

Work Health and Safety and other Legislation Amendment Bill 2023

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Submission to the Education, Employment and Training Committee:

Work Health and Safety and Other Legislation Amendment Bill 2023 Submission

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Industry Bodies, Associations and Associates



Australian Peak Shippers Association Inc. (APSA)



Submission to the Education, Employment and Training Committee inquiry into the Work Health and Safety and Other Legislation Amendment Bill 2023

1.0 Australian Meat Industry Council (AMIC)

- 1.1 AMIC is the peak body representing red meat and pork retailers, wholesalers, processors, and smallgoods manufacturers across the country. Our industry is one of the largest manufacturers in Australia today. We exist for a clear reason: to help our members achieve and maintain profitability and ensure our members are recognised for the crucial role they play in the agribusiness supply chain.
- 1.2 We are the only industry association representing the post-farmgate Australian meat industry. We work with members, governments, and industry groups to influence policy and provide technical and other services to the industry.
- 1.3 Our overriding goal is profitability for our members. To help our members achieve and maintain profitability, we work hard to solve our industry's key challenges and provide a range of services that make it easier for our members to run their businesses, from finding staff to complying with legislation.
- 1.4 The Australian Meat Industry Council is the voice of Australian businesses in the crucial and complex post-farmgate meat industry. Our 1500 plus members employ tens of thousands of people and are significant contributors to their local economies.
- 1.5 We are continually working towards a more competitive and prosperous meat and livestock supply chain that is good for members, good for industry and good for communities. We do this by advocating for effective and strategic policy, supporting our industry on important issues and providing members with tools to build and grow their businesses so they remain competitive and profitable within the Australian and global supply chain.

2.0 Introduction

- 2.1 AMIC have reviewed the changes proposed in the Bill and would like to provide a submission on behalf of AMIC's members as to the possible implications the passing of this Bill will have on our members for your detailed consideration. We are concerned by a number of the changes and the significant cost implications and

disruptions it could have to the industry, but with no associated tangible benefits apparent.

- 2.2 We note that, in some instances, with the level of detail currently available, we can only approximate the full extent of the implications of these changes, so we put forward this submission with the obvious caveat, that this is our best efforts to estimate the implications at this point in time. We only submit on those changes that we believe (at this point in time) will have an impact on our membership and are not listed in priority.

THE ISSUES

3.0 Detailed Analysis of some of the issues

3.1 Health & Safety Representative powers and rights conferred.

This bill seeks to expand the powers of a Health and Safety Representative (HSR) up to and including HSR's issuing 'cease work notices,' which have the resultant outcome, if implemented, of stopping work until the HSR withdraws notice or the issue resolves with a Work Health and Safety Inspector.

3.2 The meat industry has issues with this for many reasons:

- 3.2.1 The HSRs within industry are not safety experts, they generally only complete a 5-day training program. We submit that this would not be anywhere near enough sufficient knowledge to make the extremely significant decision as to whether a breach of safety issue may require a stop work. We also submit they may not possess the ability to appropriately liaise and advise site management on a work around. Closing down an area in a plant has multiple compounding affects, especially in the meat industry. The most significant could be, for example, animal welfare issues.
- 3.2.2 An abattoir or any type of meat industry factory/processor/abattoir would have several HSRs for different departments and shifts, these HSRs would normally only have knowledge of their specific departments. If a stop work notice is issued for one department, it may have an adverse effect on other departments within the factory. E.g., Animal welfare concerns, refrigeration of product, market access, transport delays and potentially loss of business.
- 3.2.3 The risk for industry in this instance is endless. It is not practical for an abattoir to fully stop production without a plan, live animals need to be removed from production areas to yards/pens to ensure all animal welfare requirements are met (some HSRs would/may have no knowledge of animal welfare issues), processed bodies on a production chain cannot be left for an extended period of time because of refrigeration and hygiene requirements (Food safety standards must be

considered). Distribution or warehouse departments may be waiting on product to meet shipping/delivery schedules, not meeting shipping schedules can have major consequences for the whole product lifecycle.

- 3.2.4 Whilst this is not the norm, another potential issue is if HSRs are strongly union affiliated there is a potential for them to use new powers to disrupt a business on unreasonable grounds. AMIC have seen instances like this occur where a union affiliated HSR has tried to stop a production area due to 'claimed' extreme heat. The WHS Inspectors attended & provided the 'all clear.' Unfortunately, it has been observed that HSRs and Unions intentions/actions are not always genuine.
- 3.2.5 This bill proposes HSRs nominate their own Registered Training Organisation (RTO's) for the training, this is not a practical solution. The majority of industry is rural based and will not have a great selection of nearby RTOs. Business usually has an Admin/Training/HR person who would engage with reputable RTOs to deliver training on site, and this should remain.
- 3.2.6 In the instance of HSR training, a meat employer may have several to be trained at the one time, so normally a RTO would be engaged to deliver the training to all of the HSRs at the same time on site. Otherwise, as the proposal submits, to allow HSRs nominate their own RTO, they could be hundreds of kilometres away and then be expected to be reimbursed for travel, accommodation, and time. The benefits of the employer being able to choose seems very little, as compared to the burden that this will place on the employer for effectively the same outcome.
- 3.2.7 In relation to the proposal where HSRs are to accompany permit holders and be notified when permit holders are onsite, in the meat industry this is not practical. In the industry, HSRs are usually skilled production employees within their area of work, therefore it would be impractical to remove them from their production role, this would either cause a loss of production or extra costs to replace the HSR whilst not in their normal role. Most factories would have a suitably qualified Safety Officer to accompany a permit holder, they would then relay communications to the HSR, or this could also be conducted with a site/department

supervisor. This again, seems a change of little benefit and more burden/cost/risk to the employer.

- 3.2.8 The proposed timeline shortening – With the PIN timeline shortened and issued by a HSR, this is not practical. Four days is not enough time for a business to investigate, research and potentially manufacture a remedy for a PIN. The majority of our meat industry members are in rural communities and may have limited access to services, supplies, expertise, and tradespersons to fix the issue. The shortening of the timeframe is unnecessary, impractical, and further makes it exceedingly difficult for our already struggling rural members to comply and make ends meet. This needs to be kept at 8 days as a minimum, (even perhaps extended). We would submit that there should be “exception forms” or an extended length allowed for members who are in rural areas (as long as any immediate danger is ruled out).
- 3.2.9 The Bill seeks to expand the information seeking powers of HSRs to be able to request information concerning the Workplace Health and Safety of workers in their work group. It also seeks to expand the powers of HSRs to request assistance from a 'suitable entity', which, for a HSR, may mean either a 'relevant union' or another entity authorised by the HSR to represent or assist them (excluding organisations that are not registered or do not have coverage), as well as having the associated powers to accompany WHS entry permit holders when exercising functions at the workplace.
- 3.2.10 It would seem this Bill is looking to expand union presence within all industries. Whilst AMIC acknowledge that they have a role, a lot of these changes could mean that any union within the meat industry could use these additional powers to disrupt manufacturing plants. Past history would suggest that some Union representatives have no interest in working with industry. I would suggest the Government look to engage with the industry and provide guidance and support, not seek to further extend Union’s powers in the workplace. Proactive guidance, information, materials and training would be much more beneficial to the industry.

4.0 Consultation to include unions.

4.1 The bills seeks to extend consultation with the unions. There are some difficulties that this could present for the employers that should be considered:

- 4.1.1** The current provisions state engagement with HSRs, but we submit businesses should not need to include unions when consulting with employees and HSRs on matters for their respected areas/facilities. Businesses are always looking to innovate, create efficiencies and reduce risk to employees, this is done via businesses doing their own due diligence, consulting with subject matter experts (manufacturers/other providers) employees and HSRs. Unions have no place in this consultation, they are not deemed subject matter experts in regards to improving businesses facilities, and most certainly would not be deemed safety experts. Has the Government considered the impact on union's workloads amongst these proposed changes and closing the loop changes? What if the union member did not have time to assist, are we placing safety changes/improvements/upgrades/rectifications 'on-hold' whilst we consult with a Union? With the resultant outcome potentially someone weighing in who has no additional knowledge or expertise to bring to the picture?
- 4.1.2** From our experience, a number of Meat Industry Union officials have not actually worked in meat establishments for many years (if not decades) and remain out of touch with the current environment the industry operates in. The benefits of bringing them in are well outweighed by the potential risks, costs, disruption, and hindrance that it could bring to the employer. As mentioned, if a union official is not abreast to an organisation's setup, level of automation, and methods and processes, the time spent bringing a union member up to date could be concentrated on fixing the issue and making sure it never happens again.
- 4.1.3** This Bill provides the Unions more power and even less regulation than employers are enduring. It certainly appears that Health & Safety Legislation Bill provides for the union to create their own loopholes to build on memberships, union revenue and remain largely unchecked during the process. This relaxation seems to place unions take on a regulatory role that

would normally be reserved for government bodies/agencies. These changes will place significant unrest in industry, and how we progress as an industry moving forward. There are so many ways for this to be manipulated in a way that does not equate to significantly improving safety, but increasing timeframes for rectification, including placing more work through FWC, then there are challenges to legislation interpretation and rights, access etc. There will be bottle necks when there is no need, let's use the right qualified people to manage safety situations. Unrest between unions and workplaces may arise, by allowing unions to take on regulatory roles without the same level of checks and balances that the Government endure. Unions have proven over years of working in industry that they do not have a grasp of safety requirements and legislation. Instead, they cherry pick where they think they can get leverage or access to create issues and not assist the business, worker or outcome.

- 4.1.4** The provision that relates to providing unions with a greater access will take away the ability for business to engage directly with its workforce to build feelings of mutual trust and build an increased focus on an employee-based culture. Perhaps even more importantly, you are asking people outside of the organisation to make decisions on items that they are not experts in. It creates risk, disruption cost and could affect organisations functioning effectively. These meat industry organisations represent large employers of people in both blue collar and white-collar workforces.

5.0 Health & Safety Committee

- 5.1 The proposed provisions provide an organisation to have a Health & Safety Committee to be established within 28 days. The current provisions allow two months. The current two months is reasonable, and workable in the meat industry. As previously discussed, each company may have HSRs on a site, and it does take time to finalise HSRs for each department. This amendment to the bill is not practical. This is not to say that each and every employer will utilise those full two months in order to set up a committee, but it does provide, amongst a great of deal of compliance burden, allow some latitude to getting a committee set up with all of the relevant people involved.

6.0 Powers of the regulator

- 6.1 There are significant amendments to powers of the regulator in the existing provisions. A concerning part for industry is the **powers to share information with HSR's and unions**. AMIC strongly believe that this is not acceptable. All meat processing establishments value their intellectual property (IP), suppliers, production records and competitive edge. Unions would inferentially share information with officials/members from other establishments. Even if they did not mean to, it would be impossible for information slippage not to occur and IP creep to occur across industry . Healthy competition benefits everyone. The customers, the suppliers, the employees, and the economy generally.
- 6.2 Power to require production documents within 30 days of entering a workplace, similar to the above point, production documents are valuable IP to industry and have to be established as having a strong nexus to the issue at hand. This is too open and places our employers at risk of having to provide commercially confidential information.

7.0 The insurance prohibition

- 7.1 The insurance prohibition should not cover insurance that covers WHS fines that could have come about by genuine mistake, mistaken advice, or something a reasonable person could not have foreseen occurring. AMIC notes that some reference has to be taken to defending the coverage of insurance for indemnity related to incorrect legal advice, but there is no coverage for genuine mistake/accident/or something that is not reasonably foreseeable. This may be sorted by the fact that a fine would not be issued if this was the case, but this is yet another one where the law should balance what a reasonable person can foresee and not burden industry with so much compliance and lack of support that it makes it almost impossible for companies (especially small companies) to operate under those conditions. Companies are living in fear of what is coming next, and there could be a potential for them overspending for fear of penalties closing down their business.

8.0 Remuneration – Payment as if they have worked including overtime and penalties.

- 8.1 AMIC do not have issue with the appropriate entitlements being paid to HSR's, but there should be some stipulations around overtime and penalties and some flexibility for the employer to have some say over the hours that this training is performed so as to ensure they are not enduring significant to cost to have their HSR

be trained or attend their duties. This is also tied back to the issue of the HSR choosing their own training provider, the available times that their own training provider may be available could only be in overtime hours, again creating an additional cost imposed to the employee. Employers should have the outcome of having them be sufficiently trained, it should not matter which RTO is used, and they should be able to direct when the training is done and by whom to limit cost impacts (where reasonable).

9.0 Increasing employee representative’s rights

9.1 This may cause significant disruption and unrest amongst the workers due to freedom of association, now seeing it pressing towards a likeness to forcing employees to become union members (in an industry with low union membership, covered by a small union in potential merger talks with a union outside the industry), removing the freedom of association in its true form.

9.2 There is already significant coverage and protections available to employees under the current system. Some of the additional rights that are being proposed are not justified, beneficial or practical. There is a potential for misuse, and it pushes a significant decline in the encouragement of localised communication between the employer and employee. AMIC would like to propose that the current range of protections that are already contained with the relevant Workplace Health and Safety Acts to protect employees and employee representative provide balance and protections for both the employer, employee, and employee representatives. The changes (as mentioned) are superfluous, and we submit alters what was already achieved - a balanced system.

10.0 Conclusion:

10.1 Table One is a summary of the Bill objectives against summary of the AMIC issues.

The Bill is said to be the result of wanting to achieve the following outcomes:

TABLE ONE	
Bill Proposed outcome	AMIC Summary of Issues
strengthen and promote the role of health and safety representatives	AMIC do not have issue with clarifying, strengthening and

<p>(HSRs), including clarifying powers they can exercise and functions they can perform at the workplace.</p>	<p>promoting the role of HSR's. However, clarity for employer cost implications, duration and timing for training all need to have clear stipulations as to the requirements, to avoid significant cost imposts on the employer and their operational needs. AMIC does not have an issue with ensuring the appropriate entitlements being paid to HSR's throughout this process however, there should be some stipulations around overtime, penalties, and some flexibility for the employer to be able to manage the work hours to ensure they are not enduring significant to cost to have their HSR be trained or attend their duties. They should also be able to direct which RTO is being used. RTOs they may have beneficial supply contracts with.</p>
<p>promote consultation about WHS with workers and their representatives; Work Health and Safety and Other Legislation Amendment Bill 2023</p>	<p>No issues with workers being able to bring in a representative if they are in fear of reprisal.</p>
<p>clarify rights that WHS entry permit holders can exercise at a workplace to assist workers in relation to suspected contraventions of the WHS Act;</p>	<p>We submit that additional rights to a workplace health and safety reversative (as in the authority) to produce a stop work notice, is a significant amount of power to provide someone who could potentially have had 5 days training and could be given with little or no regard to the impact on all of the other parts of the plant and activities outside the plant.</p> <p>We also submit that they should not have to leave their substantive post in order to attend the site with permit holders. A safety officer would be the appropriate person to assist as they would be the more qualified/senior safety employee with knowledge of entire operations. Production will be affected if this is the case as the best technical experts to be HSRs also hold important production positions in the company.</p>
<p>clarify which entities or persons may assist workers and act as their representatives in relation to WHS issues by: – ensuring a relevant union</p>	<p>We submit that increased involvement with the Unions, who are by no means safety experts, nor experts in each particular organisations processes,</p>

<p>whose rules entitle it to represent the worker’s industrial interests may assist workers or act as their representatives in relation to a WHS issue; and – excluding other entities such as: associations of employees or independent contractors; 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. Excluding associations of employees or independent contractors which are not registered unions under the Fair Work (Registered Organisations) Act 2009 (Cwlth), or the Industrial Relations Act 2016 (IR Act) is consistent with 2022 amendments to the IR Act;</p>	<p>methods, safety and/or other procedures, levels of automation or skill within the workplace will not add value, but potentially add disruption, cost, and extend the timeframe of resolution.</p> <p>The exclusion of other entities is not relevant as the increasing union input provides little benefit; therefore, the inclusion or exclusion of outside associations and independent contractors would also pose the same little benefit.</p>
<p>clarify and streamline the dispute resolution process;</p>	<p>No issue with this change</p>
<p>move certain proceedings from the Magistrates Court to the Queensland Industrial Relations Commission (QIRC);</p>	<p>No issue with this change</p>
<p>amend the Category 1 offence to include negligence as a fault element, in addition to reckless conduct:</p>	<p>No issues with this change</p>
<p>enable HSRs to choose their training provider;</p>	<p>This will provide significant issues, especially the ones in rural areas with limited access to RTOs. Also, central coordination of training with RTOs provides cost benefits through meaningful and cost-effective supply contracts and lessens administrative burdens.</p>
<p>prohibit persons from entering insurance contracts or being granted indemnity, or benefiting from these arrangements, to cover liability for WHS fines;</p>	<p>No issue with these amendments, except for the fact that this should only apply for instances that are purposeful, or extremely reckless or negligent. Some insurance should be available to people if there was some form of genuine mistake, or incorrect advice given, or changes that someone could not have reasonably seen. This does not appear to be covered within the Bill. Must look at the compliance burden and allowing employers to act in fear of mistake and how much “reasonable” safety precautions an employer should have in place.</p>

extend the 12-month deadline, to 18 months, for a person to request the WHS Prosecutor bring a prosecution for a Category 1 or 2 offence; and	No issue with these amendments (although note that recollection and investigations will not be anywhere near as accurate with an additional six months extended on to the timeframe).
make other amendments to enhance the operation and administration of the WHS Act, including minor technical amendments for clarity or consistency.	No issue with these amendments.

10.2 AMIC appreciates and acknowledges the importance of appropriate workplace health and safety laws to protect both the employer and the employee (and other parties who engage with the employer or employee). There is some concern that increasing the rights and powers of the Union, and the HSR's to the extent that are proposed in this bill is going to be costly, disruptive, and not provide the improvements or benefits that it espouses. The Bill is extending power to those associations that are neither regulators (and are not as strictly confined and monitored as regulators are) nor are they safety experts.

There is much potential for the new proposals to significantly increase cost, increase union powers (yet not reduce safety issues), extend length of time to resolve (with shorter timeframes provided) and empower representatives to assist in matters that they are not expert in, in any way. This could potentially elongate timeframes diluting any benefits that the Bill proposed to provide.

One of the key balances and objectives of the workplace health and safety laws was to ensure that people put in checks and balances and safety precautions that were reasonable for the size and the impact on the enterprise. The amount of cost and compliance privy to this same reasonableness test. What is reasonably foreseeable? What is imminent? Serious? How much compliance and safety requires to be implemented? How can a person or a union representative have the expertise or know how to make decisions which impact a whole enterprise (including people being employed by it). Decisions that have animal welfare impacts, biosecurity impacts, food health and safety standards and the list goes on.

There has already been significant change and real struggle under the government changes and IR reforms, leaving the average employer wondering what is next and how to cope. Many of the changes in this Bill create potential implications which could be severely detrimental and significant to the Meat in the short, medium, and long

term. There will be some that do not make it. There are particular changes (and compounding ones) that will result in whole business models falling over. If this were to strike a company in a rural area, the multiplier effect to the town and the people becomes catastrophic. ***Complex, burdensome, costly regimes, creating fear and a real chance of error and penalty, stagnating investment, productivity, innovation, and service delivery in a timely manner.***

- 9.4 The issues that this Bill is intending to mitigate are not quite right as they stand, ***we urge the decision makers to spend much time, working through (as described) what is a practical and rational reform under this Bill versus one that could ultimately ensue great cost and disruption to an already struggling industry.***