

# Modernising Work Health and Safety Laws in Western Australia

## Submission by P3 Risk and Safety Solutions

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### Submission template (including all recommendations) – P3 Risk and Safety Solutions feedback responses

Enter your comments on specific recommendations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the WHS Act other than those covered by the recommendations of the MAP.

#	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).	<b>Agree.</b>
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	<b>Unnecessary</b>
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).	<b>Agree</b>
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	<b>Partial.</b> <i>As the Dangerous Goods Safety Act 2004 is not being incorporated into this new modernised legislation until a future date there is no need to recognise the role of 'Chief Inspector of Critical Risk' unless this is to assist cross legislation referencing.</i>
5	Amend the definition of <b>import</b> to include importation from another state or territory into Western Australia.	4.	<b>Seek to establish a national harmonised approach rather than continue to pursue stand-alone jurisdictional solutions.</b>
6	Amend the meaning of <b>supply</b> to include the loan of an item.	6(1).	<b>In principle we agree. Further clarity required regarding what constitutes the “loan of an item” range. Seek to apply harmonised approach to reduce inconsistency across Australia</b>

#	Recommendation	Clauses	Comments
7	Amend the meaning of <b>person conducting business or undertaking</b> to ensure only <b>workers</b> and <b>officers</b> who are 'natural persons' are excluded.	5(4).	<b>Agree.</b>
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.	<p><b>In principle we agree.</b> (As it may help remove a segment of incompetent OHS service providers)</p> <p><b>However, this requires further situational details and clarity. It will likely add additional insurance costs to the OHS consultancy and service provider industry for no real benefit. It also moves away from the harmonised approach.</b></p> <p><i>What is the difference between, say:</i></p> <ul style="list-style-type: none"> <li>- "in-house" advice and products developed and used that fail or contribute to non-compliance;</li> <li>- "off-the-shelf" advice, service or products (ordered online or similar) implemented / applied by the purchaser;</li> <li>- "Client instructed" advice such as that given by an EPCM OHS specialist to a contractor or sub-contractor; and</li> <li>- "stand alone" products or services where you engage a specialist to assist the PCBU.</li> </ul> <p><i>What consideration has been made for consideration where the advice was not followed appropriately ?</i></p> <p><i>What is the standard of care required to be provided?</i></p> <p><i>What is the standard of proof required to prove a breach?</i></p>

#	Recommendation	Clauses	Comments
9	Amend the meaning of <b><i>serious injury or illness</i></b> to include immediate treatment as an in-patient without reference to a hospital.	36(a).	<p><b>In principle we agree. Seek to apply harmonised classifications.</b></p> <p><i>What about chronic or progressive conditions that worsen over time such as poisoning or pathogen exposure? (Which will not always require immediate treatment)</i></p>
10	Include incapacity to work for 10 or more days as a category of <b><i>serious injury or illness</i></b> .	36.	<p><b>In principle we agree. Further clarity required regarding what does “incapacity to work 10 days or more” mean. Seek to apply harmonised approach to reduce inconsistency across Australia.</b></p> <p><i>This category needs to be further clarified in lay-mans terms such as “calendar days” or “working days” due to the varying employment arrangements and needs to align with any appropriate workers comp legislation amendments.</i></p> <p><i>Consideration for the various PCBU expectation for notifications would be beneficial where various tiers of contractual arrangements are in play.</i></p>
11	Amend the heading ‘Negotiations for agreement for work group’ to Negotiations for determination for work group’.	52 (heading only).	<b>No comment</b>

#	Recommendation	Clauses	Comments
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	<p><b>Unnecessary.</b></p> <p><i>Runs the risk of either the PCBU's, workforce or others 3<sup>rd</sup> parties to "cherry-pick" the appropriate HSR for their purposes. Negatively impacting the communication and consultation aspect of this provision, and could encourage a "miss use" of power and other unintended impacts.</i></p>
13	Change the approving authority for courses to be attended by a health and safety representative (HSR) from the <b>regulator</b> to the Work Health and Safety Commission.	72(1)(a).	<p><b>In principle we agree. Need further clarity around the monitoring, auditing and prosecuting aspects.</b></p> <p><i>Does this add more regulatory and administrative cost ?</i></p>
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).	<p><b>In principle we agree. Need further clarity around the timing of the training.</b></p> <p><i>Agree with the change of the word from "entitlement" to "requirements" and in this situation that the 'MUST request' is either unnecessary or confusing.</i></p> <p><i>Timing becomes an issue for short duration projects where workforce numbers quickly rise and fall and the workforce is of a transient trade specific nature).</i></p> <p><i>Does this consider a requirement for a deputy HSR and consequently any training requirements? This is further business cost unless this is tax deductible</i></p>

#	Recommendation	Clauses	Comments
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.	<b>Agree.</b> <i>This is a good amendment.</i>
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	<b>Agree.</b> <i>Appropriate amendment.</i>
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.	<b>In principle we agree. Further clarity required.</b>
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.	<b>Agree.</b> <i>Appropriate amendment.</i>

#	Recommendation	Clauses	Comments
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	<p><b>Further clarity needed</b></p> <p><i>Numerous issues arise:</i></p> <ul style="list-style-type: none"> <li>- <i>Relevant employees</i></li> <li>- <i>'official of a union' – what about non-union or other contractual employment relationships</i></li> <li>- <i>Competency of those with a 'right of entry' (OHS qualifications or skills in specific operations rather than simply a legal or IR/ER competency)</i></li> <li>- <i>Runs risk of "frivolous" or generalised OHS concerns as a stated reason to enter site.</i></li> <li>- <i>Significant penalties are required to protect and prosecute for breaches by 'rogue unions'</i></li> <li>- <i>Liability risk and cost impacts to PCBU.</i></li> <li>- <i>Which commission is this overseen by and what powers do they have for prosecuting unions breaching and their representatives?</i></li> </ul>
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.	<b>Further clarity needed</b>
21	Insert the Registrar of the Western Australian Industrial Relations Commission as the <b>authorising authority</b> for the WHS entry permit system.	4, 116, 131, 132, 134, 135, 149, 150 and 151.	<b>In principle we agree. Further clarity is needed</b>
22	Insert the <b>WHS Tribunal</b> as the authorising authority for revocation of WHS entry permits and resolution of disputes about right of entry.	138, 139, 140 and 142.	<b>In principle we agree. Further clarity is needed</b>

#	Recommendation	Clauses	Comments
23	Replace references to the defined phrase <b>relevant state or territory industrial law</b> 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)	<b>In principle we agree.</b>
24	The <b>Registrar</b> to be included as an eligible party to apply to the <b>WHS Tribunal</b> to revoke a WHS permit, or deal with a dispute about a WHS entry permit.	138(1), 142(4).	<b>In principle we agree.</b>
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).	<b>Agree.</b> <i>Appropriate amendment.</i>
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171.	<b>Agree.</b> <i>Appropriate amendment.</i>
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193.	<b>Agree.</b> <i>Appropriate amendment.</i>
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.	<b>Agree.</b> <i>Appropriate amendment.</i>
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.	<b>Agree.</b>



#	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.	<b>Agree in principle.</b> <i>A case by case discretionary option should also be available where the most appropriate OHS benefit is obtained by applying a substantial enforceable undertaking.</i>
31	Include a worker's union as an <b>eligible person</b> who is able to apply for certain decisions to be reviewed.	223.	<b>Unnecessary.</b> <i>Currently workers and HSRs can request for 100% of the workplaces. Unions represent &lt; 30% of the workforce, so appears unnecessary.</i>
32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	<b>Agree in principle.</b>
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.	<b>Unnecessary.</b> <i>70% of workforce are non-union.</i>
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).	<b>Needs to represent consistent change management process and apply best practice across all jurisdictions</b>
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.	<b>Agree in principle.</b> <i>Needs to be costed appropriately first.</i>
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.	<b>Agree. Needs to also include an OSH association representative (ie such as from the Safety Institute of Australia).</b>

#	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.	<b>Agree. Needs to also include an OSH association representative (ie such as from the Safety Institute of Australia).</b>
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	<b>No comment</b>
39	Establish the Work Health and Safety Tribunal as the external review body for work health and safety matters.	Include new Part/Schedule.	<b>Agree.</b> <i>Appropriate amendment.</i>
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.	<b>Agree.</b>
41	Provide the Work Health and Safety Tribunal (WHST) with power to direct the <b>Registrar</b> to investigate and report on matters.	51G(1) of the OSH Act to be incorporated into the WHS Bill.	<b>Agree.</b>
42	Include a clause that mirrors the exclusion of work health and safety matters from the definition of <b>industrial matters</b> in the <i>Industrial Relations Act 1979</i> .	Equivalent of 51G(3) of the OSH Act.	<b>Agree.</b>
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.	<b>Agree.</b>

#	Recommendation	Clauses	Comments
44	Insert the <b>WHS Tribunal</b> as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	<b>Agree.</b>
	<i>Add your comments by creating new rows</i>		