

# Modernising Work Health and Safety Laws in Western Australia

## Submission by the Water Corporation

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#	Recommendation	Clauses	Response	Comment
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).	No Comment	
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	No Comment	
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).	Agree	Water Corporation agree with this recommendation as this shifts the terminology from OSH to WHS with regards to the Commission.
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4	Agree	
5	Amend the definition of <b>import</b> to include importation from another state or territory into Western Australia.	4	No Comment	
6	Amend the meaning of <b>supply</b> to include the loan of an item.	6(1).	Point of Clarification	Water Corporation agree with this recommendation in principle, however are unsure of the scope of this provision. We query whether the 'loan' of land is included in the meaning of supply, and would recommend the 'gift' of an item also be included. We believe further consultation on this recommendation is required.
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).	Agree	
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.	Point of Clarification	Water Corporation agree with this recommendation in concept however would seek further consultation in regards to the definition of 'service provider' to ensure Water Corporation discharges its Duty of Care under the Act.
9	Amend the meaning of <b>serious injury or illness</b> to include immediate treatment as an in-patient without reference to a hospital.	36(a).	Point of Clarification	Water Corporation agree with the concept however request that the definition of 'in-patient' in the legislation be clear in order to avoid confusion in the interpretation of the legislation. Water Corporation query whether the term treatment includes 'for the purpose of diagnosis only' when the person has been admitted as an 'in-patient'?
10	Include incapacity to work for 10 or more days as a category of <b>serious injury or illness</b> .	36	Agree	
11	Amend the heading 'Negotiations for agreement for work group' to 'Negotiations for determination for work group'.	52 (heading only).	Point of Clarification	Water Corporation considers 'agreement' to be a more commonly understood term for the lay reader.
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	Agree	
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).	Agree	
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).	Point of Clarification	Water Corporation agree with this recommendation however when the Health and Safety Representative is also employed as a Safety Professional this would be non-value adding. We recommend that previous training in a similar role be recognised as fulfilling this requirement.
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.	Agree	

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	Agree	
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.	Agree	
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.	Agree	
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	No Comment	
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.	Point of Clarification	Water Corporation agree with this recommendation however the preference would be to include the term 'must provide report' (mandatory) over 'may' (optional) in relation to the variation from SA clause 117(6)(a).
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.	Agree	
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.	Agree	
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)	Agree	
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).	Agree	
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).	No Comment	
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171	Agree	
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193	Agree	
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.	Point of Clarification	Water Corporation request additional consultation in relation to this provision. Water Corporation query if this is limited to the Mines Safety and Inspection Regulations & Dangerous Goods Safety Regulations or if this would apply to all workplaces?
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.	No Comment	
30	Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.	New sub-clause to be added to section 216.	Point of Clarification	Water Corporation recognise the intent of this recommendation however also understand there has been evidence to show mutual benefit of entering into an enforceable undertaking over a court proceeding within other jurisdictions. Water Corporation would request further consultation on this recommendation.
31	Include a worker's union as an <b>eligible person</b> who is able to apply for certain decisions to be reviewed.	223	Disagree	Water Corporation do not agree with this recommendation. Water Corporation believe the matter being raised by a person or Health and Safety Representative would achieve the same outcome.

32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	No Comment	
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.	Point of Clarification	Water Corporation request that clearer explanation and background relating to this recommendation be provided to clarify the intent.
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).	No comment	
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.	Agree	
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.	Agree	
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.	Agree	
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	No Comment	
39	Establish the Work Health and Safety Tribunal as the external review body for work health and safety matters.	Include new Part/Schedule.	Agree	
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.	Agree	
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.	Agree	
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.	Agree	
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.	Agree	
44	Insert the <b>WHS Tribunal</b> as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	Agree	