

28 November 2017

Hon Adele Farina, MLC
Chairperson
Public Administration Committee
Legislative Council
WA Parliament



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Dear Chairperson

Re: Inquiry into WorkSafe – Question on Notice

UnionsWA welcomes the opportunity to provide additional information to the committee and provide feedback on UnionsWA's views on the future of regulation and legislation in WA.

UnionsWA has been a long supporter of strong and nationally consistent harmonised Occupational Safety and Health (OSH) legislation in Australia. However our support has always been conditional on a national approach that does not compromise or reduce the protections and standards for workers in any state or territory jurisdiction.

UnionsWA has had concerns in regards to the direction of previous WA reviews of the model Work, Health and Safety (WHS) legislation. Those reviews centred on the need to reduce 'red tape' and 'the regulatory burden'. We believe that reviewing regulation with these as primary objectives runs contrary to the goals of safety legislation – which should be first and foremost the creation of safe and healthy workplaces.

We support the adoption of the WHS model laws in Western Australia; however we regard these as the *minimum* set of standards that our safety system should improve upon.

There are sections of the *Occupational Safety and Health Act 1984* and the *Occupational Safety and Health Regulations 1996* which provide better protections for workers compared to the model *Work, Health and Safety Act*. We therefore argue that WA should use the WHS Act only as a basis, with amendments going forward that capture those better sections of the WA Act and regulations.

However the WHS Act also improves on WA legislation in a number of ways. For example the model Act:

- Has higher and more up to date penalty provisions;
- Expands the duties upon officers and other workplace participants;
- Significantly improves on existing consultation provisions, including greater support for Health and Safety Representatives;
- Improves and modernises definitions; and

- Improves processes and resolution outcomes for discriminatory conduct;

Nevertheless unions also have general concerns that key areas in the WA regulatory system are not captured appropriately by the model laws. These issues can be remedied through minor changes to the model to ensure that workplace safety will not be compromised. Our concerns relate to:

- Duties in relation to workplace facilities;
- Adequate capture of psychosocial injuries as a notifiable incident;
- Duties to provide and maintain adequate accessible facilities;
- No specific reference to fire precautions;
- No reference to warning signs;
- No requirement for heating and cooling;
- No reference to the removal of debris;
- No reference to stairs and ramps; and
- No requirement regarding adequate seating

However there are other key issues in the WHS model legislation which will need to be addressed.

Sharing Economy/Definition of Worker

As identified in our initial evidence to the committee, we believe that the definition of a person conducting a business or undertaking (PCBU) in the model WHS legislation will be an improvement on the current WA Act and will better address the structure of modern employment relationships.

However consideration needs to be given to the definition of a *worker* and how it will interact with ever changing methods of employment in particular the National Disability Insurance Scheme (NDIS).

The NDIS will involve significant occupational safety and health risks with a large number of workers working in private residences. OSH risks and duty of care issues will be particularly apparent when the worker is directly employed by the *individual in receipt of services* – who is effectively the 'person conducting a business or undertaking' (PCBU).

A specific duty of care provision should address the risks associated with in-home care workers to ensure that the clear responsibility is outlined to assess health and safety risks.

This will provide certainty and clarity to workers and NDIS participants to ensure that health and safety is effectively managed for those in the scheme.

Entry to Workplaces for Right of Entry Holders & Others

Unions have previously been disappointed with the exclusion of union right of entry from previous drafts of WA WHS legislation.

'Right of entry' for union representative is about a worker's right to access representation by their own collective organisation. Without such a right within the OSH system, workers lack an independent means to seek advice and adequately resolve OSH issues in the workplace.

In this case, the model WHS Act strikes an appropriate balance between allowing entry only for the purposes of safety issues, safety consultation and assisting safety representatives, with appropriate safeguards.

However previous proposals to remove entry into the workplace for union officials have had the unintended consequence of removing outside support for health and safety representatives' altogether. This is a particularly acute problem in an era when WorkSafe has been grossly underfunded and has effectively abandoned its enforcement role. It is also the case that the entry provisions can also relate to assistance from other organisations – not only unions.

For example, unions in WA have previously used organisations such as the Asbestos Diseases Society, the Cancer Council of WA and specialists such as occupational hygienists to provide advice on workplace safety issues. Excluding those professions or organisations from providing assistance within the workplace would be detrimental for both workers and employers.

Union Right to Prosecute

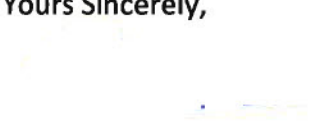
Under current state and commonwealth laws employers are rarely held to account for safety breaches. In 2011-12, across Australia a mere 362 legal proceedings against employers resulted in a conviction, order or agreement. This indicates that the risk of conviction is quite low, and legal proceedings are therefore unlikely to act as much of a deterrent to employers under the current system.

With so few legal proceedings, it is critical that the entitlement to prosecute should extend beyond the regulatory authorities. Trade union members have a legitimate interest in upholding workplace safety standards and in encouraging deterrence. Moreover, union prosecutions allow for a more efficient use of resources by freeing up those of the state regulator or the prosecuting authority. Prosecutions by unions have been used very effectively in the past to create organisational and cultural change, significantly improving health and safety.

Where unions do engage in prosecutions, it is done so sparingly and only in the most egregious of cases. No one has provided evidence of any union-initiated prosecutions that have been found to be vexatious or frivolous.

UnionsWA thanks the committee for the opportunity to provide additional feedback on these issues and would be happy to provide any further information or assistance if requested.

Yours Sincerely,



Owen Whittle
Assistant Secretary
UnionsWA