

Work Health and Safety and other Legislation Amendment Bill 2023

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Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
BRISBANE QLD 4000

**RE: SUBMISSION FOR THE WORK HEALTH AND SAFETY AND OTHER LEGISLATION
AMENDMENT BILL 2023 (QLD)**

Dear Education, Employment and Training Committee,

Thank you for providing us with the opportunity to make a submission for the review of the *Work Health and Safety and Other Legislation Amendment Bill 2023 (Qld)* ('the Bill').

About us

Civil Contractors Federation Queensland Ltd ('CCF QLD') is the peak body that represents the civil construction industry throughout all of Queensland.

Our representation encompasses a range of industry perspectives from resources and services that support the delivery of infrastructure to the physical delivery of the infrastructure needs of Queensland.

The size of the businesses we represent range from small businesses to Tier 1 companies. We assist businesses of every size across the civil construction industry.

CCF QLD represents businesses, whose employees are engaged in all aspects of the civil construction industry including:

- Roads and bridges – freeways, highways, urban and rural
- Land development – housing, commercial and industrial subdivisions
- Water treatment and reticulation
- Sewer treatment and reticulation
- Telecommunications infrastructure

- Electricity distribution
- Pipelines
- Dams
- Irrigation infrastructure
- Quarrying
- Land improvement – rural earthworks
- General excavation
- Drainage
- Marine civil
- Retaining walls
- Rail works
- Demolition
- Renewable infrastructure

CCF QLD also represents businesses whose employees provide support through services and products including:

- Manufacturers of products, such as pipes and steel
- Suppliers of raw materials, such as quarry products, concrete and bituminous products
- Equipment sales and hire
- Suppliers of fuels and lubricants
- Professional services, such as legal, accounting, recruitment, insurance and superannuation.

Background

All employees have the right to a safe working environment. The *Work Health and Safety Act 2011 (Qld)* ('the Act') seeks to protect the employee's right to safety by regulating particular parties that can contribute to unsafe work practices, such as the person conducting a business or undertaking ('PCBU'). The current Bill seeks to amend the Act based on the outcomes from the [Review of the Work Health and Safety Act 2011 - Final Report](#) and [2018 Review of the Model Work Health and Safety Laws](#) ('the Boland Review'). The object of the Act to ensure "appropriate scrutiny and review of actions by persons exercising powers and performing functions under this Act" means we need to bring to light some of the issues discussed below.

1. Mandatory "invite" for election of HSR

The Bill seeks to insert s 50B(2)(b) into the Act:

"The person conducting the business or undertaking must, at the time within the period required under subsection (3)...invite the workers to ask the person to facilitate an election for 1 or more health and safety representatives under section 50."

The introduction of s 50B(2)(b) means that a PCBU must invite the employees to ask the person to facilitate an election. The consequence is that a PCBU would be required to initiate what should be an employee elected process under s 50. A primary function of the HSR is to bring empowerment to employees through an employee elected system. We can envisage the unintended consequences of forcing PCBU's to *invite* employees – an employee may feel compelled either way to accept or reject the invitation – which will move the power out of the hands of the employee under s 50 into the hands of the employer under the proposed s 50B.

We do not contend that it is important to raise awareness and education about the functions, powers, and availabilities of HSR in order to increase their uptake within workplaces. We do contend, however, that it becomes unsatisfactory to all parties that the PCBU must be the first to *invite* employees to ask to facilitate an election. The only requirement under legislation that should be present for the PCBU is that they must facilitate an election once an employee has enlivened s 50.

We submit that s 50B(2)(b) should read as follows:

“The person conducting the business or undertaking must, at the time within the period required under subsection (3)...facilitate an election of 1 or more health and representatives under section 50.

2. Cease work notices

The Act provides that a HSR may direct unsafe work to cease under s 85. The Bill seeks to insert s 85A which details the content that is required for the cease work notice:

“A cease work notice, in relation to a direction given under section 85(1) or (3), must state –

- (a) *briefly*, the health and safety representative's concern and the basis for that concern by reference to—
 - (i) the risk to the worker's health or safety; and
 - (ii) the work that, if carried out, will expose the worker to a serious risk to the worker's health or safety”

We have concerns that the word *briefly* might be interpreted in such a way that allows for ambiguous statements, and could create a system whereby the notices are used to further hinder or disrupt work for an invalid/alternative reason. The contents of the cease work notice should be quick enough to stop work before safety is compromised, however, detailed enough to identify and understand the safety concern and make sure that the reason behind the notice is for a legitimate purpose.

We submit that *with sufficient detail* should be used instead of *briefly*. Section 85 would read as follows:

- “A cease work notice, in relation to a direction given under section 85(1) or (3), must state –
- (b) *with sufficient detail*, the health and safety representative’s concern and the basis for that concern by reference to—
 - (iii) the risk to the worker’s health or safety; and
 - (iv) the work that, if carried out, will expose the worker to a serious risk to the worker’s health or safety”

3. The introduction of “negligence” for Category 1 offences

The Bill seeks to introduce negligence as a fault element for Category 1 offences. The explanatory memorandum notes that this amendment was made in light of the Boland Review, with the intention of lowering the threshold for Category 1 offences.

We note that there are many ways that safety can be achieved for employees and the most effective way is through lead indicators. While lead indicators proactively gain insight into dangerous safety practices before an incident occurs, lag indicators reactively gain insight only after an incident has occurred. Prosecutions for safety breaches is one way in which insight is gained upon reflection of an incident – making it a lag indicator.

Further lowering the threshold for Category 1 offences to increase prosecutions is not going to improve safety on its own. The focus for safety needs to start with increasing lead indicators.

Examples of lead indicators can include:

- Audits/Inspections
- Safety training participation
- Reporting of near misses

4. The behaviour of WHS permit holders

The Act provides that a “WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention” of the Act.

We believe that right of entry permits only protects workers when used in a collaborative and educational manner. We cannot ignore, however, the unacceptable behaviour of permit holders that have no regard for the law or procedures. We note the most recent case of *Fair Work Ombudsman v Blakeley* [2023] FCA 1597.

There needs to be appropriate checks and balances for the behaviour of both parties, to ensure that safety is best protected. An additional requirement is needed for permit holders, who wish to enter for WHS reasons, is to demonstrate a knowledge of WHS operations and management through either relevant industry experience in the areas to be inspected or demonstration of formal WHS training. The demonstration should be a combination of both.

We have broad support for an Act that protects the safety of employees, however, true protection of employees will require a fundamental reform of culture and behaviour.

Closing

Thank you for considering our submission. We hope that we can work together to enhance the safety of our workforce in a collaborative, consultative, and educational manner.

Kind Regards,



Damian Long
Chief Executive Officer
Civil Contractors Federation Queensland Limited