



**Finance Sector Union of Australia
Submission
on the
Western Australian
Work Health and Safety Bill 2014**

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Introduction

The Finance Sector Union (FSU) is the trade union representing employees working in the banking, finance and insurance sector. This industry consists of around 420,100 employees nationwide¹.

The FSU has experience working with members in each of the state and territory work health and safety jurisdictions as well as many members working in the Commonwealth jurisdiction (National Australia Bank, Commonwealth Bank, Reserve Bank and Bankwest are all Comcare licensees).

The FSU has a strong track record of supporting members within the industry around health and safety issues specific to our industry, including such issues as workplace violence and armed robbery.

The FSU welcomes the opportunity to make a submission in relation to the WA WHS bill 2014 as the FSU believes that having strong Work Health and Safety legislation in place is instrumental to individual, workplace and societal well being. We support the submission prepared by Unions WA and in addition have made our own comments based on the direct experiences of our union membership.

If you have questions about any aspect of our submission, please contact Veronica Black on Veronica.Black@fsunion.org.au or 02) 9320 0046 for further information

¹ ABS, *Labour Force Australia: Detailed, Quarterly, Nov 2013*, (2013), <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Nov%202013?OpenDocument> Viewed 24/01/2014

Comments on the *Work Health and Safety Bill 2014*

Clause (section) of the Model WHS bill	Comment
7 - Meaning of “worker”	<p>FSU is concerned at the exclusion of volunteers and others as set out in 7(4) of the WA WHS Bill 2014.</p> <p>Volunteers should not be excluded from the definition of worker. Everyone has a right to be safe at work, including volunteers. Volunteers play a vital role in communities across Australia and make significant contributions by carrying out unpaid work for a variety of organisations every day.</p> <p>Many of the employers in our industry provide several days per annum of paid leave for employees to engage in volunteer work, and as a result, many finance sector workers are also volunteers.</p> <p>Other jurisdictions include volunteers in their definition of “worker” under their mirror WHS laws, and coverage of volunteers has existed in many jurisdictions since before the introduction of the Model WHS Act, with previous laws in Queensland, the Northern Territory, South Australia and the Australian Capital Territory specifically requiring the health and safety of volunteers to be protected.</p> <p>In other jurisdictions there was a duty on employers to protect other people at the workplace including volunteers and visitors. General and common law duties of organisations who engage volunteers are well established. Australian courts have long recognised that volunteers are owed a general duty of care by the people and the organisations they support.</p>
17 - Management of risks	<p>FSU has significant concerns about the inclusion of the following clause in the WA WHS Bill:</p> <p><i>(17)(2) A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.</i></p> <p>FSU believes that this clause provides an unreasonable defence in regards to an employer claiming that they do not have the capacity to influence and control the matter.</p> <p>FSU regularly comes across situations where health and safety risks go unresolved for unreasonable periods while people debate who is responsible for resolving the matter (e.g. where a bank branch is located in a major shopping centre and the bank claims the responsibility lies with the shopping centre operator). We believe this will be</p>

	<p>exacerbated by this provision.</p> <p>It is entirely reasonable for the management of risks and duty of care to operate concurrently and overlap between PCBU's.</p>
19(5) – primary duty of care	<p>FSU is concerned at any attempt to restrict the duty of care in relation to accommodation owned by or under the control of the PCBU.</p> <p>The FSU has many members in regional WA who are living in bank owned or bank funded houses. Accommodation may be provided due to a lack of affordable accommodation options or simply as a way to get people to agree to work in remote locations. As these premises are owned or controlled by their employers, it is not unreasonable to expect that they should be maintained to safe standards, whether or not there is a written agreement containing terms that might reasonably be expected to apply to the letting of the premises to a tenant.</p>
38(7) – Duty to notify of notifiable incidents	<p>The FSU is concerned at the exclusion of 38(7)</p> <p><i>A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.</i></p> <p><i>Maximum penalty:</i></p> <p><i>a) in the case of an individual - \$5,000, or</i></p> <p><i>b) in the case of a body corporate - \$25,000</i></p> <p>While the FSU appreciates that this information is held by the regulator, this assumes that the only persons who may need to access this information are the PCBU and the regulator.</p> <p>Workers and their representatives also play an important role in ensuring the safety of workplaces and under the model WHS Act, (where this information is required to be maintained by the employer), it could also be obtained by a HSR under 70(c)(i) and (ii) of the WHS Act or a Work Health and Safety Entry Permit Holder under Part 7 Division 2 of the WHS Act. If this information is held only by the regulator it would not be available for the inspection of the HSR or a Work Health and safety entry permit holder attempting to exercise their functions under the Act, reducing their capacity to work towards improved safety outcomes in the workplace.</p>
67 – Deputy HSRs	<p>The FSU notes with concern that the WA WHS bill does not include provisions relating to deputy HSRs. The role of Deputy HSR, is a relatively new one in most jurisdictions. It reflects the importance of the HSR role and attempts to address issues that may arise should the HSR cease their role or be unable or unavailable to</p>

	<p>perform their functions, (such as when absent from work), provided they have also received appropriate training.</p> <p>In an industry with a lot of part time workers, the FSU believes that deputy HSR roles are very important in ensuring members have representation.</p>
68(c),68(d), 70(d) and 70(e) – Powers and functions of HSRs and powers and functions generally limited to the particular workgroup	<p>The role of the HSR is to represent the workers in the work group in matters relating to work health and safety - Section 68(1)(a).</p> <p>There is no logic to removing provisions 68(2)(e) and 70(e) which allow the HSR to be present at an interview relating to health and safety matters with a group of workers and an inspector or the PCBU – as this would seem to be a times that workers are most likely to require representation.</p>
74(2) List of Health and Safety representatives	Fail to see the need for this departure from the model Act
78 – Meetings of Committees	FSU believes that having minimum requirements for regularity of meetings of Health and Safety committees as per the model WHS Act is an appropriate way to ensure that workers have a more genuine opportunity to be consulted about WHS matters in their workplaces. The removal of any minimum standards in relation to meetings of committees will lead an increase in the number of committees that exist in name only, rather than to allow an opportunity for genuine worker input.
85 – Health and safety representative may direct that unsafe work ceases	<p>The FSU strongly believes that Clause 85 of the model WHS Act should be included in the WA WHS Act. The 2008 OHS review recommended that both workers and HSRs be afforded the power to cease work as HSRs were considered better placed than individual workers to progress discussions with PCBUs and participate in the issue resolution process. Individual workers are often highly reluctant to take the decision to cease unsafe work on their own, feeling more confident when they are acting on the recommendation of someone who has received training in WHS.</p> <p>FSU is not aware of any information that would suggest that there is widespread abuse of the HSR power to direct unsafe work to cease, and given that there are currently processes in place in the model WHS act to deal with situations where HSR powers are abused, we believe that it should be included in the WA legislation.</p>
100 – Request for review of provisional improvement notice	The model WHS Act provides a clear 7 day timeframe for a request for a review of a provisional improvement notice. This ensures that serious health and safety matters that have been raised and have not been resolved have a timeframe for resolution rather than being dragged out. Given that the process of harmonisation is to provide a nationally consistent framework, there appears to be no good reason for departure from the model WHS Act.
105(1)(b), 105(1)(d), 111(b)	FSU opposes the deletion of 105(1)(b)(i) and 105(1)(d). With the

<p>and 112(3)(c) What is discriminatory conduct, order for compensation or reinstatement & civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct</p>	<p>increase in insecure work through casualisation and use of temporary contracts, it is important to ensure that workers are not “blacklisted” from future employment as a result of raising work health and safety matters.</p>
<p>110 - Proof of discriminatory conduct</p>	<p>FSU believes section 110 should be included as per the model WHS Act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.</p>
<p>113 – Procedure for civil action</p>	<p>FSU believes that Section 113 should be included as per the model WHS act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.</p>
<p>Part 5 – various clauses in relation to deputy health and safety representatives</p>	<p>All reference to Deputy HSRs in the model WHS Act should be retained – see comments on deputy HSRs earlier in the document.</p>
<p>Part 7 – Workplace entry by WHS entry permit holders</p>	<p>Trade unions have an important role to play in ensuring the safety of workers, particularly under legislation styled on the Roben’s committee approach. Any reduction in the powers provided to WHS entry permit holders under the model WHS Act, will result in a reduction in health and safety for workers.</p> <p>The model WHS Act confers powers to entry permit holders to enter workplaces to:</p> <ul style="list-style-type: none"> • Inquire into suspected WHS contraventions; • Inspect employee records; • To consult and advise workers <p><u>Inquire into suspected WHS contraventions</u></p> <p>The powers provided to WHS entry permit holders to enter a workplace to inquire into suspected WHS contraventions under the WHS Act in other jurisdictions has had a positive impact on the FSU’s capacity to support members with health and safety issues at work.</p> <p>First contact with members around health and safety concerns would generally be to:</p> <ol style="list-style-type: none"> 1. Identify the nature of the WHS issue; 2. Ascertain whether the member has raised the matter with the employer and the outcome of this; 3. Provide any information that may be of assistance to the member in raising the issue, (either directly or via their

	<p style="text-align: center;">HSR)</p> <p>Should there be a need for the union to enter a workplace in order to inquire into suspected WHS contraventions, this would generally occur at a time that is agreed with the relevant employer. The times that this may not be the case, would include: where the risk is serious and imminent; and/or where advising the employer in advance would defeat the purpose of the entry to the workplace; and/or where the employer would not come to a reasonable arrangement.</p> <p>It is important that right of entry provisions in the model WHS Act are included in the WA WHS Act and organisers are not restricted to exercising right of entry under the Fair Work Act. Contraventions of WHS laws can have immediate and serious consequences for the health and safety of workers, which is why entry to inquire into WHS contraventions is different from entry under the Fair Work Act, and should not be subject to the same requirement for notice.</p> <p>Within the finance industry, a key safety issue for members is the potential for serious injury/death as the result of armed hold ups. FSU contends that situations where we receive contact from members reporting malfunctioning of security equipment, or severe staff shortages resulting in one person working alone with cash, require immediate attention.</p> <p>Member feedback on this issue is that members value the right to have a union official attend their workplace when there are health and safety concerns and that they strongly feel that this should support should also be available to members based in WA.</p> <p><u>Inspect employee records</u></p> <p>The FSU has not experienced any problems in relation to right of entry to inspect employee records in relation to WHS in any jurisdiction currently operating under the model WHS Act, and as such, sees no need for changes to this area</p> <p><u>Entry to consult and advise</u></p> <p>Trade unions have an important role to play in raising awareness among union members about health and safety in the workplace – this is necessary if workers are to effectively participate in WHS process with their employers.</p> <p>Lunt et al. assert that: <i>In cases where trade unions were present, more meaningful worker consultation and representation on health and safety has been found²</i></p>
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² Lunt, J., Bates, S., Bennett, V. & Hopkinson, J. 2008, *Behaviour change and worker engagement practices within the construction sector*, Research Report RR660, Health and Safety Executive,

	<p>Ayes reports that: <i>Empirical evidence from the UK tends to support such claims, showing that where trade union safety representatives work together with employers, accident rates are up to 50% lower than where managers alone make decisions over OHS</i> ³</p> <p>FSU provides information to members about matters such as:</p> <ul style="list-style-type: none"> • Information on specific health and safety issues in the industry; • Employees rights and responsibilities; • Consultation; • Identifying hazards and risk assessment; • How to resolve work health and safety issues; <p><i>It is important to note that freedom of association principles were the cornerstone of the Roben’s committee’s approach, recognising, as it did, the unique role of the representatives of employees (unions), and, whereas individual employees may not have had personal experience of health and safety adversity, collective organisations acquired what may now be called “corporate knowledge” of OHS issues, particularly those specific to an industry.</i>⁴</p> <p>The FSU has not experienced any difficulties in relation to this provision in any jurisdiction operating under the model WHS Act, and as such, sees no need for WA to remove this from their WHS Act.</p> <p>Overall</p> <p>The FSU strongly opposes any move to exclude union right of entry from the WA WHS Act. The capacity to respond as a matter of urgency to serious work health and safety matters is critical to reducing workplace injuries. Given that there are already safeguards against the misuse of the WHS entry provisions built into the model WHS law, we do not support the idea of excluding right of entry in WA.</p> <p>In NSW, unions have had right of entry for WHS purposes since 1983, i.e. more than 30 years, without issue. It encourages a collaborative approach to the resolution of WHS issues without the involvement of WHS agencies and enforcement action. Solutions reached are more specific and appropriate to the industry and workplace due to the more specialised knowledge of union officers.</p>
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available on the Health and Safety Executive home page:
<http://www.hse.gov.uk/research/rrhtm/rr660.htm>.

³ Ayers, G., F., 2011, *Consultation and Organisational Maturity in the Victorian Construction Industry*, PhD Thesis, University of Ballarat.

⁴ Parliament of Australia, Parliamentary library, Bills digest, 30th August 2005

176 and 177 – Inspector’s power to seize dangerous workplaces and things and powers supporting seizure	FSU believes that Section 176 and 177 should be included as per the model WHS Act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.
Part 11 – Enforceable undertakings	FSU believes that Part 11 should be included as per the model WHS act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.
223 Which decisions are reviewable	<p>FSU have grave concerns that the WA WHS bill has major departures from the Model WHS act in relation to who is eligible to apply for a review of reviewable decisions.</p> <p>Key departures relate to the capacity of impacted workers and HSRs to apply for a review of any matter that directly relates to the management of a hazard in their workplace.</p> <p>Having access to appeal to an independent body is crucial to workers being able to ensure that their workplaces are safe and without risk to their health and safety.</p>
224 – application for internal review	FSU believes that Section 224 should be included as per the model WHS Act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.
226 – Decision of internal reviewer	<p>Model Act provides that the internal reviewer must review and make a decision as soon as reasonably practicable and within 14 days. The WA version removes the 14 day timeframe, then goes on to remove subsections 3 and 6 as not required given that they refer to the 14 day period.</p> <p>FSU strongly believes that timeframes for getting issues resolved are important and that the WA legislation should reflect the model Act.</p>
230 – prosecutions	<p>The WA WHS Act should include a secretary of a registered industrial organisation as a person who can initiate prosecutions as in the NSW model WHS act.</p> <p>Research demonstrates that prosecutions provide effective deterrence for breaches of work health and safety laws.</p> <p>In McCallum’s <i>Reflections on General Deterrence and OHS Prosecutions</i>, he found that: <i>prosecutions must be used routinely under the Act in order to deter</i></p>

	<p><i>non-compliance by non-prosecuted companies, because of the important constitutive and symbolic effects associated with such prosecutions.</i>⁵</p> <p>In our experience it is rare for regulators to initiate prosecutions within the finance industry, or indeed, in the federal system, to initiate any prosecutions at all – with the most recent Comcare annual general report showing that no prosecutions had been undertaken within the 2012-2013 financial year.</p> <p>Given that prosecutions are important in ensuring compliance, if the regulators are unwilling or unable to initiate prosecutions, there is a clear role for unions to be able to undertake this activity in the interests of the safety of their members.</p> <p>A major health and safety issue for bank workers is exposure to violence and armed hold ups. 4545 bank workers were directly threatened and assaulted in the 10 years to 2007. This includes workers being bashed and kicked unconscious and one who received a sledgehammer to the face resulting in a broken jaw. Many workers involved in these incidents have permanent physical and psychological injuries as a result.</p> <p>In 2002 there were 106 bank robberies in NSW. All of these were notified to the regulator, but no action was taken. The FSU instigated 4 prosecutions between 2002-2005, and as a result of this intervention, the industry invested over \$100 million in upgrading security in bank branches. Hold ups in NSW decreased to 20 by 2008, and nationally we saw a reduction of armed hold ups by 70%.</p> <p>The FSU had been requesting that employers in the industry upgrade their security for many years, and had been urging the regulator to intervene, but it was only the capacity for the union to initiate prosecutions that saw the safety of finance workers improved.</p> <p>The FSU strongly asserts that introducing the capacity for unions to prosecute under the model WHS Act, would lead to significant improvements in workers health and safety.</p>
<p>231 – procedure if prosecution is not bought</p>	<p>This departure from the model WHS Act removes the capacity for a person to request that a prosecution be bought for a category one or two offence under the WHS Act.</p> <p>This provision should be included to enable that workers can seek that a duty holder is prosecuted for serious breaches of the law.</p>

⁵ McCallum, Ron, 2010, *WP 75 - Reflections on general deterrence and OHS prosecutions*, National Research Centre for OHS Regulation, Canberra

232(1)(a) – Limitation period for prosecutions	Should include c) in relation to WHS undertakings, see comments on WHS undertakings above.
276(3)(h) – Regulation making powers	FSU believes that Section 276(3)(h) and (i) should be included as per the model WHS act. An object of the Bill is to provide a balanced and nationally consistent framework, and we see no valid reason to depart from the model WHS Act.