

Submission to WorkSafe on the Work Health and Safety Bill 2014

1. The State School Teachers' Union of WA (Inc.) has been in existence since 1898. It has a proud history of engagement in both professional and industrial matters, seeking to improve conditions for its members, as well as the students, who attend public schools and TAFE colleges.
2. In addition, the SSTUWA and its members have an affiliation and membership with other teachers and lecturers in public education facilities across the nation through the Federal Australian Education Union.
3. The Union represents over 15,000 teachers, administrators, school psychologists, district directors, education officers and school development officers in the government schools sector and lectures in the TAFEWA sector.
4. We believe that workers have a fundamental right to protection at work and that we need both a regulatory and enforcement structure that ensures this. Safety and health is very different from the issues around safety and risk in our everyday activities because the employee has little or no control over their workplace and the system of work and level of protection are in the control of the employer.
5. The Occupational Safety and Health Act 1984 has been effective in trying to address the balance of power in the workplace by providing for consultation through the provision for the election of safety and health representatives and committees and the ability to serve provisional improvement notices (PIN'S).
6. The basic premise that employers have a duty of care and must protect the safety and health of their workers and others and must assess all work activities in order to eliminate risk is uncontroversial and accepted and supported by the community. However this legislation is primarily enabling and much of the law to protect workers and others from specific hazards is by way of regulation and it is difficult to judge the potential effectiveness of the draft Work Health and Safety Act without seeing the supporting regulations.
7. The State School Teachers' Union of WA (Inc.) supports strong and consistent harmonised OSH legislation in Australia. This must not be at the risk of reducing protection for workers.
8. This review is an opportunity to introduce best practice in Occupational Safety and Health in Western Australia. But the premise for the review seems to be based on 'reducing red tape' and the 'regulatory burden' on business. Strong legislation should be seen as essential for a civilised society.
9. According to research conducted by the UK Government in 2005, where the level of OSH regulation created by the European Union is far greater than in Australia, the average business spends 20 hours per year on complying with risk management legislation at a cost of £350 on administrative costs.

10. The toll of death, injury and workplace caused disease is unacceptable and the reported figures do not show the number of people who have to give up work or move to another occupation because of exposure to an occupational hazard. There are many professions where workers cannot follow their chosen occupation until retirement age. This is very true of the education industry where many workers cannot continue due to work related stress and occupational violence. Neither of these hazards are adequately covered by the existing or proposed legislation.
11. The SSTUWA is very concerned that the Safe Work Australia (SWA) review into the harmonised laws will be considered in the drafting of the final WA WHS bill with no chance to comment on some very controversial recommendations such as 'on-line' training for safety and health representatives (HSR's).
12. The SSTUWA fully supports the UnionsWA submission and has contributed to its development but would like to offer the following comments on specific issues.
13. The new legislation should specifically require an employer to assess and manage the risks from work to the mental health of employees.
14. **Section 19(1)(d)** of the current OSH Act requires employers to provide personal protective clothing where necessary free of charge. The proposed Section 19 – Primary Duty of Care – does not reiterate this obligation. This specific requirement should be stated in the Act or regulations. All too frequently employers are requiring their employees to provide their own protective clothing such as steel toe capped boots, overalls, etc.
15. **Duties of Workers (Proposed Section 28)** – No requirement for workers to report hazards or any injury or harm to health as per current Section 20 (2)(d)(i) and (ii)

This is seen as an essential part of the risk management process for a workplace. It also protects employees to some extent from repercussions from raising OSH issues as it is a legal requirement. If employees are not required to report ill-health or injury, the employers' ability to meet their duty of care is seriously jeopardised.

16. **Objects of the Act – Section 3** – The proposed Section 3(1) (a) (d)

Objects of Act - Section 3

* 3(1) to secure the health and safety of workers and workplaces by:

- (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising through work.

The corresponding provision in the current Act objects (Section 5) is:

- (d) to reduce, eliminate and control the hazards to which persons are exposed at work.

The existing provision is stronger as it specifically requires the control of hazards. The SSTUWA supports retaining the existing provision.

17. The proposed object 3(1)(c) -

3(1)(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, assisting persons conducting businesses and undertakings and workers to achieve a healthier and safer work environment.

This does not support the basic premise that the OSH legislation will be truly tripartite as embodied in the current Section 5(e) – “to foster co-operation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;”

18. Resolution of Issues

Proposed Section 81(2)

There is no definition of “relevant agreed procedure”. Whereas in current Section 24(2) it is defined and requires employees to be involved in agreeing with the procedure.

19. OSH Committees

The proposed Section 25 requires five workers to request a committee to be established whereas the current Section 39 only requires one employee to make the request.

This change will possibly reduce the number of workplace OSH committees established.

In the proposed legislation there is no requirement as to how often a committee should meet whereas there is a requirement in the current legislation to meet at least every three months. The SSTUWA does not believe that the current requirement is onerous and that no minimum timeline for meeting may allow the employer to avoid having an active and effective OSH committee.

20. Under current Section 26 – Employees can refuse to work if to continue would place other persons at imminent and serious risk or harm but under the new provision a worker can only refuse to carry out work if it is themselves that is at serious risk of harm to health or safety.

The SSTUWA believes that workers should retain the right to cease work where they believe they would be put at risk the safety and health of others. The proposed Act clearly places a duty of care on PCBU's to protect the safety and health of others as well as workers and this would be consistent with the objects of the Act.

It is also important as the WA Government does not support the right of HSR's to direct unsafe work to cease as per the model WHS legislation. Therefore the individual employee should be able to stop work that not only might harm them but put others at risk.

If workers are unable to cease unsafe work that might place other persons at risk, they are in the untenable position of risking prosecution should they cause harm to others. This right is important for teachers as they have a duty of care to vulnerable minors in their care.

21. **Provisional Improvement Notices**

We believe that there should be a limited time to request a review of a PIN, and suggest it should be within the 8 days before remedy can be required, as allowing review up until the date the PIN is required to be remedied by could allow the employer or person on who the PIN has been served to delay the action required remedy.

22. **Incident Notification**

Section 35 & 36 – The requirement to notify serious injury or illness of a person is defined but does not include the current requirement to notify an injury or illness requiring 10+ days off work which is the only way that psychological injuries are currently required to be notified. Therefore there could be an employee who has experienced serious mental harm through work and there is no requirement for WorkSafe to be informed and therefore no opportunity for the matter to be investigated.

23. The SSTUWA welcomes many of the provisions in the proposed WA WHS legislation as contained in the Bill which will help strengthen the legislation and we thank the Government for the opportunity to provide feedback on the Bill and look forward to consultation on the proposed supporting regulations, codes and guidance material.