

Modernising Work Health and Safety Laws in Western Australia

Submission by the Amalgamated Prospectors and Leaseholders Association

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Submission template (including all recommendations)

Enter your comments on specific recommendations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the WHS Act other than those covered by the recommendations of the MAP.

#	Recommendation	Clauses	Comments
1	Amend the Objects of the WHS Act (WA) to foster cooperation and consultation in the development of health and safety standards.	3(1)(c).	No Comment (NC)
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	Yes, there are very different scenarios here in WA compared to other States that have little or no small scale mining and prospecting industry. (SSMPI)
3	Include the formulation of policies and the coordination of the administration of laws relating to work health and safety in the Objects of the WHS Act.	3(1).	NC
4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	NC
5	Amend the definition of import to include importation from another state or territory into Western Australia.	4.	NC
6	Amend the meaning of supply to include the loan of an item.	6(1).	The lender of equipment cannot be held responsible for any incidents arising from day to day use of that equipment. Such prescription is restrictive to our industry sector.

#	Recommendation	Clauses	Comments
7	Amend the meaning of person conducting business or undertaking to ensure only workers and officers who are 'natural persons' are excluded.	5(4).	The relationship of a PCBU is not clear when applied to small scale miners carrying out alluvial mining operations under a "Tribute Agreement". Further discussion and opinion required here.
8	Include a new duty of care on the providers of workplace health and safety advice, services or products.	New clause to be added to Division 3, Part 2 and new definitions to be added to section 4.	NC
9	Amend the meaning of serious injury or illness to include immediate treatment as an in-patient without reference to a hospital.	36(a).	NC
10	Include incapacity to work for 10 or more days as a category of serious injury or illness .	36.	NC
11	Amend the heading 'Negotiations for agreement for work group' to Negotiations for determination for work group'.	52 (heading only).	NC
12	Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.	69(3).	NC
13	Change the approving authority for courses to be attended by a health and safety representative (HSR) from the regulator to the Work Health and Safety Commission.	72(1)(a).	NC

#	Recommendation	Clauses	Comments
14	Ensure the PCBU's obligation to ensure a health and safety representative (HSR) attends approved training is a 'requirement' rather than an 'entitlement'.	72(1)(b).	NC
15	Require that a health and safety committee must include a representative from management with sufficient seniority to authorise the decisions and recommendations of the committee.	New clause to be added to section 76.	NC
16	Include the common law right for a worker to cease unsafe work where there is a risk posed to another person by the work.	84	NC
17	Include the right to seek review of an issue arising out of the cessation of unsafe work by the Work Health and Safety Tribunal (WHST).	89, 229.	NC
18	Add a requirement that a HSR is notified where a request to review a provisional improvement notice by an inspector is sought by a PCBU or person.	New clause to be added to section 100.	NC
19	Implement the approach to right of entry provided in the WHS Bill 2011 consistent with all other harmonised jurisdictions.	117, 119, 120, 123.	NC
20	Adopt the intent of South Australian provisions for right of entry, permitting a workplace entry permit holder (EPH) to inform the Regulator of the intended entry, and associated changes.	New clauses inserted in section 117.	NC
21	Insert the Registrar of the Western Australian Industrial Relations Commission as the authorising authority for the WHS entry permit system.	4, 116, 131, 132, 134, 135, 149, 150 and 151.	NC

#	Recommendation	Clauses	Comments
22	Insert the <i>WHS Tribunal</i> as the authorising authority for revocation of WHS entry permits and resolution of disputes about right of entry.	138, 139, 140 and 142.	NC
23	Replace references to the defined phrase relevant state or territory industrial law with the <i>Industrial Relations Act 1979</i>	4, 116, 124, 131(2)(c)(ii), 133(c)(ii), 137(1)(b)(ii), 137(1)(d)(ii), 138(2), 150(b), 150(c)(ii)	NC
24	The Registrar to be included as an eligible party to apply to the <i>WHS Tribunal</i> to revoke a WHS permit, or deal with a dispute about a WHS entry permit.	138(1), 142(4).	NC
25	Modify the power of inspectors to require production of documents and answers to questions without the prerequisite of physical entry to the workplace.	171, Division 3 of Part 9 (heading) and Subdivision 4 of Division 3 of Part 9 (heading).	NC
26	Clarify that the power of inspectors to conduct interviews includes the power to record the interview.	171.	NC
27	Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.	193.	NC
28	Include the power for the Regulator to request an independent evaluation consistent with current practice.	New clause to be added to Division 2, Part 8.	NC

#	Recommendation	Clauses	Comments
29	For consistency with the <i>Coroner's Act 1996</i> , remove the power of an inspector to attend any inquest into the cause of death of a worker and examine witnesses.	160(f) and 187.	NC
30	Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.	New sub-clause to be added to section 216.	NC
31	Include a worker's union as an eligible person who is able to apply for certain decisions to be reviewed.	223.	NC
32	Permit the Regulator to appoint any person to initiate a prosecution.	230(b) and 260(b).	NC
33	Include a union as a party that can bring proceedings for breach of a WHS civil penalty provision.	New paragraph to be added to 260.	NC
34	Remove the requirement that codes of practice cannot be approved, varied or revoked by the Minister without prior consultation with the Governments of the Commonwealth and each state and territory.	274(2)(b).	NC
35	Streamline and modernise dangerous goods safety laws, and adopt Schedule 1 of the model WHS Bill.	Section 3 references to 'dangerous goods' and Schedule 1.	NC

#	Recommendation	Clauses	Comments
36	Establish the Work Health and Safety Commission (WHSC) as the tripartite consultative body for Western Australia.	Schedule 2 to include clauses establishing the WHSC.	NC
37	Replace the Mining Industry Advisory Committee with the Mining and Critical Risk Advisory Committee (MACRAC)	Include a section establishing the MACRAC in Schedule 2.	NC
38	Review approach to remuneration for appointed members of the WHSC in consultation with Parliamentary Counsel.	Remuneration clause for inclusion in Schedule 2.	NC
39	Establish the Work Health and Safety Tribunal as the external review body for work health and safety matters.	Include new Part/Schedule.	NC
40	Add clauses specifying administrative and procedural matters for reviews conducted by the Work Health and Safety Tribunal	New clauses to be added to section 229.	NC
41	Provide the Work Health and Safety Tribunal (WHST) with power to direct the Registrar to investigate and report on matters.	51G(1) of the OSH Act to be incorporated into the WHS Bill.	NC
42	Include a clause that mirrors the exclusion of work health and safety matters from the definition of industrial matters in the <i>Industrial Relations Act 1979</i> .	Equivalent of 51G(3) of the OSH Act.	NC

#	Recommendation	Clauses	Comments
43	Extend the current conciliation powers of the Work Health and Safety Tribunal (WHST) to include all matters that may be referred, other than Regulator enforcement activities.	51J of the OSH Act to be incorporated into the WHS Bill.	NC
44	Insert the WHS Tribunal as the designated court or tribunal for specific matters.	65, 112, 114, 215, and 229.	NC
45	Further consideration and clarification required on whether “tribute mining and prospecting operations” display sufficient “control of work relationship” or “sub-contractual relationship” that would force the PCBU, in his tenement holder capacity, to be liable under this WHS Proposal.		This issue could have enormous detrimental effects on the prospecting industry across WA. It has the potential to shut down this industry sector resulting in an increase in unemployment in regional areas.
46	Further consideration and clarification required on whether access to and prospecting on mining tenements not held by the prospectors are subject to the PCBU relationship and the “control of work” conditions. E.g Access and prospecting under Sect 40e of the Mining Act. This should also include non-Sect 40e private arrangements between prospectors and tenement holders.		This issue could have devastating detrimental effects on the recreational and tourist prospecting industry across WA. When combined with comment 45, it has the potential to shut down this industry sector and deprive the State Government of a revenue flow, tourist potential as well as the loss of self-employment opportunities.

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47	<p>Overwhelming compliance cost considerations demand that further consideration be given to exclude or exempt small operators, prospectors, sole traders and small scale miners from the exigencies and express demands of any proposed WHS legislation. e.g Bona-fide prospecting activities are given a 10 hectare exemption from Native Vegetation Clearing Permit assessment under Schedule 6 of the WA Environmental Protection Act.</p>		
48	<p>APLA welcomes full and frank discussion on this issue as we are often considered to be an insignificant industry sector and often suffer the “one size fits all” approach to legislation. However, with 2000 members across WA we are beholden to our members to raise that profile and be heard before we are once again overrun by legislation that is not tailored for our smaller operations. We are small business people. We should be supported far more than we are at present.</p>		