



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr JP Lister MP
Mr MA Boothman MP
Mr N Dametto MP (teleconference)
Mr BL O'Rourke MP (teleconference)
Mr JA Sullivan MP (teleconference)

Staff present:

Mr R Hansen—Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

Friday, 1 December 2023

Brisbane

FRIDAY, 1 DECEMBER 2023

The committee met at 1.30 pm.

CHAIR: Good afternoon. I declare open this public briefing. I am Kim Richards, the member for Redlands and chair of the committee. I would like to respectfully acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. We are very fortunate in this country to have two of the oldest continuing living cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all now share.

Welcome everyone and thank you for supporting the work of the committee. With me here today are: James Lister, the member for Southern Downs and deputy chair; and Mark Boothman, the member for Theodore. On the phone we have: Nick Dametto, the member for Hinchinbrook; Barry O'Rourke, the member for Rockhampton; and Jimmy Sullivan, the member for Stafford.

Today's briefing forms part of the committee's consideration of the Work Health and Safety and Other Legislation Amendment Bill 2023. The Hon. Grace Grace MP, the Minister for Education, Minister for Industrial Relations and Minister for Racing, introduced this bill in the Legislative Assembly on 30 November 2023. The bill was then referred to this committee for consideration. This meeting of the committee is a proceeding of the Queensland parliament and subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath or affirmation, but I remind you that intentionally misleading the committee is a serious offence.

FOX, Ms Andrea, Executive Director, Work Health and Safety Engagement and Policy Services, Office of Industrial Relations, Department of Education

McCARROLL, Ms Renee, Manager, Safety Legislation Reform, Work and Electrical Safety Policy, Office of Industrial Relations, Department of Education

McKAY, Mr Peter, Deputy Director-General, Office of Industrial Relations, Department of Education

McPHERSON, Ms Janine, Director, Emergent and Environment Work Health and Safety Policy, Work and Electrical Safety Policy, Office of Industrial Relations, Department of Education

CHAIR: I now welcome our departmental officers from the Office of Industrial Relations in the Department of Education. Before I turn to questions from the committee, I will hand over to you for an opening statement.

Ms Fox: Thank you to the committee for the opportunity to make a statement. The primary purpose of this bill is to implement recommendations from the independent review of the Work Health and Safety Act undertaken in 2022 and from the 2018 review of the national model work health and safety laws. The independent review of the Work Health and Safety Act examined whether existing frameworks in the act are operating effectively, with a focus on ensuring that the provisions relating to health and safety representatives, and issue and dispute resolution, are serving as intended, and that workers are appropriately represented and assisted when it comes to health and safety matters. The final report of the review made 31 recommendations, consisting of 55 subrecommendations. The Queensland government has accepted 49 of the subrecommendations in full and six subrecommendations in principle. This bill implements 33 of those 55 subrecommendations. These are the majority of the recommendations that require amendment to the act.

I thank industry and unions who worked with the department in shaping the drafting of this bill to ensure it met the practical elements of the day-to-day lives of workplaces. The primary aim of this bill is to strengthen worker consultation and participation dimensions of the health and safety framework. As you will know, worker consultation is fundamental to the Work Health and Safety Act and the ability of all to meet their duties. Improving the uptake of health and safety representatives and elevating that role in addressing safety concerns in the workplace has driven a significant proportion of what you will see in the proposed amendments.

The bill requires employers to actively promote and support the formation of work groups and the election of health and safety representatives for those groups to ensure that health and safety representatives are aware of safety matters affecting their work group. The bill places requirements on employers to inform representatives of health and safety issues when they have been raised by inspectors and work health and safety entry permit holders, as well as incidents that have been notified to the regulator that affect that representative's work group.

Where serious health and safety issues remain unresolved, health and safety representatives have an important power. In these amendments, they will be able to issue a written cease work direction to the employer as well as workers. This will provide more certainty for workers around the instruction but also provides more opportunity for the health and safety representative and the employer to be brought together in resolving the most serious of risks. The bill clarifies the rights of work health and safety entry permit holders as well to enable them to effectively assist workers regarding suspected work health and safety contraventions. This includes allowing them to stay at a workplace for the time needed for the purpose of their entry and for related activities to be undertaken on that same occasion.

Amendments in the bill also allow relevant unions, by written request, to be party to work group negotiations and to become a party to any resulting dispute. The bill makes amendments to ensure greater consistency with the Industrial Relations Act in relation to the definition of both discriminatory conduct as well as the rules on the representation of workers by relevant registered unions for work health and safety matters.

Importantly, the bill streamlines the resolution of work health and safety disputes, including moving some proceedings from the Magistrates Court to the Queensland Industrial Relations Commission. Industry, unions and inspectors were unanimous in their feedback that they were too often finding themselves in lengthy and complex disputes to settle. Great effort has gone into recommendations from the review that provide amendments to simplify and de-escalate problem solving.

The bill also implements nine other recommendations of the 2018 national review of the model work health and safety laws. Finally, I wish to thank my team both here and back at the office, as well as the Office of the Queensland Parliamentary Counsel for their hard work on this bill.

CHAIR: Thank you. I invite the deputy chair to ask the first question.

Mr LISTER: Thanks for coming in so close to Christmas.

CHAIR: And at such short notice.

Mr LISTER: Yes, given this bill was only introduced in the House yesterday. Can I give you a scenario and ask you to tell me how this would work. Under the bill if enacted, a lawyer or some other contracted representative or, for instance, the Housing Industry Association, which might represent to the prime contractor on a site or something like that on behalf of members, are excluded from the role of representative; is that correct?

Ms Fox: Correct.

Mr LISTER: Is there any body of evidence that has been considered which would necessitate this, other than simplifying it for the system as opposed to the individual who would lose choice out of this?

Ms Fox: I should preface it by saying that, when the independent reviewers undertook the review, we were kept at arm's length from that review. That is because part of the point of looking at whether our legislation was behaving as people wanted it to is to also look at us as a regulator in how we go about enacting parts of the act. I was not completely privy by any means to all elements they had there. They had academics as well to support them so even the research tasks were not performed by the department.

What I can say about it I guess is that the findings of the review clearly indicate that the work health and safety benefits of working together are best realised where there is a level of rigour and sophistication around how people are engaging. I can see from the review recommendations that a lot of consideration was given to who was participating in those parts of those roles and how they were set up to be able to participate in those channels in the act. Certainly, workers—all of us—are still entitled to go and seek information for ourselves from other bodies and organisations and to have as much contact as we wish with those groups for advice and progress those positions ourselves. It just means that the particular mechanisms within the act that lend themselves to those work health and safety specialists are only open to registered and relevant bodies.

Mr LISTER: So that would be the position if the bill were enacted and currently that is not the case. It is not as restrictive right now?

Ms Fox: Currently, the case is that 'representative' is often a confusing element for people in one part of the act. 'Representative' is used several ways in the act, as you probably know. The purpose of that representative element—the one that we are talking about—is to allow you to get some kind of technical input or information. If the matter is something beyond your own technical expertise and it is about something around exposure levels to something, you could still ask an occupational hygienist to come in and assist you with that discussion. As a health and safety representative, you could still refer to an engineer under that but they are only able to respond to that element of the act. They cannot then go on to use other powers. I guess there has been a lot of confusion about once someone is involved—

Mr BOOTHMAN: They cannot do legal proceedings against, say, a business which actually breached. As an example, as the member for Southern Downs was talking about, if you have exposure to a certain chemical in a facility, yes, you can go and get a third party to review that situation. However, when it comes to the legal element, this bill blocks if they are outside of an approved union, so to speak. Is that the case? Or can somebody seek a legal expert who potentially is not part of a registered union to take this industrial matter further?

Ms Fox: The element of the act that you are referring to is section 81 and it is to resolve a work health and safety issue. I am not certain of how the legal element would come into it, if you are talking about legal interpretation of the act. Obviously, legal matters about completely separate workplace issues that might come up for you, like privacy, would not be in the scope of that part of the act anyway.

CHAIR: Member for Hinchinbrook, do you have a question?

Mr DAMETTO: I have no questions at this point.

Mr O'ROURKE: Thank you to those in the room for coming together so quickly on this bill. I was thinking about the Magistrates Court, where you actually will be referred through to the Queensland Industrial Relations Commission to manage. Is the Queensland Industrial Relations Commission prepared for this additional work? Will they be able to action it in a timely manner?

Ms Fox: Both the reviewers in forming the recommendations and ourselves in delivering the drafting of those recommendations consulted with the Queensland Industrial Relations Commission, and they were supportive and did not raise any issues around this. They recognised the intention of that recommendation to utilise their industrial relations expertise for this area.

Mr SULLIVAN: I have quite a few questions and I will go one by one and take your lead, Chair. Some of my questions follow on from the member for Southern Downs in terms of associations and lawyers. For the benefit of those in the room, I am the member for Stafford in the inner north of Brisbane. An association like the Brisbane Netball Association naturally does not have workplace health and safety permits, do they?

Ms Fox: That is correct.

Mr SULLIVAN: Or the north side gardens association or the Chermside historical society association. So associations, as defined under that act, do not normally have the rights and responsibilities when it comes to workplace health and safety responsibilities and permits?

Ms Fox: Correct. The amendments to this act clarify better which are considered the suitable entities. It has been further defined that that would also include the relevant union to the workers of that workplace.

Mr SULLIVAN: It also reflects the history of demarcation disputes over time et cetera to recognise those who do have coverage in that sort of thing?

Ms Fox: Correct.

Mr SULLIVAN: Or to reflect the precedence of that over time?

Ms Fox: Yes, you are correct. It speaks to the de-escalation and simplifying of areas that can end up in dispute.

Mr SULLIVAN: To your point earlier, I do not want to paraphrase you but I think you said something to the effect of nothing here prevents people from seeking advice from a third party if they choose to go and do so. If I have a workplace dispute, I could go and talk to my local Lions Club for advice or my local priest if I wanted some counselling or a lawyer. Being admitted to the Supreme Court of Queensland as a lawyer and being able to practise in a firm is a very different process to being registered as a workplace health and safety permit holder; is that correct?

Ms Fox: That is correct.

Mr SULLIVAN: Just because I have a legal degree and admission document to the Supreme Court, it does not mean that I get to walk into a workplace and say, 'Hey, I am a lawyer. I am coming in'?

Ms Fox: Correct.

Mr LISTER: Somebody who has the necessary qualifications to be a workplace health and safety representative under this bill with a registered trade union, that same person with those same qualifications could not render those services as part of an alternative organisation such as one of the Red unions or another association or as an independent contractor or something like that; is that correct? It can only be a registered trade union that could be the source of that person's authority?

Ms Fox: To clarify, you mentioned a health and safety representative at the beginning of that.

Mr LISTER: Forgive me. My apologies. My unfamiliarity with the parlance, yes.

Ms Fox: Your question is when a health and safety representative seeks the assistance of a representative for them, are they able to access a union delegate who has joined something other than a relevant union?

Mr LISTER: Let me put it this way: I will go to the explanatory notes here. One of the purposes is to clarify which entities or persons may assist workers and act as their representatives in relation to WHS issues. One of the purposes of the bill is to exclude other entities, such as associations of employees or independent contractors, and other entities that represent or are purporting to represent the industrial interests of the worker, entities that demand or receive a fee from such bodies, and individuals connected with excluded bodies. Am I right in saying that to be such a person who can assist workers and act as their representative in relation to WHS, a person who did so as part of a registered industrial organisation could provide that service, but if they were to resign and go to another potential provider, such as a Red Union association or as an independent contractor or something like that, they would not have the same rights as they would if they were employed by a registered trade union? That seems to me to be the effect of what is described here in the explanatory notes.

Ms Fox: You can either request the assistance of the relevant union or a suitable entity, and the suitable entity lists out those that are not considered part of the suitable entity, and the description of what you are giving falls under that.

Mr LISTER: The point that the member for Stafford was making is that you have to be qualified to be able to do this sort of thing and that the 'Garden Club of Stafford' clearly is not subjected to the necessary safeguards and all that sort of thing. However, an individual who was qualified to do so as part of a registered trade union, assuming that they had the same qualification and moved outside of the registered union, would not be able to provide that service so that the distinction is not the ability of the person involved, it is the nature of the body to which they belong; is that correct?

CHAIR: The registration status.

Mr LISTER: Registration status, yes.

Ms Fox: They would be misrepresenting what they could provide because they are no longer a member of their relevant union.

Mr SULLIVAN: I think you misrepresented what I said then, member for Southern Downs. In terms of the ability for somebody who is qualified and the relevant coverage, that applies to whether a particular union covers that particular workplace or covers that industry as well, does it not? Simply being an employee or then a union does not entitle someone to walk into any workplace, it is about the relevance of that to have responsibility; is that fair enough?

Ms Fox: Correct. Yes. It needs to be the entry permit holder.

CHAIR: There have been some increases in those penalty units in clause 3. How did the department arrive at the penalty units for the taking out or providing insurance to indemnify against liability for a monetary penalty under the Safety in Recreational Water Activities Act, the 200 penalty units for a PCBU for intentionally hindering, preventing or discouraging a worker from making a request for the election of an HSR and 200 penalty units for interfering in the election of a health and safety representative?

Ms McCarroll: In relation to the penalty level for insurance, that is consistent with the level that was selected in the model legislation. That provision is a mirror provision from the review of the model of the work health and safety laws. In relation to—

CHAIR: What would insurance costs look like to take out?

Ms McCarroll: I could not say. Then in relation to the penalty levels for the health and safety prohibitions, they are both modelled off similar prohibitions in the coal mining safety legislation and also Victorian OHS legislation for similar type of prohibitions.

CHAIR: Thank you. Member for Hinchinbrook, did you have any questions?

Mr DAMETTO: No, Madam Chair, but I wish to thank very much the department for offering this briefing today, so close to Christmas, and such a short time between the bill being introduced and then facing the committee. I look forward to going through the process.

Mr BOOTHMAN: In regards to the information sharing with other regulators ensuring that regulators can obtain information from outside their jurisdiction that is relevant to an investigation for a breach under a workplace health and safety act, can you give an example of the type of information? I am curious to know what would be obtained and what would be deemed as not appropriate? Can you explain that?

Ms Fox: These amendments are to particularly assist investigations where a PCBU or an employer might actually be operating over both state lines so that an investigation is happening in one spot very closely to an investigation that might happen in another space. It would be the types of information that would be part of that investigation—notices issued, those sorts of things.

Mr BOOTHMAN: So if there was a breach in, say, another state, would that information then be requested to be shared with Queensland, so to speak?

Ms Fox: Correct.

Mr BOOTHMAN: What type of activation would be the threshold to be notified?

Ms Fox: I would have to come back to you on precisely how that has been operating across the other state lines.

Mr BOOTHMAN: Is this mirrored on any other legislation?

Ms Fox: It is model law legislative change, so other jurisdictions have adopted it.

Mr BOOTHMAN: Has Victoria or New South Wales, or any other state?

Ms Fox: I believe there is intention by all states. I think we might be one of the later ones to bring it forward in a bill.

CHAIR: In regards to HSRs being able to issue the written cease work notices, will there be any sort of training or guidance provided to existing HSRs and new ones as this rolls out? I assume they will need a little bit of—

Ms Fox: There is currently an ability for HSRs to be able to cease work, but obviously these new provisions allow the HSR to also cease work by direction to the PCBU, and we recognise that that is quite a significant power and one that people would want to be able to be informed about how they are using it and whether they are using it appropriately. It is the intention to both update the training that HSRs receive and also to produce templates and guidance. I imagine it will only be used in fairly rare circumstances, and that is probably all the more reason people want to rely upon some guidance around this.

CHAIR: In regard to negligence as a fault element in clause 8 and 16 to amend the Work Health and Safety Act and the Safety in Recreational Water Activities Act to include negligence as a fault element, can you give an example? What will be the effect of including negligence as a fault look like for those offences?

Ms Fox: The effect of it at the moment is that category 1, which, as you know, is for those very serious situations, is only able to be taken as a prosecution under recklessness which involves two steps in order to build a case for prosecution. Negligence means that you do not need to have that sense of intention behind it that recklessness relies upon as part of the legal definition.

CHAIR: That is a good change then.

Ms Fox: It is a significant change, but it is in response to accounts that were brought forward about views that there was probably not a good legal reason for why negligence was not being treated on that same level of seriousness as recklessness.

Mr SULLIVAN: In the explanatory notes something that piqued my interest was the outcomes of the District Court decision of Commissioner of Police v Seiffert which I understand was centred on the issue of officers being able to remain on site once they are under the workplace health and safety permit. That is obviously a very brief summary. Can you explain a bit more about some of the practical examples or outcomes that might flow from these reforms in relation to that issue?

Ms Fox: In reality, there is probably not a lot of difference in how this plays out in a workplace. It arises from a case where there was confusion about whether the ability to enter extended to a length of time to remain on site to resolve that particular issue. I think in most cases people would have practically assumed that entry did mean to remain there during the course of that process. The reviewers gave a recommendation that that clarification should be specific to avoid confusion.

Mr SULLIVAN: So more a clarification rather than a substantive change on the ground, really?

Ms Fox: Correct.

Mr SULLIVAN: Chair, I apologise to the officers there that I am not there in person. I am just in between a couple of school events, so supporting the other elements of the department. I am sure you will not take it personally. Thank you.

Mr LISTER: You do a lot of that.

CHAIR: Certainly.

Mr LISTER: I am looking at the statement of compatibility with human rights and the statement there concerning right to freedom of association and so forth. Am I to take it that in some workplaces or all of them—I am not sure—as the member for Stafford said, only a certain registered union can represent in a particular workplace; that there is some demarcation formally established? Is that the case?

Ms Fox: I think I am reading your question correctly: you need to be the relevant union rather than any union?

Mr LISTER: Yes.

Ms Fox: Correct.

Mr LISTER: If a worker in that environment, for some reason, does not have faith in that particular registered union, but they are the only one, does not the absence of choice for that particular worker provide a perverse disincentive—the monopoly, I am talking about, of the single union—to provide the best possible service?

Ms Fox: I would answer that in two ways: it is an established position of the legislation in Queensland under this government that that is how 'relevant union' is treated between the Industrial Relations Act and this one, and the second element that I would note is that any worker who feels that they want assistance from a work health and safety expert beyond what is offered by the relevant union would be advised to call one of our work health and safety inspectors who can give that kind of—

Mr LISTER: So the Office of Workplace Health and Safety has a role here as a statutory alternative; is that right, in effect?

Ms Fox: I think inspectors have a role in assisting parties in understanding and using the legislation.

Mr BOOTHMAN: Going back to my other question when it comes to clarifying information sharing, would the information potentially be shared if there was an issue which was proven in a court, in industrial relations? Would that be still shared—for instance, any history on a business? What is the threshold? I am very curious about that.

Ms Fox: There are existing thresholds. There are a lot of controls around information that is used in investigations. We would have to provide that information for you because I do not have that on hand. This does not circumvent those controls on how information is used or shared.

Mr BOOTHMAN: I would be interested to see.

Ms Fox: We can take that on notice.

CHAIR: There being no further questions, thank you very much for your time today. The time for this briefing has now expired. We are very grateful for you coming in at such short notice and for the information that you provided today. Thank you to our Hansard reporters and parliamentary broadcast staff for their assistance. A transcript of these proceedings will be available in due course.

The committee is now seeking written submissions on any aspects of the bill. The closing date for submission is 10 January 2024. Information on making a submission is available from our inquiry webpage or from the secretariat.

There have been two questions taken on notice: one on the data and then the activation criteria. The secretariat will be able to assist with those when we get the transcript. We would be very grateful if we could get a response to those two questions on notice by Friday, 15 December 2023. I now declare this hearing closed.

The committee adjourned at 2.01 pm.