



Hon. Adele Farina
Chair
Legislative Council Public Administration Committee
GPO: Box A11
Perth, WA, 6837

27th July 2017

Hon. Adele Farina,

On behalf of the Safety Institute of Australia Limited (SIA) and its Western Australian Branch we are pleased to respond to the invitation to make a submission on the Western Australian Legislative Council Public Administration Committee's Inquiry into WorkSafe.

Please find attached;

- Our submission on your current inquiry into WorkSafe, and
- Our 2014 Submission on the Work Health and Safety Green Bill referred to in this current submission.

If you have any questions about this submission please feel free to contact Nathan Winter, WA based Director and Deputy Chairman, Safety Institute of Australia

Yours Sincerely,

David Clarke
Chief Executive Officer

Nathan Winter,
WA Director and National
Deputy Chairman



**Safety Institute
of Australia Ltd**

27th July 2017

**Submission of the Safety Institute of Australia (SIA) WA Branch on the Western Australian
Legislative Council Public Administration Committee's Inquiry into WorkSafe**

WorkSafe's performance against the objects of the *Occupational Health and Safety Act 1984*

The objects of the WA Occupational Safety and Health Act 1984 are –

- (a) to promote and secure the safety and health of persons at work;
- (b) to protect persons at work against hazards;
- (c) to assist in securing safe and hygienic work environments;
- (d) to reduce, eliminate and control the hazards to which persons are exposed at work;
- (e) to foster cooperation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;
- (f) to provide for formulation of policies and for the coordination of the administration of laws relating to occupational safety and health;
- (g) to promote education and community awareness on matters relating to occupational safety and health.

The SIA believes that WorkSafe WA is actively and conscientiously working to achieve the objects of the *Occupational Safety and Health Act 1984* within its allocated budget.

The issuing of regular WorkSafe WA Newsletters is one example of what they have done to fulfil object (g).

However, a disturbing level of fatalities and serious injuries are still occurring in Western Australia and more could be done to achieve objects (a) – (d). For example, between 2003 and 2015, Western Australia had 400 workplace fatalities or 2.6 per 100,000 population which coincided with Australia's average rate. Transport, postal and warehousing accounted for 82 deaths, Agriculture, forestry and fishing 81, Construction 48, Manufacturing 48, and Mining 40. Even allowing for state-specific characteristics, the level and rate of safety improvement is below best practice.

Funding and resourcing of WorkSafe

The degree to which WorkSafe WA is able to achieve the objects of the Act is obviously linked to the amount of funding and resources available to WorkSafe WA and the efficiency and effectiveness in which they are deployed.

Safe Work Australia's Comparative Performance Monitoring Report is the most reliable comparison of the resources in terms of the number of field active inspectors in each state, which is an indicator of the relatively resourcing of WorkSafe regulators around Australia. Unfortunately the latest version of this report that is available is the Seventeenth Edition that was published in October 2015 and only includes data up until 2013/2014. This reports shows that Western Australia has the lowest (worst) number of field active inspectors of any state or territory of Australia with only 0.9 inspectors per 10,000 employees. This is less than half of the ACT that has 2.0 inspectors per 10,000 employees.

Safe Work Australia's Comparative Performance Monitoring Report also shows that Western Australia has the fourth lowest (best) serious injury and disease claim incidence and frequency rates of any Australian state or territory. This would suggest that WorkSafe and their inspectors although limited in number are very effective.

The SIA is aware that in the past the resourcing of a regulator in at least one other state of Australia has been reduced by reducing the numbers of administrative and support staff. The number of inspectors was maintained, however the reduction in administrative and support staff led to the inspectors having to perform more of the administrative work, thereby reducing the amount of time available to inspectors to perform workplace visits and therefore the effectiveness of that regulator.

The SIA would therefore be concerned to see a reduction in the number of WorkSafe WA inspectors or a reduction of administrative and support staffing unless there are well considered and clear plans that deliver greater efficiencies through the introduction of process/technological improvements. The SIA does see real potential for cross-learning and administrative efficiencies in the new Department of Mines, Industry Regulation and Safety but these are not unlimited.

Adequacy of WorkSafe's training, oversight and accountability processes

WorkSafe WA's inspectors may benefit from becoming "Certified" members of a professional association that most closely aligns with their area of expertise and the associated requirement to commit to undergo "Continuing Professional Development (CPD)" to maintain currency of their knowledge of the latest developments in health and safety research and application of that research.

Adequacy of administrative processes, including complaints, investigations and prosecution processes

As per the SIA's submission on the Work Health Safety Green Bill in 2014(see attached), our position is that best investigation practice is for an investigation to commence as soon as possible following an incident, to ensure those involved are most able to accurately recall what happened in the time proceeding, during and after the event. Once the investigation is complete WorkSafe WA should expeditiously make a decision about whether to recommend that a prosecution should commence or not. Having the threat of prosecution hanging over an organisation, creates unnecessary anxiety for directors, managers, supervisors and workers and this uncertainty delays any further investments an organisation may have had planned for their Western Australian workplaces. Too often prosecutions of organisations occur well after the incident and unnecessarily prolong anxiety and potentially delay investment in Western Australia. However, often it is not clear whether the delays and inefficiencies with which these prosecutions occur lie with WorkSafe WA or with others such as the Director of Public Prosecutions.

The SIA submits that any funds generated from prosecution of an employer/ PCBU which results in a financial penalty be used specifically for the purpose of improving Workplace Health & Safety. Investment in activities like the SIA Research and Development Fund is one such way those funds could be used to improve safety outcomes for Western Australian workplaces.

Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training

The SIA is perplexed as to why this has been included as an issue for investigation in an inquiry into WorkSafe WA, when the responsibility for auditing Registered Training Organisations (RTOs) that deliver workplace health and safety training resides with either the Training Accreditation Council (TAC) of Western Australian or the Australian Skills Quality Authority (ASQA) for those RTOs that deliver workplace health and safety training in multiple states.

Timely implementation and public education of coronial inquest recommendations arising from a workplace death

The SIA is not aware of any exceptional delays to the implementation of recommendations from coronial inquests arising from a workplace death in Western Australia.

Legislative and jurisdictional issues

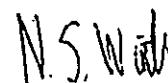
The SIA's position is that *"A nationally consistent WHS legal framework removes unnecessary duplication and regulatory burden on business, providing greater clarity, certainty and economic efficiency for organisations operating in more than one jurisdiction. Accordingly, the SIA strongly supports the harmonisation of WHS legislation across all Australian States and Territories."* The SIA is strongly supportive of the Western Australian Government's announcement on 12th July 2017, through the Hon. Bill Johnston, that a modernised Work Health and Safety Bill for Western Australia which is based on the national Work Health and Safety Act is to be developed. The SIA urges the Western Australia government to harmonise with the model Work Health and Safety Act (with minor amendments such as in South Australia that do not change the clause numbering) as closely as possible and to enter into discussions with Safe Work Australia and the regulators in other states and territories where they believe amendments to the model Work Health and Safety Act are required. The Minister's 12th July statement is also in accord with the SIA's submissions in support of the simplification of high hazard legislation and regulation for petroleum, mining, major hazard facilities and dangerous goods.

Any other relevant matter

The SIA would hope that the Inquiry looks more broadly and holistically than being limited to WorkSafe WA to consider the opportunities from the Government's 12th July announcement on Work Health and Safety legislation and also within the new Department of Mines, Industry Regulation and Safety for WorkSafe WA to identify and share best practices and overheads with the Resources Safety Division and Electrical Safety for the benefit of all Western Australian workers.



David Clarke
Chief Executive Officer



Nathan Winter
WA Director and
National Deputy Chairman



**SUBMISSION OF SAFETY INSTITUTE OF AUSTRALIA (SIA) POSITION STATEMENT ON THE
DRAFT WORK HEALTH AND SAFETY BILL 2014 (GREEN BILL)**

Executive Summary

The Safety Institute of Australia Ltd (SIA) strongly supports the adoption of the WA Work Health and Safety Bill 2014 (Green Bill) to regulate and improve the performance of work health and safety in Western Australia and nationally.

The WA Branch of the SIA and its members fully support adoption of a harmonised WHS Act with the same section numbering as other jurisdictions and there is broad agreement following consultation that *"This legislation will provide greater safety outcomes in Western Australian workplaces than the existing legislation"*. Such adoption is supported with a number of recommended changes.

Some of the changes proposed relate to Sections that SIA strongly opposed or where omissions were noted, including:

- the failure to include in S 28 those requirements under the current WA OSH Act to impose a duty on workers to report a "hazard" and "any injury" to their employer (the PCBU);
- that the time frame to commence a prosecution of two years, as specified in the Model Work Health and Safety Act;
- the omission of Enforceable Undertakings in the Green Bill which would otherwise create a more open and less adversarial relationship between the Regulator and PCBUs, not to mention equate to a forced investment in the business and industry.

We encourage the WA Government to approach Safe Work Australia to amend the model WHS Act to align with the WA changes especially at sections 74(2), 78(a), 100(1), 224(3), 195(4) and 224(3). The SIA is ready to support a submission to Safe Work Australia for these changes in the interest of national consistency and providing greater safety outcomes in all Australian workplaces.

The SIA also promotes the opportunity for its members and the broader community to be engaged in the evolving Work Health and Safety Regulations by Work Safe WA. We also note that national codes of practice should be adopted by WA by referencing them in the revised WA WHS Regulations, as opposed to creating our own.

The Safety Institute of Australia recommends the inclusion of a requirement within the duties of a PCBU to engage suitably qualified and certified professionals and/or practitioners to assist the PCBU to fulfil their duties under, and overall compliance with, this legislation.

The SIA believes that alignment between the WA Resources sector safety Legislation and the general WHS Legislation is also very important. Proceeding with the WHS Green Bill so that this can be used as a basis for the WA resources sector will simplify the law for businesses that traverse sectors, bring WA into closer alignment with the other states, reduce red tape for small to medium enterprises (SME), as well as reducing the confusion among those WA organisations which operate in one or more other states and territories.

If the cost to transition is of concern the SIA believes allowing a longer timeframe for small and medium enterprises to transition would be a better option than not proceeding with the Green Bill.



About SIA

The Safety Institute of Australia is Australia's peak body for health & safety professionals. With over 60 years' experience, and a membership of over 4,500, the SIA aims to develop, maintain and promote a body of knowledge that defines professional practice in OHS.

We are committed to creating a profession that can deliver the highest standards of OHS and we do this through the engagement of our individual members, corporate and strategic partners, governing bodies and key profession stakeholders.

Through the **SIA**, **individuals** have access to *qualified* timely advice into public policy and regulation, research and development to advance OHS knowledge and guidance. We have developed a body of knowledge to set health and safety standards, procedures and practices to be adopted on a national basis across the profession.

Submission

The Safety Institute of Australia's Western Australian Branch welcomes the opportunity to make a submission to Work Safe WA on the Work Health and Safety Bill 2014. To assist the Safety Institute of Australia compile its submission we established an online survey that our members were invited to complete. This submission has been compiled with reference to and in line with the feedback from our members.

SIA appreciates the collaboration of the Industrial Foundation for Accident Prevention in the preparation of the responses to the Green Bill by our two organisations.

Meaning of Person Conducting a Business or Undertaking (5)

The Safety Institute of Australia agrees with adopting the terminology Person Conducting a Business or Undertaking (PCBU) and thereby widen the application of Work Health and Safety requirements, such that a more consistent standard of safety is applied by a PCBU whether they are an "Employer" or not.

Meaning of Worker (7)

The Safety Institute of Australia agrees with adopting the terminology "worker" and thereby widen and removing confusion about who has duties and who PCBU's have duties to, under the Work Health and Safety Legislation, such that a more consistent standard of safety can be expected by workers regardless of whether they are an employee or not.

Duties of Officers (27)

The Safety Institute of Australia agrees with adopting the Due Diligence requirements for officers. The SIA would like to highlight that officers can be ably assisted with confidence to fulfil their due diligence duties in section 27 (5) by a suitably certified Work Health and Safety professional and/or practitioner.



Duties of Workers (28)

The Safety Institute of Australia opposes the omission of the current requirements in the WA Occupational Safety and Health Act section 20 (2) (d) imposing a duty on workers (employees) to report “any situation at the workplace that the employee has reason to believe could constitute a hazard” and “any injury or harm to health which he or she is aware of that arises in the course of, or in connection with, his or her work” to their employer (the PCBU).

Dangerous Incidents (37)

The Safety Institute of Australia agrees that the inclusion of the requirement for PCBUs to report Dangerous incidents is appropriate and will lead to organisations giving more attention to and conduct more in-depth investigation in relation to these Dangerous Incidents which have the potential to result in a fatality or serious injury and treat them with the full respect that they deserve.

Power of Health and Safety Representatives to cease work

The Safety Institute of Australia understand the rationale that every worker has the right to cease work, and therefore believe it’s omission not justified, given its inclusion wouldn’t have had a material impact on WA workplaces. This is demonstrated by other states that have given HSRs this power in the past and have not seen it used very frequently at all. Not including this power has provided an inconsistency between the WA Work Health and Safety Bill and the states which have adopted the Model Work Health and Safety Act with a lack of rationale given the immateriality if it were to be included.

Powers of Health and Safety Representatives 68(2) (d)

The Safety Institute of Australia do not agree that Health and Safety Representatives should not be able to be present at an interviewing concerning a group of workers, an inspector and a PCBU. If they can be present when it is a single worker, why shouldn’t they be present if it is a group of workers.

List of Health and Safety Representatives 74(2)

The Safety Institute of Australia agrees that it is more efficient for Work Safe WA to process notifications about specific new or resigned HSRs from a given workplace as opposed to being provided with a full list each time there is a change(s), requiring Work Safe WA to compare two list to identify the differences. This should thereby free up more resources to undertake other activities such as checking upon progress with enforceable undertakings.

Meetings of Committee

The Safety Institute of Australia agrees that the omission of section 78 (a) of the Model Work Health and Safety Act is appropriate and that Safety Committee should be able to set their own meeting frequency.



Request for review of provisional improvement notice (100)

The Safety Institute of Australia agrees that the amendment to section 100(1) of the Model Work Health and Safety Act such that a request for review of a provisional improvement notice, can be made up until the time specified in the provisional improvement notice as opposed to limiting it to 7 days as prescribed in the Model Work Health and Safety Act is appropriate.

Reversal of the onus of proof in discrimination cases

The Safety Institute of Australia agrees that the reversal of the onus of proof in discrimination cases is inappropriate and that the general Australian law whereby you are innocent until proven guilty should apply.

Union Right of Entry

The Safety Institute of Australia agrees that the Union Right of Entry requirements are better contained in the Industrial Relations Legislation.

Powers to issue prohibition notice (195)

The Safety Institute of Australia agrees that the addition of section 195 (4) requiring an inspector that has issued a prohibition notice to stay at that site until the prohibited activity has ceased where it is practicable to do so is appropriate.

Enforceable Undertakings

The Safety Institute of Australia strongly opposes the omission of Part 11 – Enforceable Undertakings as contained in the Model Work Health and Safety Bill. Enforceable Undertakings are a valuable and proactive alternative to prosecutions of a PCBU. A prosecution simply takes funds from an organisation and puts them in the general government consolidated funds; incurs legal fees for both and doesn't deliver any improvement in safety outcomes for Western Australian workplaces. Enforceable Undertakings allow for the resources wasted during a prosecution to be redirected to delivering improved safety outcomes for Western Australian workplaces, whether that be through improved training or implementing engineering solutions to identified hazards. Enforceable Undertakings would also create a more open and less adversarial relationship between Work Safe WA and PCBUs and reduce anxiety for both.

We note Worksafe WA has commented that they do not currently have the resources to check that any enforceable undertakings agreed to have in fact been implemented. The Safety Institute of Australia would highlight that their resources saved from not having to undertake a prosecution could be redirected to auditing the enforceable undertakings.

An option could be to have those organisations entering in to "Enforceable Undertakings" also agree to have their undertaking audited by an appropriate, certified and Work Safe WA authorised auditor. This is similar to other cost recovery models adopted by other government departments such as NOPSEMA for auditing compliance with safety cases.



Application for internal review (224)

The Safety Institute of Australia agrees that the amendment to section 224(3) such that a request for an internal review of an improvement notice should be within the period specified in the notice as opposed to limiting it to 14 days as specified in the Model Work Health and Safety Bill is appropriate.

Procedure if prosecution not brought

The Safety Institute of Australia agrees with the omission of section 231 of the Model Work Health and Safety Act, it is not appropriate for others than the regulator to request prosecution be brought against a PCBU.

Limitation period for prosecutions (232)

The Safety Institute of Australia disagrees with increasing time to commence a prosecution to 3 years and suggest that the time frame of two years specified in the Model Work Health and Safety Bill should be adopted. Best investigation practice is to commence the investigation as soon as possible following an incident, this is to ensure those involved are most able to accurately recall what happened in the time proceeding, during and after the event. Once the investigation is complete Work Safe WA should expeditiously make a decision about whether to proceed with a prosecution, an enforceable undertaking or nothing. Having the threat of prosecution hanging over the organisation, creates unnecessary anxiety for directors, managers, supervisors and workers and this uncertainty would delay any further investments an organisation may have had planned for their Western Australian workplaces. Two years should be more than ample to investigate even the most serious and complex incidents.

The Safety Institute of Australia suggests that any funds generated from prosecution of a PCBU which results in a financial penalty be used specifically for the purpose of improving Workplace Health & Safety. Investment in activities like the Safety Institute of Australia Research and Development Fund is one such way those funds could be used to improve safety outcomes for Western Australian workplaces.

Conclusion

The Safety Institute strongly supports the adoption of the WA Work Health and Safety Bill 2014 with the recommend changes as detailed above.

100% of members that responded to the Safety Institute of Australia online survey on the WA Work Health and Safety Bill 2014 agreed that *"This legislation will provide greater safety outcomes in Western Australian workplaces than the existing legislation"*.

The Safety Institute would encourage the Western Australian Government to approach Safe Work Australia regarding a number of the minor but rational changes that have been made in this WA Work Health and Safety Bill compared to Model Work Health and Safety Bill and propose to Safe Work Australia that they amend the model WHS Bill to align with the WA changes with respect to sections 74(2), 78(a), 100(1), 224(3), 195(4) and 224(3). The Safety Institute of Australia would be prepared to support Work Safe WA if it were to make such a submission to Safe Work Australia in the interest of national consistency and providing greater safety outcomes in all Australian workplaces.



Safety Institute of Australia Ltd

The Safety Institute of Australia recommends the inclusion of a requirement within the duties of a PCBU to engage suitably qualified and certified professionals and/or practitioners to assist the PCBU to fulfil their duties under, and overall compliance with, this legislation.

The Safety Institute of Australia would welcome and believe it essential that we and the wider community are also given an opportunity to provide further submissions to Work Safe WA on the Work Health and Safety Regulations as well. We note that it will be important that where there are national codes of practice, Western Australia should adopt those Code of Practices through referencing them in the WA Work Health and Safety Regulations as opposed to creating its own.

The SIA believes that alignment between the WA Resources sector safety Legislation and the general WHS Legislation is also very important. Proceeding with the WHS Green Bill so that this can be used as a basis for the WA resources sector will simplify the law for businesses that traverse sectors, bring WA into closer alignment with the other states, reduce red tape for small to medium enterprises (SME), as well as reducing the confusion among those WA organisations which operate in one or more other states and territories.

Representatives from the Safety Institute of Australia would be happy to meet with Work Safe WA to discuss any aspect of this submission in more detail.

If you have any questions about this submission please feel free to contact Nathan Winter, WA based Director and Deputy Chairman, Safety Institute of Australia on 0417 038 176 or at nathan@sia.org.au.

Handwritten signature of David Clarke.

David Clarke
Chief Executive Officer

Handwritten signature of Nathan Winter.

Nathan Winter
WA Director and
National Deputy Chairman