

Modernising Work Health and Safety Laws in Western Australia

Submission by the Civil Contractors Federation WA

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Modernising work health and safety laws in Western Australia - CCF WA comment

#	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).	Supported
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	Supported
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).	Supported
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	Supported
5	Amend the definition of import to include importation from another state or territory into Western Australia.	4.	Supported
6	Amend the meaning of supply to include the loan of an item.	6(1).	Supported
7	Amend the meaning of person conducting business or undertaking to ensure only workers and officers who are 'natural persons' are excluded.	5(4).	Supported, though noting greater clarity is needed on the meaning of PCBU on major construction sites with complex contracting chains.

#	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.	We oppose imposing such a broad duty of care which will overlap with existing obligations by professionals and training providers. For example, the training qualification RII30915 Certificate III in Civil Construction includes the unit 'Work safely and follow WHS policies and procedures'. RTOs deliver this unit to nationally-recognised guidelines and are regulated in WA by the Training Accreditation Council. We cannot support overlaying new, duplicative regulation on top of the existing framework.
9	Amend the meaning of serious injury or illness to include immediate treatment as an in-patient without reference to a hospital.	36(a).	Supported
10	Include incapacity to work for 10 or more days as a category of serious injury or illness .	36.	Supported
11	Amend the heading 'Negotiations for agreement for work group' to Negotiations for determination for work group'.	52 (heading only).	Supported

#	Recommendation	Clauses	Comments
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	Opposed. This is unreasonable and potentially dangerous. An HSR is elected to represent a specific work group. Civil construction sites may contain many work groups performing a wide variety of specialist tasks. It is unlikely any HSR will have the knowledge to assess risk in every situation.
13	Change the approving authority for courses to be attended by a health and safety representative (HSR) from the regulator to the Work Health and Safety Commission.	72(1)(a).	Supported
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).	Supported
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.	Opposed. The concept that this senior manager is somehow 'first among equals' on the committee by being able to authorise (or not authorise) decisions may expose that person to serious consequences if an incident arises. Such potential consequences need to be fully explored before this recommendation can be considered.
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	Supported

#	Recommendation	Clauses	Comments
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.	Opposed. This recommendation seeks to give excessive power to the HSR. We do not support the HSR's power (in the Model WHS Law) to cease work, and this recommendation seeks to extend that power. The HSR is an important link in the safety chain and can request a stop work to management and regulators, but we caution against recommendations that seek to elevate HSR's to a status that may be above their training and capabilities. Furthermore, all workers can stop work at any time if they think it unsafe. Conferring a duplicative 'special' right to HSRs may have the unintended consequence of making other workers feel less empowered to act.
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.	Supported
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	Opposed. We endorse the view expressed in the 2012 Regulation Impact Statement by Marsden Jacobs: "right of entry for the purposes of occupational health and safety is already provided for under the Industrial Relations Act 1979. The proposed change is considered to create duplication risking confusion and inconsistencies."

#	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.	See above
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.	Supported
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.	Supported
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)	Supported
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).	Supported
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).	Supported

#	Recommendation	Clauses	Comments
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171.	Supported
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193.	Supported
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.	No comment
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.	Supported

#	Recommendation	Clauses	Comments
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>CCF WA opposes this recommendation and supports the inclusion of Part 11 of the model WHS Bill unamended. We further recommend that WorkSafe be adequately resourced to manage enforceable undertakings.</p> <p>We reject the view that there is a community expectation of prosecution Category 2 offences involving a fatality. Communities do not expect prosecution where recklessly unsafe conduct did not occur or cannot be established. Enforceable undertakings have been used effectively in other jurisdictions as an alternative to prosecution. Such undertakings are outcome-focused; they lead to a direct improvement in workplace safety as they require the employer to address the problem – as opposed to prosecutions and penalties, which are simply punitive.</p>
31	Include a worker's union as an eligible person who is able to apply for certain decisions to be reviewed.	223.	<p>Opposed. We support the existing model WHS Bill's structured review process and can see no reason why unions should be added to the definition of eligible person. Union membership on civil construction sites is very low and this recommendation risks giving unions an elevated standing on sites that is not justified by their limited presence.</p>

#	Recommendation	Clauses	Comments
32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	Supported
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.	Opposed. As stated above, unions have little or no presence on most civil construction sites in WA. This recommendation seems to be based on the premise that unions are widely representative, which is not the case. We also note that there are already similar powers available to unions under Federal law, so we cannot support imposing duplicative State laws.
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).	Supported
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.	Supported
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.	Supported

#	Recommendation	Clauses	Comments
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.	Supported
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	Supported
39	Establish the Work Health and Safety Tribunal as the external review body for work health and safety matters.	Include new Part/Schedule.	Supported, on the proviso that the WHST's remit is limited to WHS matters – Recommendation 43 seeks to extend its powers into industrial relations matters.
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.	Supported
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.	Supported
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.	Supported

#	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.	Opposed. The powers of the WHST should be strictly limited to safety matters, not wider industrial relations issues.
44	Insert the WHS Tribunal as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	Supported
	<i>Add your comments by creating new rows</i>		