.	
22	Insert the WHS Tribunal as the authorising authority for revocation of WHS entry permits and resolution of disputes about right of entry.	138, 139, 140 and 142.	Members gave examples of misuse of the right of entry to disrupt an organisation's operations. If the right of entry is to be retained, then we support the authorising authority as being responsible for the revocation of WHS entry permits to act as a deterrent from permit entry holders abusing their entry permit.
23	Replace references to the defined phrase relevant state or territory industrial law 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)	

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24	The Registrar to be included as an eligible party to apply to the WHS Tribunal to revoke a WHS permit, or deal with a dispute about a WHS entry permit.	138(1), 142(4).	
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 Subdivis ion 4 of Division 3 of Part 9 (heading).	We support this recommendation. We suggest that there is a requirement for these requests to be written communications.
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171.	We support this recommendation.
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193.	We support this recommendation.

#	Recommendation	Clauses	Comments
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.	We support this recommendation.
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.	
30	Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.	New sub-clause to be added to section 216.	
31	Include a worker's union as an eligible person who is able to apply for certain decisions to be reviewed.	223.	
32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	We support this recommendation.

#	Recommendation	Clauses	Comments
33	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.	We comment that this recommendation has the potential to increase bureaucracy and will inevitably create conflict between PCBUs and Unions and not lead to the productive and trusting relationships that are required between PCBUs and workers to prevent illness and injury and improve safety performance.
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).	In principle we support this recommendation. The practical implementation requires planning to ensure the handover to new CoP's, and ensuring the standards set are not lowered in new CoP's.
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.	We support this recommendation.

#	Recommendation	Clauses	Comments
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.	We support this recommendation.
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.	We support this recommendation. We would like to offer a suitable and Certified member of the SIA as a member of this Committee.
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	We support this recommendation.

#	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.	We support this recommendation.
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.	We support this recommendation.
41	Provide the Work Health and Safety Tribunal (WHST) with power to direct the Registrar to investigate and report on matters.	51G(1) of the OSH Act to be incorporated into the WHS Bill.	We support this recommendation.
42	Include a clause that mirrors the exclusion of work health and safety matters from the definition of industrial matters in the <i>Industrial Relations Act 1979</i> .	Equivalent of 51G(3) of the OSH Act.	We support this recommendation.

#	Recommendation	Clauses	Comments
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.	We support this recommendation.
44	Insert the <i>WHS Tribunal</i> as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	We support this recommendation.