

# Modernising Work Health and Safety Laws in Western Australia

## Submission by Saskia Scott

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## Submission

<p><b>Questions for you to consider:</b></p> <ol style="list-style-type: none"> <li>1. What is the likely cost to implement a specific proposal?</li> <li>2. What is the benefit to workplace participants?</li> <li>3. Is a specific recommendation likely to be effective in achieving safer workplaces?</li> <li>4. Are there any unintended consequences of a proposal?</li> <li>5. If a new requirement is proposed, what are the costs and benefits?</li> </ol>	
<b>Recommendation number in the Consultation Paper and/or section number in the model WHS Bill.</b>	<b>Comment (including costs and benefits)</b>
<b>Recommendation 1</b>	<p>I agree with the intent behind this regulation but also note that the current version uses obfuscating language. I would love to see a more 'plain English' version of the existing Objects clause.</p>
<b>Recommendation 8</b>	<p>Can it be clarified whether this will also apply to in-house consultants? So if someone is employed as a permanent employee by a PCBU and their role is to be a WHS adviser, to what extent would this clause apply to them?</p> <ul style="list-style-type: none"> <li>• If it does this may help protect other workers by giving the adviser a motivation to give correct advice</li> <li>• It may also allow the worker to be unfairly treated on the basis of their advice, or it may prompt that person to underperform out of fear of giving the wrong advice.</li> </ul>
<b>Recommendations 6, 7, 14, 15 and 16</b>	<p>I strongly agree with these recommendations, brilliant ideas.</p>
<b>Recommendation 29</b>	<p>I'm not happy with this idea but I acknowledge that it is the only way to tie in with existing laws. I can't think of any recommendation within the scope of the WHS bill which would make it better.</p>
<b>Section 16(3)</b>	<p>The wording seems slightly confusing here. My recommendation is to change 'the person's' or 'the person' where it occurs in both (a) and (b) to 'that person's' or 'that person'. This will make it clearer that each person is being referred to separately and one person does not hold a duty for another person.</p>
<b>Section 8 and also 23(2a)</b>	<p>To what extent does the definition of workplace extend to public entertainment spaces such as museums, theatres, amusement parks etc? And to what extent does the definition of 'plant' and 'structure' include museum</p>

	<p>exhibits or rides?</p> <p>What if a visitor who is in a museum space is injured during the normal use of the equipment? Could they be deemed to have been injured while using the plant 'for a purpose for which it was designed or manufactured' while being 'at a workplace'?</p> <p>I would recommend that the definitions are constructed such that this would not be possible, if the intent of the law is still to focus mostly on worker safety as opposed to public health.</p>
<b>Section 19 (2)</b>	<p>Similar to above:</p> <p>In the entertainment and museums industry, does this clause refer to visitors to a museum being put at risk by their interactions with the exhibits in the normal use of the exhibit? For example, if a visitor to a museum was using an exhibit in the normal way, and injured, would this come under the PCBU's duty of care in this section?</p>
<b>Sections 23, 24, 25 and 26</b>	<p>Again for museums, would the definitions of 'plant' and 'structure' include museum exhibits or rides in these sections? Could the legislation make it clear that the safety obligations to those whose work it is to install, repair, build or work on exhibitions and rides includes those structures themselves and not simply the tools used to work on them (for example, an exhibit that is very heavy or that contains dangerous substances).</p> <p>And if that is the case then the above queries become even more important as to whether, if they are classed as 'plant' for this purpose, are they also classed as 'plant' for a visitor?</p>
<b>Section 29</b>	<p>Does this section include visitors to museums? If yes, to what extent does the visitor's duty to keep themselves safe at a museum/entertainment venue mitigate any WHS duties the PCBU may have under this legislation, if at all?</p>
<b>Section 34</b>	<p>Clause 34(1) excludes volunteers from liability for a breach of WHS law: does this include volunteer board members who make decisions affecting the whole organisation? Do they still need to execute due diligence or is that the purview of paid officers only?</p>
<b>Section 113</b>	<p>Is this a reverse burden of proof? I disagree with this on principle of the spirit of our legal system.</p>