



Motor Trade Association of WA
Your Business, Your Industry, Your Voice

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SUBMISSION ON WORK HEALTH AND SAFETY BILL 2014

Thank you for the opportunity to provide feedback on the *Work Health and Safety Bill 2014* (the WHS Bill) as part of the Government's statutory review of workplace health and safety legislation in Western Australia.

The Motor Trade Association of Western Australia (MTA WA) is the peak industry body for the Western Australian motor industry and represents over 1,800 businesses. Its membership incorporates all aspects of the motor industry including automotive franchise dealers, used motor vehicle dealers, imported motor vehicle dealers, body repairers, mechanics, heavy transport and rental vehicle operators.

Introduction

Overall, the proposed WHS Bill appears to be workable for Western Australian automotive businesses at a practical level. The MTA WA does have a number of concerns in relation to changes in administrative processes and the proposed penalty rates within the WHS Bill itself, however its main concerns relate to the review process more broadly, the lack of detail provided as part of this review and the lack of evidence to support the need for change. The MTA WA is of the view that the WHS Bill will not deliver any net benefit to Western Australian businesses or their employees while placing unnecessary costs on small businesses in adopting the changes.

While the MTA WA supports the broad principle of national consistency in workplace health and safety requirements, it shares the Government's concern about introducing a new health and safety regime that will no longer contribute to this goal, given the varied uptake of the Model Work Health and Safety Bill across Australia, and more importantly is not tailored to the needs of the business environment in Western Australia.

The need for change

In its response to the *Model Work Health and Safety Regulations and Codes of Practice in Western Australia* in October 2012, the MTA WA raised concerns about introducing legislative change that increases operational and financial costs for businesses without clear, overriding benefits to workers, the public or the economy. The MTA WA is concerned that there is a lack of evidence to support the need for systemic change in Western Australia's workplace health and safety regime and that the introduction of the WHS Bill would be both unnecessary and costly for small business.

The Minister for Commerce, the Hon Michael Mischin MLC, recognised the effectiveness of the current *Occupational Health and Safety Act 1984* (OHS Act) in his statement to Parliament on 12 August 2014. In fact, the evidence provided by the Minister demonstrates that workplace health and safety in Western Australia has continued to improve since the current legislation was introduced.

During the past 18 months, the MTA WA has engaged an accredited health and safety consultant to deliver free, technical advice to its members on their regulatory obligations under the OHS Act. The MTA WA has also made available formal health and safety audits for members conducted at their business premises to provide a tailored, comprehensive assessment of compliance with the OHS Act and assist in developing relevant practices and procedures to ensure a safe, efficient and compliant workplace.

In 2014, the MTA WA carried out 32 audits among member businesses and during this process did not receive any feedback to indicate any specific, major issues with current work health and safety legislation at an operational level. The results of these audits demonstrate that the current legislative framework in Western Australia is on the whole reasonable, practical and offers adequate protection for employees. Despite this, many businesses fail to meet all of their compliance obligations, in particular the requirement to develop formal health and safety policies and procedures and keep up to date records. While each business faces their own specific challenges, the problems mostly stem from a general lack of knowledge and understanding of their regulatory requirements, along with limited resources to implement and maintain workplace health and safety schemes.

However, once businesses were provided with individual support and advice many were able to introduce changes to improve their compliance with the OHS Act and consequently the safety of their workplaces. In other words, the problem that exists does not lie within the legislation itself but in ensuring the necessary support is made available to assist businesses understand and implement the various practices required to ensure safety and compliance in the workplace.

Impact on small business

As noted in the *Regulation Impact Statement - Model Work Health and Safety Regulations and Codes of Practice in Western Australia* (RIS) prepared for WorkSafe WA in December 2012, larger businesses that operate across State and Territory borders have already mostly addressed any harmonisation issues within their operations and are well equipped to adapt to any further changes in health and safety requirements. Further, in his statement to Parliament, Minister Mischin recognised that small businesses are not likely to benefit directly from any changes introduced to align health and safety requirements with other jurisdictions.

Currently, small businesses represent the majority of businesses within the MTA WA's membership base with nearly 60 per cent of the MTA WA's members employing five or fewer staff. The MTA WA is therefore primarily concerned about the compliance burden of any future changes on the state's small business sector which often bears the cost of regulatory changes to a greater extent than larger businesses due to their relative lack of resources. The RIS demonstrates this and recognises that regulatory change affects big business differently to small business (p. 43).

Maintaining consistency and minimising the compliance burden on small businesses in relation to workplace health and safety is even more pertinent following the Government's recent decision to cease funding for the Thinksafe Small Business Assistance Program. Businesses will no longer have access to free, individually tailored, expert advice in this area and the impact of this would be compounded should further regulatory change be introduced.

WHS Bill

The MTA WA previously raised concerns regarding some technical aspects of the national *Model Work Health and Safety Regulations* including asbestos testing, health monitoring reports, personal and protective clothing, item of plant registration, and a removal of prescriptions around a number of other workplace hazards. The Government has not provided any information on the Regulations or Codes of Practice that would accompany the WHS Bill. This represents a significant lack of information for the MTA WA to be able to assess the impact of the proposed changes on the operations of automotive businesses.

Having said that, based on concerns raised by its members previously and feedback from its health and safety audits and in-house consultations, the MTA WA's comments in relation to the WHS Bill are outlined below.

1. Administrative processes

The WHS Bill contains a number of administrative processes including notification periods, consultation and information sharing procedures, meeting guidelines, and record keeping that businesses will need to adjust. While they are not overly problematic in themselves, they are in some cases more prescriptive and represent a

shift from current requirements. The main costs for small businesses will therefore be in the time and resources needed to understand and implement the changes into their current processes. The MTA WA also notes that there is no consultation, as part of this review, on the proposed transitional period to allow business to adapt. Small businesses in particular will require adequate time and **additional support to implement** any changes and/or new requirements.

2. Penalty rates

In its *Consultation Regulation Impact Statement Information and Issues Paper*, the Government committed to not adopting penalty rates contained in the *Model Work Health and Safety Bill* because they are significantly higher than current levels and could potentially be punitive for small businesses. The MTA WA supports this position and is concerned that the Government has appeared to reverse its previous commitment. The higher penalty rates are both unsustainable for small businesses and could act as a disincentive to engage with the regulations.

Summary

The Government's objectives for workplace health and safety are presumably to ensure a safe working environment for Western Australian workers and minimise where possible the regulatory burden for business. The MTA WA believes that in order to achieve this objective resources are needed to improve education, advice and support for business instead of being absorbed in introducing regulatory changes that do not appear to be justified at this stage.

The MTA WA believes the impact of introducing the WHS Bill will be increased costs for small business and minimal or no net benefit to big business because:

- The current OHS Act provides an effective framework for protecting employees and is reasonable and for businesses;
- There are no systemic issues with the current regulatory regime;
- The adoption of the model WHS laws has already varied greatly across jurisdictions therefore the benefit to big businesses would be negligible; and
- Small businesses operate the majority of workplaces and will be impacted more heavily, with no overriding benefit to be achieved.

The MTA WA notes that the Government will consider the way forward in workplace health and safety based on feedback to this review along with the outcomes of the Federal Government's current review of the *Model Work Health and Safety Bill*. The MTA WA urges the Government to consider the additional costs of introducing the WHS Bill for small businesses whose resources are already stretched in meeting their obligations and are being faced with a reduction in the support available.

The MTA WA would be please to provide further information should it be required. I can be contacted on 9233 9800 or by email at stephen.moir@mtawa.com.au.

Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Stephen Moir
Group Chief Executive Officer