

Modernising Work Health and Safety Laws in Western Australia

Submission by Local Government Professionals WA

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Dear Ian,

Submission on WHS Reform

Thank you for the opportunity to provide a submission to the WHS Reform. Every worker deserves to work in a workplace that is free of physical and psychological hazards; and has an employer that will exercise their duty of care to ensure, as far as practicable, that their workers are working safely at all times. This is an important piece of legislation which will guide all parties in relation to workplace safety on roles and responsibilities under the reformed Act.

About LG Professionals WA

LG Professionals WA (LGPWA) is the peak representative body for local government professionals in Western Australia. Established in 1936, LG Professionals Australia is a National Federation with Member Associations in each State, representing over 5,000 members across Australia.

Locally, LGPWA represents about 900 members with about 120 of them being Chief Executive Officers (CEOs) of WA local governments.

LGPWA provides a range of services and support for our members and local government professionals, including:

- Advocacy, representation and policy development;
- Training and professional development;
- Formal mentoring programs;
- Networking; and
- Guidance and advice on career advancement.

We are committed to continuing improvement in local government leadership, governance, management and service delivery for local communities, and ensuring that our members are at the forefront of change and innovation.

Elected Members as Employers of Chief Executive Officers

LGPWA is aware that the overall review is for the modernisation and alignment of the legislation, and encourages that this also applies to overlapping legislation. One of the key issues facing WA Local Governments currently is the increasing relational conflict between Elected Members (Council) and Administration of the local government, headed by the Chief Executive Officer (CEO). It is not

uncommon for the conflict to manifest itself in ways of repeated undermining, intimidating and unreasonable behaviour by Elected Members against the CEO – which is in effect workplace bullying.

The problem is there is currently no protection for CEOs due to WorkSafe WA's interpretation of the Occupation Safety & Health Act (1984). Under Part 1 – Preliminary of the OSH Act (page 2):

Employer means:

(a) a person that employs an employee under a contract of employment;

WorkSafe WA interprets this to mean that the Local Government (entity) is the employer of all employees (including the CEO) in the organisation and therefore, the CEO is the duty holder of workplace safety.

In situations where the local government's CEO is the subject of alleged bullying behaviours by Elected Members, WorkSafe WA would investigate and if improvement notices are to be issued, the notices are issued to the CEO as the "employer" of the organisation – who is the person dealing with the unlawful behaviour. This logic is impractical and has often discouraged local government CEOs from reporting bullying incidents to regulatory bodies such as WorkSafe WA rendering them feeling unsafe, powerless and helpless in these circumstances.

Under the Local Government Act (1995):

Section 2.7 **The role of the council**

(1) The council –

(a) Directs and controls the local government's affairs;

(b) Is responsible for the performance of the local government's functions.

(2) Without limiting subsection (1), the council is to –

(a) Oversee the allocation of the local government's finances and resources; and

(b) Determine the local government's policies.

Section 5.36 **Local government employees**

(1) A local government is to employ –

(a) A person to be the CEO of the local government; and

(b) Such other person as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.

(2) A person is not to be employed in the position of CEO unless the council –

(a) Believes that the person is suitably qualified for the position; and

(b) Is satisfied with the provision of the proposed employment contract.

These provisions clearly indicate that Elected Members (*the Council*) are acting on behalf the local government entity in relation to the CEO's recruitment. This also extends to the CEOs' annual performance reviews including termination (Section 5.38).

In every CEO's contract of employment, they are employed by the Council of the Local Government and the Council has the power to hire and terminate accordingly.

When the CEO is the worker being exposed to workplace bullying, they require their employer (the Council) to exercise a duty of care, for as far as practicable, to provide them with a safe workplace.

For the above reasons, LGPWA is seeking for WorkSafe WA to recognise local governments' elected members as employers of local government CEOs and that they are the duty holder to ensure CEOs,

just like all other employees, performs their role in a workplace which is free of physical and psychological hazards.

If I can provide further clarification to this submission, please do not hesitate to contact me.

Kind regards,

Candy Choo

Chief Executive Officer

Local Government Professionals Australia WA