

Comments on the *Work Health and Safety Bill 2014*

Clause (section) of the Model WHS bill	Comment
All	<p>Section Numbering</p> <p>The WA Branch of the SIA and its members fully support adoption of a harmonised WHS Act with the same section numbering as other jurisdictions</p>
5	<p>Meaning of Person Conducting a Business or Undertaking</p> <p>The Safety Institute of Australia agrees with adopting the terminology Person Conducting a Business or Undertaking (PCBU) and thereby widen the application of Work Health and Safety requirements, such that a more consistent standard of safety is applied by a PCBU whether they are an “Employer” or not.</p>
7	<p>Meaning of Worker</p> <p>The Safety Institute of Australia agrees with adopting the terminology “worker” and thereby widen and removing confusion about who has duties and who PCBU’s have duties to, under the Work Health and Safety Legislation, such that a more consistent standard of safety can be expected by workers regardless of whether they are an employee or not.</p>
19	<p>Primary Duty of Care</p> <p>The Safety Institute of Australia recommends the inclusion of a requirement within the duties of a PCBU to engage suitably qualified and certified professionals and/or practitioners to assist the PCBU to fulfil their duties under, and overall compliance with, this legislation.</p>
27	<p>Duties of Officers</p> <p>The Safety Institute of Australia agrees with adopting the Due Diligence requirements for officers. The SIA would like to highlight that officers can be ably assisted with confidence to fulfil their due diligence duties in section 27 (5) by a suitably certified Work Health and Safety professional and/or practitioner.</p>
28	<p>Duties of Workers</p> <p>The Safety Institute of Australia opposes the omission of the current requirements in the WA Occupational Safety and Health Act section 20 (2) (d) imposing a duty on workers (employees) to report “any situation at the workplace that the employee has reason to believe could constitute a hazard” and “any injury or harm to health which he or she is aware of that arises in the course of, or in connection with, his or her work” to their employer (the PCBU).</p>

37	<p>Dangerous Incidents</p> <p>The Safety Institute of Australia agrees that the inclusion of the requirement for PCBUs to report Dangerous incidents is appropriate and will lead to organisations giving more attention to and conduct more in-depth investigation in relation to these Dangerous Incidents which have the potential to result in a fatality or serious injury and treat them with the full respect that they deserve.</p>
	<p>Power of Health and Safety Representatives to cease work</p> <p>The Safety Institute of Australia understand the rationale that every worker has the right to cease work, and therefore believe it's omission not justified, given its inclusion wouldn't have had a material impact on WA workplaces. This is demonstrated by other states that have given HSRs this power in the past and have not seen it used very frequently at all. Not including this power has provided an inconsistency between the WA Work Health and Safety Bill and the states which have adopted the Model Work Health and Safety Act with a lack of rationale given the immateriality if it were to be included.</p>
68(2)(d)	<p>Powers of Health and Safety Representatives</p> <p>The Safety Institute of Australia do not agree that Health and Safety Representatives should not be able to be present at an interviewing concerning a group of workers, an inspector and a PCBU. If they can be present when it is a single worker, why shouldn't they be present if it is a group of workers.</p>
74(2)	<p>List of Health and Safety Representatives 74(2)</p> <p>The Safety Institute of Australia agrees that it is more efficient for Work Safe WA to process notifications about specific new or resigned HSRs from a given workplace as opposed to being provided with a full list each time there is a change(s), requiring Work Safe WA to compare two list to identify the differences. This should thereby free up more resources to undertake other activities such as checking upon progress with enforceable undertakings.</p>
	<p>Meetings of Committee</p> <p>The Safety Institute of Australia agrees that the omission of section 78 (a) of the Model Work Health and Safety Act is appropriate and that Safety Committee should be able to set their own meeting frequency.</p>
100	<p>Request for review of provisional improvement notice</p> <p>The Safety Institute of Australia agrees that the amendment to section 100(1) of the Model Work Health and Safety Act such that a request for review of a provisional improvement notice, can be made up until the time specified in the provisional improvement notice as opposed to limiting it to 7 days as prescribed in the Model Work Health and Safety Act is appropriate.</p>

	<p>Reversal of the onus of proof in discrimination cases</p> <p>The Safety Institute of Australia agrees that the reversal of the onus of proof in discrimination cases is inappropriate and that the general Australian law whereby you are innocent until proven guilty should apply.</p>
	<p>Union Right of Entry</p> <p>The Safety Institute of Australia agrees that the Union Right of Entry requirements are better contained in the Industrial Relations Legislation.</p>
195	<p>Powers to issue prohibition notice</p> <p>The Safety Institute of Australia agrees that the addition of section 195 (4) requiring an inspector that has issued a prohibition notice to stay at that site until the prohibited activity has ceased where it is practicable to do so is appropriate.</p>
	<p>Enforceable Undertakings</p> <p>The Safety Institute of Australia strongly opposes the omission of Part 11 – Enforceable Undertakings as contained in the Model Work Health and Safety Bill. Enforceable Undertakings are a valuable and proactive alternative to prosecutions of a PCBU. A prosecution simply takes funds from an organisation and puts them in the general government consolidated funds; incurs legal fees for both and doesn't deliver any improvement in safety outcomes for Western Australian workplaces. Enforceable Undertakings allow for the resources wasted during a prosecution to be redirected to delivering improved safety outcomes for Western Australian workplaces, whether that be through improved training or implementing engineering solutions to identified hazards. Enforceable Undertakings would also create a more open and less adversarial relationship between Work Safe WA and PCBUs and reduce anxiety for both.</p> <p>We note Worksafe WA has commented that they do not currently have the resources to check that any enforceable undertakings agreed to have in fact been implemented. The Safety Institute of Australia would highlight that their resources saved from not having to undertake a prosecution could be redirected to auditing the enforceable undertakings.</p> <p>An option could be to have those organisations entering in to “Enforceable Undertakings” also agree to have their undertaking audited by an appropriate, certified and Work Safe WA authorised auditor. This is similar to other cost recovery models adopted by other government departments such as NOPSEMA for auditing compliance with safety cases.</p>
224(3)	<p>Application for internal review</p> <p>The Safety Institute of Australia agrees that the amendment to section 224(3) such that a request for an internal review of an improvement notice should be within the period specified in the notice as opposed to limiting it to 14 days as specified in the Model Work Health and Safety Bill is appropriate.</p>

	<p>Procedure if prosecution not brought</p> <p>The Safety Institute of Australia agrees with the omission of section 231 of the Model Work Health and Safety Act, it is not appropriate for others than the regulator to request prosecution be brought against a PCBU.</p>
<p>232</p>	<p>Limitation period for prosecutions</p> <p>The Safety Institute of Australia disagrees with increasing time to commence a prosecution to 3 years and suggest that the time frame of two years specified in the Model Work Health and Safety Bill should be adopted. Best investigation practice is to commence the investigation as soon as possible following an incident, this is to ensure those involved are most able to accurately recall what happened in the time proceeding, during and after the event. Once the investigation is complete Work Safe WA should expeditiously make a decision about whether to proceed with a prosecution, an enforceable undertaking or nothing. Having the threat of prosecution hanging over the organisation, creates unnecessary anxiety for directors, managers, supervisors and workers and this uncertainty would delay any further investments an organisation may have had planned for their Western Australian workplaces. Two years should be more than ample to investigate even the most serious and complex incidents.</p> <p>The Safety Institute of Australia suggests that any funds generated from prosecution of a PCBU which results in a financial penalty be used specifically for the purpose of improving Workplace Health & Safety. Investment in activities like the Safety Institute of Australia Research and Development Fund is one such way those funds could be used to improve safety outcomes for Western Australian workplaces.</p>
	<p>Consistency with Resources Safety Legislation</p> <p>The SIA believes that alignment between the WA Resources sector safety Legislation and the general WHS Legislation is also very important. Proceeding with the WHS Green Bill so that this can be used as a basis for the WA resources sector will simplify the law for businesses that traverse sectors, bring WA into closer alignment with the other states, reduce red tape for small to medium enterprises (SME), as well as reducing the confusion among those WA organisations which operate in one or more other states and territories.</p>