

Work Health and Safety and other Legislation Amendment Bill 2023

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Work Health and Safety and Other Legislation Amendment Bill 2023

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Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au

While MEA supports initiatives which improves both employee health and safety (H&S) and negotiation power imbalances, we are conscious they can impose unfair burden on persons conducting business or undertaking (PCBUs) if not designed too broadly. We are concerned the proposed wording within specific clauses under the *Work Health and Safety and Other Legislation Amendment Bill 2023* (the Bill) is at risk of having a broader interpretation than intended, giving H&S representatives unfettered workplace access beyond the Bill's intent. For these reasons, MEA has suggested additional wording to be integrated within specific clauses which we believe will better ensure H&S representatives are not abusing the amended *Work Health and Safety Act 2011* (the Act) for agendas beyond the H&S issue at hand. This will protect PCBUs from being unduly burdened with H&S representative presence.

MEA's Suggested Amendments to the Bill's Clauses

Cl 18 (s 48 – Nature of the Consultation)

Compared to s 48(2) under the Act, cl 18's proposed wording under s 48(3) imposes a narrower obligation on PCBUs regarding consultation with H&S representatives whereby s 48(3) would place onus of PCBU consultation with H&S representatives on the employee.

Section 48(2), *the Act* -

If the workers are represented by a health and safety representative, the consultation must involve that representative.

Clause 18, *the Bill* -

S 48(3) – Also, if 1 or more of the workers ask the person conducting the business or undertaking to consult with their representative, the consultation must involve that representative.

We recommend the Bill narrows the wording of s 48(2) to read as follows:

If the workers are represented by a health and safety representative **and that worker requests the health and safety representative to be present during consultation,** the consultation must involve that representative.

Not only does this provide consistency between ss 48(2) and (3), but prevents H&S representatives from imposing undue pressure on PCBUs. H&S representatives should only be allowed onsite to provide support when invited by employees. We do not believe there is any justification for essentially free entry to H&S negotiations without such invite.

Cl 20 (s 52 – Negotiations for Agreement for Work Group)

MEA is concerned the wording of s 52(3)(4B) risks being misinterpreted too broadly. We recommend that 'requested' be inserted into the amendment as follows:

*(4B) The relevant union may become a party **if requested** to the negotiations...*
-Line 21 (page 22).

Whilst we recognise this clause only comes into effect if a union member is involved, we are concerned the current proposed wording would give H&S representatives unfettered access to H&S discussions/negotiations/consultations. This is at odds with H&S representatives' purpose to support employees and negate power imbalances and instead places undue pressure on PCBUs.

Moreover, inserting "if requested" within (4B) would align cl 20 with cl 18, where the employee is required to request PCBU to engage with their H&S representative.

It is for these reasons we believe s 52(3)(4B) proposed under cl 20 should strictly limit H&S representatives attendance in workplace H&S meetings when invited.

Cl 31 (s 81 – Resolution of H&S Issues)

MEA is concerned the proposed wording of s 81(3) is at risk of being abused by H&S representatives. We recommend that 'only' be inserted into the amendment as follows:

*... to enter and remain at the workplace **only** for the purpose of...*

-Line 14 (page 33)

We note s 81(2) imposes somewhat of a time limit on how long H&S representatives can be present at a PCBUs' workplace by legislating that parties are to "make reasonable efforts to achieve a timely, final and effective resolution". However, our concern is the seemingly unfettered access to all H&S matters (beyond the issue at hand) which H&S representatives would gain through cl 31 wording. There does not appear to be a limit to the scope of H&S matters a H&S representative can be exposed to during these negotiations.

Adding the word 'only' ensures H&S representatives are limited to the singular H&S matter they have been invited on site for, providing a fair and equitable balance between employees and PCBUs.

Cl 46 (s 119 – Notice of Entry)

MEA raises concern over the wide scope of entry cl 46 bestows upon H&S permit holders (despite s 119(2A)). We advocate the greater safety restrictions for 'notice of entry' be legislated within s 119. MEA have recently heard of an instance where a H&S permit holder entered a barricaded work area unannounced and fined the PCBU for exposed defects within the barricade, endangering themselves despite the safety precautions designed to protect personnel from entering. This incident exemplifies liberties H&S permit holders are empowered to take in the absence of specific legislative wording.

We recognise that over-regulating pre-entry safety requirements for H&S permit holders can defeat the purpose of s 119, but a delicate balance does need to be legislated to prevent unjust investigation of PCBUs. While we want to avoid W&S permit holders completing several hours of inductions allowing PCBUs to tidy up defects, we advocate a bare minimum of PPE and safety procedure requirements (e.g. signing SWMS) are imposed on H&S permit holders.

Conclusion

MEA advocates for the Bill to tighten its interpretation within the following clauses:

- Cl 18 – Amendment to the nature of the consultation
- Cl 20 – Amendment to Negotiations for Agreement for Work Group
- Cl 31 – Amendment to Resolution of H&S issues
- Cl 46 – Amendment to Notice of Entry

We are concerned that proposed wording within specific clauses of the Bill is inequitable against PCBUs, allowing H&S representatives unfettered access to a worksite the moment a union member is involved in a H&S negotiation. Narrowing interpretation prevents PCBUs from being the targets of H&S representative 'witch-hunts', providing equitable balance between employees and PCBUs.

Of particular concern is H&S permit holders' wide scope of 'notice of entry' under cl 46. We advocate s 119 implement minimum PPE and safety procedure requirements which prevents danger to H&S permit holders and inequitable investigation of PCBU worksites.

MEA looks forward to the outcomes of the Bill and are available for any further discussions.