

10 December 2019



WHS Reform
Department of Mines, Industry Regulation and Safety
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Dear Madam/Sir

SUBMISSION ON WORK HEALTH AND SAFETY REGULATIONS IN WESTERN AUSTRALIA

I write on behalf of the Western Australian Prison Officers' Union (WAPOU) in relation to the development of Work Health and Safety (WHS) Regulations for Western Australia.

This submission is not confidential.

1.0 About WAPOU

- 1.1 WAPOU is a trade union that represents uniformed Prison Officers in Western Australia (WA). It is affiliated with Unions WA, the Australian Council of Trade Unions and the Australian Labor Party.
- 1.2 It currently has approximately 2,400 members throughout the WA prison system, both public and private.
- 1.3 Since 2013 WAPOU has been a state branch of its Federal affiliate, the Community & Public Sector Union.

SECTION ONE: PROTECTION FROM TOBACCO SMOKE – WHS REGULATIONS FOR WA

2.0 WAPOU's Policy on Smoking in Prisons

- 2.1 WA Regulations on Exposure to Tobacco Smoke
- 2.2 WAPOU supports the adoption of a regulation on exposure to tobacco smoke that is more expansive than the current proposal.

- 2.3 WAPOU ultimately supports prisons becoming smoke-free in WA. At this current time prisoners often smoke tobacco products within their cells and other confined spaces. The majority of our Members work 12-hour shifts within prisons. As a result our Members are exposed to second-hand tobacco smoke in volumes and for durations not encountered in most WA workplaces.
- 2.4 WAPOU supports the current prohibitions on exposing workers to tobacco smoke to be expanded to minimise incidents of tobacco smoke drifting into a workplace; to minimise exposure of employees to second-hand smoke in outdoor areas; and to eliminate the exposure of employees to second-hand smoke in enclosed areas.

SECTION TWO: DIFFERENCES BETWEEN THE NATIONAL MODEL WHS REGULATIONS AND THE OSH REGULATIONS 1996

3.0 UnionsWA General Recommendations on WA WHS Regulations

- 3.1 Reflecting the Interests and Priorities of its Affiliates
- 3.2 WAPOU is an affiliate of UnionsWA and has participated in consultation conducted by UnionsWA in regards to their submission.
- 3.3 We echo UnionsWA's call for strong and consistent harmonised WHS legislation in Australia. WAPOU also views the model Work, Health and Safety legislation as a minimum benchmark and would strongly oppose the final version of the WA legislation containing anything less than the standards and protections for workers of the model legislation.
- 3.4 WAPOU supports UnionsWA's submissions, in full, as being a true reflection of the priorities of its affiliates.
- 3.5 We seek to draw attention, however, to a number of matters raised in UnionsWA's submissions that are of great interest to our Members. We set out our supporting submissions below.

4.0 UnionsWA Recommendation 1: That SA WHS Act S72 (9) is incorporated in WHS R21

- 4.1 Additional Training for Health and Safety Representatives (HSRs)
- 4.2 WAPOU supports the UnionsWA submission that, from time to time, HSRs need to obtain additional skills and knowledge to assist them to undertake their duties.
- 4.3 Prison environments are relatively unique compared to other WA workplaces. It is fair to say it is a high-risk environment for workers, visitors and the prisoners themselves. Incidents can easily become catastrophic.
- 4.4 The provision of access to additional specialised or industry-related training will enable HSRs to participate in Health and Safety Committee meetings with a higher level of knowledge and expertise as well as assist them to carry out their duties under the Act.
- 4.5 To this end, WAPOU supports increasing the HSR training entitlement to three and two days training, during the second and third year of their role respectively, through adopting the provisions from s72 (9) of the South Australian WHS Act.

5.0 UnionsWA Recommendation 2: That WA OSH R3.9, 3.11, 3.15, 3.17, 3.18 and 3.19 are incorporated in WHS R40 and 41 and UnionsWA Recommendation 3: That 'so far as is reasonably practicable' is removed from WHS R40 and 41

5.1 Workplace Facilities and a higher obligation than 'so far as is reasonably practicable'

5.2 WAPOU fully supports UnionsWA's recommendation that the following Regulations are adopted into section 40 (Duty in relation to workplace facilities) and 41 (Duty to provide and maintain adequate accessible facilities):

- (1) Reference to fire precautions
- (2) Reference to warning signs
- (3) Requirement for heating and cooling
- (4) Removal of debris
- (5) Stairs and ramps
- (6) Adequate seating

5.3 Prisons are places that can be highly restrictive in regards to the free movement of people. This includes employees, but also prisoners and visitors. To this end it is important that all areas where persons may be working or otherwise confined are fitted with adequate facilities.

5.4 The term 'so far as is reasonably practicable' should not apply to the employer's obligation to provide basic necessities such as drinking water, toilets, climate moderation, seating, ventilation and safe egress or evacuation.

6.0 UnionsWA Recommendation 4: That the Australian Standards requirement in WA r3.33 are incorporated into WHS r44 and Recommendation 5: That the respiratory protective equipment requirements in WA r 3.40 to 3.44 are incorporated into WHS r44

6.1 Personal and Respiratory Protective Equipment

6.2 As stated earlier, prisons are high-risk environments. It is commonly understood that incarcerated persons can pose a physical hazard to each other and to prison staff, and certain PPE is required by Prison Officers to avoid or minimise injuries during the de-escalation of a riot, brawl or assault attempt. Prisoners are also known to attempt assaults on Officers utilising their own saliva, blood or faeces. As these situations are chaotic and unpredictable, Officers are highly reliant on the quality standards of any appropriate PPE for their own personal safety and health.

6.3 Prison Officers are also required to attend to 'cell fires' lit by prisoners. This occurs more often than the general public might expect. Prisoners light fires regularly as a form of dissent, but cell fires tend to occur within a locked, confined space and the smoke is usually toxic due to the types of fuel available to feed the fire. Officers must act quickly to enter a cell fire to extinguish it and extract any prisoners before anyone is injured. It is imperative to our Members that the Compressed Air Breathing Apparatus used in these circumstances provides the highest standard of respiratory protection.

6.4 It may also be relatively unknown that each prison contains a diverse range of industries and trades such as textiles, abattoirs, dairies, bakeries, laundries and cabinet workshops, to name a few.

- 6.5 The majority of workers in prison industries are incarcerated persons who may have come to work in an industry (and obtain a trade certificate) with little or no previous work experience, let alone experience in occupational safety. These workers often also come to prison work with a range of intellectual, social and physical/mental health issues. For a range of reasons workers in prison industries would be arguably at greater risk of injury than workers in the same industries outside the prison.
- 6.6 It is not acceptable, given the risks, for substandard or inappropriate PPE to be utilised in a prison environment. To this end WAPOU fully agrees with UnionsWA's submission that employer provided PPE, including respiratory protective equipment, must be highly effective and comply with any prescribed Australian Standards.

7.0 UnionsWA Recommendation 6: That exposure to heat is classified as high risk work and Recommendation 12: That exposure to solar ultraviolet radiation is classified as high risk work

- 7.1 Adoption of Prevention of Heat Stress and Ultraviolet Radiation Exposure Regulations
- 7.2 As highlighted previously, prisons are places that can be highly restrictive in regards to the free movement of workers, prisoners and visitors. To this end it is important that all areas where persons may be working or otherwise confined are moderated against the worst excesses of heat and ultraviolet radiation.
- 7.3 Heat and sun exposure already present as high risks within any prison environment in WA and climate change is set to exacerbate these risks further. West Kimberley, Broome, Greenough, Roebourne and Eastern Goldfields Regional Prisons carry even greater risks, now and into the future.
- 7.4 WAPOU supports the proposed regulation to prevent heat stress and ultraviolet radiation exposure as drafted by UnionsWA.

8.0 UnionsWA Recommendation 19: That regulations introduce a power for the Commissioner to order the removal of in situ asbestos containing materials which has been installed or constructed post the introduction of the 2003 ACM ban

- 8.1 In Situ Asbestos Removal Orders
- 8.2 The use of asbestos containing materials has been banned since the end of 2003 but, unfortunately, there have been incidents where such materials have been imported to WA and used in the construction of new buildings or other structures.
- 8.3 Prison Officers usually work 12-hours shifts, often in confined or relatively confined spaces. It is not acceptable to WAPOU for our Members to be exposed to an asbestos risk in their working environment. The same applies to any housing provided to Officers as part of an employment remuneration package. We also invite the reader to consider the implications of incarcerating and confining a person, ostensibly against their will, to a small cell for no less than 12 hours per day if it is known asbestos is present.
- 8.4 Prison infrastructure is being built now and there will be more infrastructure built as the state's population grows. WAPOU considers the risk of imported asbestos containing materials being, intentionally or accidentally, used in the construction of prison facilities as significant.

8.5 It is WAPOU's view the Commissioner must have the powers to order the removal of in situ asbestos containing materials that have been installed or constructed since 2003.

9.0 UnionsWA (Additional) Recommendation 20: That the WHS Regulations address psychosocial hazards

9.1 Psychosocial Hazards

9.2 WAPOU prioritises the comprehensive inclusion of psychological health and psychosocial injuries within the new Regulations. We have argued for some time that we need more comprehensive regulations and a codes of practice to address the psychological health hazards impacting on Prison Officers.

9.3 Prison Officers are at very high risk of psychosocial injuries at work. The data contained in the table below was obtained from WorkSafe in 2017. It shows the ranking of Prison Officers in relation to 12 other public sector industry groups and common psychological stress factors in the workplace. Within this group of industries Prison Officers are ranked in the top four in regards to the following psychological risk factors:

- (1) Being assaulted at work (ranked 1/13)
- (2) Work pressure (ranked 1/13)
- (3) Exposure to traumatic events at work (ranked 2/13)
- (4) Exposure to workplace or occupational violence (ranked 2/13)
- (5) Other mental stress factors in the workplace (ranked 3/13)
- (6) Accidental assaults from another person (ranked 4/13)
- (7) Work related harassment and/or workplace bullying (ranked 4/13)

<i>Industry</i>	24- Being hit by a person accidentally RANKING	29- Being assaulted by a person or persons RANKING	81 - Exposure to a traumatic event RANKING	82 - Exposure to workplace or occupational violence RANKING	84 - Work pressure RANKING	86 - Other mental stress factors RANKING	87 - Work related harassment and/or workplace bullying RANKING
Hospitals (Except Psychiatric Hospitals)	2	4	3	3	2	1	1
Primary Education	1	6	10	4	3	3	2
Secondary Education	3	8	6	1	4	2	3
Correctional and Detention Services	4	1	2	2	1	3	4
Other social Assistance Services	5	3	5	5	5	3	5
Technical & Vocational Education	12	14	11	13	7	3	6
Other Health Care Services n.e.c.	10	10	12	10	9	3	7
Psychiatric Hospitals	8	2	4	6	6	1	8
Other Residential Care Services	6	7	8	7	8	2	8
Investigation and Security Services	7	5	9	8	11	3	9
Other Allied Health Services	13	11	13	12	12	3	9
Other Transport Support Services n.e.c.	11	12	7	11	13	3	9
Rail Passenger Transport	9	9	1	9	10	3	10

9.4 WAPOU shares UnionsWA's criticism that, despite the inclusion of psychological health in the definition of health within the WHS Act, there is no provision anywhere in the Act or Regulations which expressly deals with the issue of psychological health.

9.5 Psychosocial injuries are often complex and multi-layered. They should be differentiated from physical injuries and dealt with through specific provisions in the Regulations.

9.6 Notwithstanding the above, it must also be recognised that psychosocial injuries are not necessarily unrelated to or disconnected from physical hazards. For

example, the current legislation does not adequately deal with the psychosocial injuries which often follow violence, the threat of violence, or exposure to violent acts in the workplace.

- 9.7 Without clear legislative obligations and accompanying industry codes of practice the 'persons conducting business or undertakings' (PCBU) and HSRs will not have adequate guidance on risk management, and the government regulatory body will experience great obstacles in regards to assessing or enforcing compliance.
- 9.8 WAPOU strongly supports the UnionsWA recommendation that a psychological health regulation be included in the WHS Regulations.

We thank you for the opportunity to provide this submission in regards to the WHS Regulations for Western Australia.

Yours sincerely



Hsien Harper
Industrial Officer