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Dear Mr Marsden

RE: Model Work Health and Safety Regulations – public consultation

UnionsWA is Western Australia's peak union body, representing over 30 affiliated unions and 170,000 union members.

UnionsWA supports the goal of health and safety harmonisation where it brings all jurisdictions up to the highest health and safety standards. However UnionsWA does not believe that these model regulations will achieve this goal, and will actually lead to a diminution of protections for WA workers.

The purpose of a Regulation Impact Statement process is to assess the benefits and costs to workplace participants of these model regulations. It is the view of UnionsWA that the minimal costs of stronger safety standards are far outweighed by the costs to workers and businesses of lower standards. Businesses lose labour, time, skills and reputation by operating in unsafe working environments.

We note that the goal of stronger Work Health and Safety has not been assisted, and indeed has been actively sabotaged, by the attitude of the Liberal-National state government of WA to national health and safety harmonisation. The four areas in which Western Australia will not be consistent with the rest of Australia are:

1. Reduction in penalties provisions;
2. No reverse onus of proof on matters of discrimination;
3. No right of entry provisions;
4. No right of health and safety reps to direct cessation of work when unsafe.

The state government's refusal to include these areas in its draft legislation will seriously endanger WA workers. As such it becomes all the more crucial for the proposed model work health and safety regulations to be lifted to the highest standards of protection, rather than simply imposing a bare minimum of what governments and employers feel that they can get away with at the expense of their employees.

The following is our response to the thirteen areas of concern about the model WHS regulations as identified by WorkSafe WA's Information and Issues Paper. It is by no means an exhaustive list, and our concerns broadly reflect those raised by the Victorian Trades Hall Council in their public comment response to the model regulations.

Asbestos

Australia has one of the highest incidents of asbestos related disease in the world. However the proposed regulations will create the following problems

- The proposed regulation does not cover asbestos which is a dust, as the definition of friable asbestos only refers to asbestos material that can be made into powder by hand pressure. The definition must be consistent with NOHSC Code of Practice for the Management and Control of Asbestos in the Workplace.
- The proposed regulation do not clearly state that exposure to airborne asbestos fibres should be eliminated by removing asbestos-containing material. There is also no reference to the hierarchy of control
- The proposed regulation does not specify what a PCBU (Person Conducting an Undertaking or a Business) must include in the Asbestos Register, nor does it specify what a licensed asbestos removalist must include in a Control plan.
- In the draft regulation, a licence is not required for the removal of 10 square metres of non-friable asbestos. There is the real danger that new companies will begin to offer themselves as 'unlicensed removalists'.
- All forms of asbestos must be treated as prohibited carcinogenic substances. The Regulations must be written to enable the regulators to enforce the prohibition.

Construction Projects

UnionsWA agrees that the Model WHS Act far too often qualifies the duty of all duty holders, except workers and other persons at the workplace, by the phrase *so far as reasonably practicable*. This is particularly the case in areas dealing with Construction.

For example, where the duties of the principal contractor for a construction project are described as ensuring ***'so far as is reasonably practicable that each person carrying out construction work in connection with the project is made aware of any revision to the WHS management plan that is relevant to the construction work being carried out by the person'***. This qualification should be removed.

There is a need for the regulations to include a site specific induction training section dealing with first aid and emergency procedures, routes of entry and exits, and site hazards.

Diving work

The Hazard duty for diving work is also inappropriately qualified by *so far as is reasonably practicable*. This phrase should be removed from the following: 'A person conducting a business or undertaking must, **so far as is reasonably practicable**, ensure that all hazards associated with diving work are identified by a dive supervisor'.

Fall Prevention

Hazard identification is another area that is inappropriately qualified by *so far as is reasonably practicable*. A person conducting a business or undertaking must identify all fall hazards associated with the business or undertaking – with no qualification.

The regulations should also include a specific requirement to ensure that workers using fall injury minimisation systems, for example, restraint or fall arrest systems, receive appropriate training.

Hazardous Chemicals

There are many hazardous tasks which have been ignored by these regulations such as foundries, welding, electroplating and spray painting. Depending on the composition of the metal, welding can produce fumes containing cadmium, nickel or chromium. These hazardous tasks currently exist in regulations in states including WA and must be adopted in regulation as the minimum protections for all workers.

There is also a lack of positive duties i.e. no duty holder has an obligation to classify substances as hazardous. There is also no requirement to undertake a risk assessment or to document such a process.

High Risk Work Licences

The model regulations require that the person conducting a business or undertaking must ensure that a person supervising the work of a person carrying out high risk work provides direct supervision. However there is no requirement that the employer ensure the direct supervisor of a trainee holds a relevant high risk work licence.

Incident notification

The proposed regulations must ensure that the anonymity of workers is maintained via an obligation to report issues for resolution to their representatives. The right of a worker to leave their area of work to report an issue must also be included

Lead risk work

Lead has been listed as a Category 2A carcinogen. This is not reflected in the regulations – it should be.

Regulations referring to

- Containment of lead contamination
- Cleaning methods
- Prohibition on eating, drinking and smoking
- Provision of changing and washing facilities

Should have *so far as is reasonably practicable* qualifications removed.

Noise

In WA, the regulators have found that increasing numbers of workers are suffering noise-induced hearing loss. WorkSafe WA Inspectors identified noise hazards at 30 of the 94 workplaces targeted last year. Issues with the noise standards in proposed regulations are:

- Outdated exposure standards are unacceptably high
- There is no Hazard Identification duty for the purposes of determining noise exposure.
- There is no requirement for an approved testing regime to be followed
- There is no requirement for ongoing monitoring
- The Regulations do not address designing out noise risk
- There is nothing on the appropriate form of information/instruction
- There is no reference to health surveillance for noise exposures i.e. audiometric testing.
- The risk control provisions do not include that workers be isolated from the source of noise which is part of the hierarchy of control

Personal Protection Equipment (PPE)

- Workers should have the right to refuse to use PPE if they believe the PPE provided is damaged, unclean, or incorrect for the work to be carried out
- There is no assurance that workers do not have to pay for their PPE
- There is no mention that PPE must not create other risks for the wearer.
- Signage duty is currently qualified by *so far as reasonably practicable* which should be removed

Plant

- Supply of second-hand plant duties of supplier are qualified by *so far as reasonably practicable* which should be removed
- The provisions for training of workers should be included in the Plant and Structures chapter
- The process of identifying the hazards associated with machinery and equipment has been omitted. There is agreement that all hazards would have a hazard identification duty. This must be added as an obligation on the employer

Spray Painting

The omission of any regulations specific to Spray painting (carcinogens, respiratory sensitizers, reproductive toxins etc) should be remedied by including the South Australian WA and NSW standards in regulation as the minimum protections

Thermal comfort

- Exposure to environmental conditions of heat and cold should be included in the definitions of hazardous manual tasks
- In regulations around general working environments the qualifier 'extremes' should be removed from provisions around heat and cold.

Two further issues of concern for UnionsWA are

Mines

The CFMEU has objected to the qualifications *so far as is reasonably practicable* being used at every opportunity in proposed mine safety regulations. They argue that in several key areas – principal hazard management, emergency response, Work Health and Safety Management Systems, and health surveillance for example – too little guidance has been provided for mine operators.

Person & Person Conducting Business or Undertaking (PCBU)

The model regulations lack clarity as to who the duty holder is in many circumstances. This is especially the case when the single word person is used. It is often unclear if the duty holder is a PCBU or a natural person, or a manufacturer etc. This requires re-drafting across the regulations.

Thank you for this opportunity to represent the views and concerns of WA union members. As previously mentioned, the minimal cost of safer workplaces to businesses is far outweighed by the benefits of stronger work, health and safety to employees, employers and the community. Please contact me on 08 9328 7877 or MHammat@unionswa.com.au if you wish to discuss this submission any further.

Yours sincerely



Meredith Hammat
A/Secretary
UnionsWA