

Work Health and Safety Bill 2014

Submission to Worksafe WA

Civil Contractors Federation (WA Branch)



**CIVIL CONTRACTORS
FEDERATION**

Introduction

CCF WA thanks the State Government for the opportunity to comment on the WHS Green Bill. While we support the principle of harmonisation between the states in health and safety legislation, we believe the State Government has taken the right approach by not rushing into harmonisation.

We also support the Government's decision to reject three components of the harmonised model Act:

- Removal of union right-of entry provisions
- Removal of the reverse onus of proof in discrimination matters
- Removal of the ability for health and safety representatives to order a stop work.

CCF WA endorses the detailed analysis of the WHS Green Bill in the Chamber of Commerce and Industry of WA's (CCI WA) submission, and we support CCI WA's recommendations.

The comments below refer to areas of particular concern to CCF WA.

Penalties

CCF WA is disappointed that the Government has changed its position in regard to another of the original "non-negotiable" issues, the level of penalties in the model Act. The penalties in the Green Bill are up to five times greater than those in WA's current OSH Act. There is no evidence that the imposition of such onerous penalties would lead to improved safety outcomes.

Enforceable Undertakings

The excessive penalties in the Green Bill are even more problematic in the light of the Government's decision to exclude the enforceable undertakings provisions of the model Act.

Part 11 of the model Act enables the regulator to accept written undertakings given by a person in connection with a matter relating to a contravention or alleged contravention of the Act.

Enforceable undertakings have been used effectively in other jurisdictions as an alternative to prosecution. Such undertakings are outcome-focused; they lead to a direct improvement in workplace safety as they require the employer to address the problem – as opposed to prosecutions and penalties, which are simply punitive.

Feedback from WorkSafe WA during the Green Bill consultation suggests that one reason for the decision to omit enforceable undertakings was the potential administrative burden such undertakings would place on the regulator. CCF WA believes that resourcing concerns are not an acceptable reason to omit an essential component of the Model Act. Accordingly we recommend the inclusion of Part 11 and that WorkSafe be adequately resourced to manage enforceable undertakings.

'Welfare' requirement

Section 3(1)(a) of the Green Bill requires workers to be protected from harm to their health, safety and welfare, and there are other references to 'welfare' throughout the Act, sometimes in the context of providing facilities. While the meaning of the terms 'health' and 'safety' are well understood in this State, it is not clear what is meant by welfare, or how it will improve health and safety outcomes.

CCF WA recommends the removal of references to welfare, or if not a clear definition of what it means.

‘Influence and Control’

Sections 16(3)(b) and 17(2) refer to a person’s capacity to ‘influence and control the matter’. It is not clear what is gained by the introduction of a new ‘influence and control’ test, as opposed to the current Act which consistently refers to ‘control’ of a workplace.

Section 19, Primary Duty of Care, also includes the concept of ‘influence’. CCF WA shares the concerns of Master Builders Australia

The use of “influence” in conjunction with “control” is, hence, likely to have a broader meaning than “control” on its own. If this was not intended to be the case, then it would not have been necessary to include “influence” in this provision of the WHS Act. (Losing Control? – The Impact of the Primary Duty Of Care. Master Builders Australia, August 2011)

CCF WA recommends removal of references to ‘influence’ as it will add uncertainty and will not improve health and safety outcomes.

Health monitoring

Section 19(3)(g) imposes a duty on PCBUs to ensure, so far as is reasonably practicable, that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers.

The requirement for health monitoring is onerous, especially on small business. Furthermore, it is not clear how businesses are expected to monitor their employees’ health (both physical and psychological).

While some forms of health monitoring may be appropriate in high-risk workplaces, such requirements could be covered in regulations or codes of practice.

CCF WA recommends the removal of the health monitoring requirement in the Act.

Election of and consultation with health and safety representatives (HSRs)

Under the current act, the process of appointing an HSR can only be initiated by the request of an employee. Section 50 of the Green Bill, however, provides that a request for election of health and safety representative can be made by a worker, which as defined in the Green Bill may include subcontractors, labour hire workers, outworkers or even students on work experience.

This is an unreasonable requirement and CCF WA recommends that such requests can only be made by an employee.

The consultation requirements in s49 are unnecessarily prescriptive, especially regarding facilities for the welfare of workers, health monitoring and training. CCF WA endorses the importance of regular, direct consultation with workers on health and safety issues. On civil construction sites, such consultation is typically conducted daily in the form of 'take 5' meetings. However the prescriptive elements of s49 in areas such as welfare (especially noting our previous concerns about the lack of clarity around this term) and training may interfere with an employer's ability to effectively manage, particularly when everyday management decisions are made at a location different to the workplace affected, as is common in the construction industry.

CCF WA recommends the prescriptive consultation requirements in the Green Bill be replaced by a more general requirement to consult on health and safety matters where practicable.

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About CCF

The Civil Contractors Federation is the member-based body representing the Australian civil construction industry, providing assistance and expertise in contractor development and industry issues. Nationally, we represent more than 1,550 civil contractors and a further 770 suppliers to industry.

CCF WA members are involved in a variety of projects and activities including the development and maintenance of civil or “horizontal” infrastructure such as roads, bridges, railways, sewer, water and drainage pipelines, dams, wharves, and commercial and housing land development.

In the 2012/13 financial year, a record \$15.5 billion was invested in civil infrastructure construction in Western Australia – a six-fold increase in just over a decade, due in part to works directly related to the state’s “resources boom”, as well as an increased appreciation by governments of the economic benefits of infrastructure investment.

This remarkable growth in infrastructure meant that during the 2011/12 financial year, total civil construction activity in WA exceeded building construction for the first time. While civil construction activity has moderated from that peak, the sector will remain similar in size to the building industry – a significant turnaround from little more than a decade ago, when the building sector was double the size of civil.



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