

Work Health and Safety and other Legislation Amendment Bill 2023

Submission No: 8
Submitted by: Queensland Nurses and Midwives' Union
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:

Submission to

Education, Employment and Training Committee

*Work Health and Safety and Other Legislation
Amendment Bill 2023*

January 2024

Contents

Introduction.....	3
Recommendations	4
About the Nursing and Midwifery workforce	4
Health and Safety Representatives.....	5
<i>WHS Champions</i>	5
Remuneration entitlements during training	5
Determination of work groups	5
<i>Definition of readily accessible</i>	5
<i>HSR coverage and work group negotiation</i>	6
Powers and functions of Health and Safety Representatives	7
<i>Issuing an improvement notice</i>	7
Issue and dispute resolution.....	7
<i>Definition of union</i>	7
Discriminatory conduct matters.....	7
<i>Notice of dispute given to commission</i>	8
Incident notification provisions	8
<i>Notification of serious incidents</i>	8
<i>Psychological injury notifications</i>	9
References	11

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Education, Employment and Training Committee for the opportunity to comment on the *Work Health and Safety and Other Legislation Amendment Bill 2023* (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our over 71,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander Peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

The *Work Health and Safety Act 2011* (Qld) (WHS Act) has been in place for over a decade as part of the model work health and safety legislative framework. Since its commencement, the WHS Act has been the subject of several reviews, including the Best Practice Review of Workplace Health and Safety Queensland in 2017, the review of the model Work Health and Safety Laws (Boland Review) in 2018, and most recently an independent review of the Work Health and Safety Act by the Office of Industrial Relations (OIR) in 2022 (the WHS Act Review).

The QNMU welcomes the opportunity to make a submission to the Bill and reiterates the feedback provided in our previous submissions to the WHS Act Review. We support the Bill in giving effect to a number of recommendations from the WHS Act Review Report to clarify and strengthen existing frameworks and ensure the overall effectiveness of the WHS Act. We also express broad support for the comprehensive submission provided by the Queensland Council of Unions.

The QNMU is well placed to provide insight into the operation of these matters through our ongoing representation and engagement with work health and safety matters on behalf of our members, including members who are Health and Safety Representatives within their organisations.

We remain committed to establishing and maintaining safe workloads and work environments as a priority for nurses and midwives in Queensland. As a key principle, when nurses and midwives are safe in their workplaces, those in their care are safe and experience better health outcomes.

Recommendations

The QNMU Recommends:

- Amending the *Work Health and Safety Act 2011* (Qld) (WHS Act) or *Work Health and Safety Regulation 2011* (WHS Regulation) to strengthen compliance, enhance capacity to increase Health and Safety Representatives (HSR) numbers and improve workgroup negotiation;
- Clarifying that the use of any other title (i.e., Champion) is not equivalent to the HSR position;
- Amending the WHS Regulation at sections 16, 17 to provide a more prescriptive definition of 'readily accessible';
- Amending section 36 of the WHS Act to explicitly refer to injuries that result in a person being absent from their voluntary or paid employment for more than 4 days to be classified as a serious injury;
- Amending the WHS Act so that a dangerous incident includes "an exposure to occupational violence in the workplace"; and
- Reviewing the capacity of the WHS model to deal with the notification and incidence of psychological injury in health care and the latent onset nature of these injuries.

About the Nursing and Midwifery workforce

Nursing and midwifery are physically and mentally demanding professions. Our members work in unique occupational environments that can require rotating and night shifts, long hours, prolonged standing, lifting, and exposure to chemicals, infectious diseases, x-ray radiation and other hazards (Lawson 2009). Hazardous manual tasks can contribute to musculoskeletal injuries which can be permanent and impact on a person's working ability and quality of life as well as the productivity and economic performance of their employer.

Nurses, midwives, and personal carers (however titled) may be exposed to a wide variety of physical, chemical, biological, psychosocial, or other hazards. All these factors can negatively affect their health and performance. For instance, our members have one of the highest rates of work-related musculoskeletal injuries of any professional group (Mullen 2015). In 2020-2021, workers in the health care and social assistance industry had the second highest number of serious claims, accounting for 20% of serious claims lodged across Australia (Safe Work Australia 2023).

All workers have an equal right to safe and respectful work, without discrimination and free from violence and aggression. Despite this, our members continue to face significant threats to their physical and psychological health from role overload, fatigue, burn out, occupational violence, bullying and harassment, among other factors. A recent survey of our membership found that physical and psychological safety concerns presented a significant barrier for our members to remain in their professions. Promoting psychological safety in the workplace is known to contribute to greater job satisfaction, decreased turnover and improved patient safety (Cho H, Steege LM et al. 2023). Nurses and midwives must be protected from all hazards and risks at work, including psychosocial as well as physical hazards and risks.

We view the WHS Act review as a crucial opportunity to protect and value the health and safety of our nurses and midwives, along with workers more broadly.

Health and Safety Representatives

Health and Safety Representatives (HSRs) are an important part of the safety consultative framework of the workplace. HSRs are workers that are elected by co-workers to represent the health and safety interests of a work group and to raise any issues with their employer. The HSR role serves to facilitate effective communication on behalf of workers and employers, as HSRs have special powers that enable them to escalate and address any safety concerns on behalf of their colleagues.

Where workplace health and safety is well organised and taken seriously by the employer, we have found staff are much better informed and experience fewer hazards. Similarly, workplaces lacking information and commitment to safe practices are more likely to create an environment of hostility and increased risk. A key finding from the WHS Act Review Report found that safety outcomes improve when workers are empowered to have an active role in safety, and where there are high levels of cooperation between workers and employers. The QNMU therefore advocates for strengthening the role of HSRs by clarifying their functions and rights within the WHS Act and WHS Regulation, through the following recommendations.

WHS Champions

The QNMU has observed an increasing trend for workplaces to use the term WHS 'Champion'. In Queensland, the term HSR is a specific consultative position referred to in legislation and the role requires elected employees to undergo five days of external training to become an authorised representative. However, a WHS champion is not a specific title registered under WHS legislation. The role is not required to undertake additional training, nor is there a requirement to conduct an election to hold the position.

The QNMU raises concern that workplaces are compromising the HSR framework prescribed by the WHS Act, by giving equivalence to the title, 'Champion'. This is not only potentially misleading but diminishes the importance of the HSR role. We seek that the WHS Act clarify that the use of any other title is not equivalent to the HSR position.

Remuneration entitlements during training

The QNMU welcomes the amendments to section 72(4) of the WHS Act to recognise the payment of equivalent wages for non-standard workers including overtime, penalties, or allowances, when attending HSR training.

This is a common issue for our HSR members, who often work shift work and only receive their ordinary time pay rate and not their usual remuneration, including overtime and shift allowances when attending HSR training. This has been a significant disincentive for members to take up a HSR position in their workplace to date. These amendments will ensure that non-standard workers, including many of our members, are no longer financially disadvantaged when attending HSR training.

Determination of work groups

Definition of readily accessible

In accordance with section 16 of the *Work Health and Safety Regulation 2011* (WHS Regulation), any negotiations to determine work groups and variations to work groups must be directed at ensuring that workers are grouped in a way that:

- most effectively and conveniently enables the interests of the workers, in relation to work health and safety, to be represented; and

- has regard to the need for a health and safety representative for the work group to be readily accessible to each worker in the work group.

Section 17 of the WHS Regulation further provides for the particular matters which are to be taken into account when negotiating the work groups under sections 52(6) and 56(4) under the WHS Act.

In practice, the QNMU expresses concern that the WHS Regulation remains ambiguous about the meaning of *readily accessible*. Our members have experienced workplaces applying a broad interpretation of this definition that leads to unintended consequences. For instance, employers often look at the costs of a system of health and safety representatives and seek to minimise their costs by reducing HSR representation, entering into delays or obstructing the processes with workers.

The QNMU has assisted members who reported dangerously inadequate ratios of HSRs to staff in a regional public hospital.

The facility supplied three distinct units of specialised care, comprising over 140 employees that were working in varied disciplines, with nurses working 24/7 year-round. There were only 2 HSRs available to cover all three units across all shifts. This essentially leaves a large proportion of shifts with no coverage.

The QNMU regards this number of HSRs to staff as inadequate and potentially hazardous. In our view, workers need convenient access to a HSR so that they can express any concerns regarding their health and safety and so that they can quickly be consulted by the HSR about health and safety matters in the workplace.

Although we acknowledge that this is outside the scope of the Bill, it is within the remit of reviewing model WHS legislation to ensure the safety and effectiveness of the provisions. The QNMU emphasises the need to amend the WHS regulation to provide a more prescriptive definition of 'readily accessible'.

HSR coverage and work group negotiation

Currently, there is no legal requirement for a particular number of HSRs to be appointed in a workplace, nor is there a requirement for the HSRs to be proportionate to the workforce. The number of HSRs in a workplace is a matter to be determined by consultation with workers before an HSR election. Our members have reported concerns that some workplaces have inadequate HSR ratios to staff that leave a large proportion of shifts with no coverage.

Although the QNMU cautions the approach of codifying HSR ratios in the model WHS laws for the potential unintended bureaucratic impositions it may cause, we remain concerned that inadequate numbers of HSRs leads to unsafe workplaces.

The QNMU supports the Bill in recognising the need to strengthen compliance and enhance capacity to increase HSR numbers and improve workgroup negotiation within the WHS Act. We also support the introduction of prohibitions on discouraging persons from requesting the establishment of a work group or nominating for the HSR role. We view these interim

measures as part of a range of necessary changes to support the broader uptake of the HSR role in workplaces and to ensure the WHS Act is effective in achieving the objects of the Act.

Powers and functions of Health and Safety Representatives

Issuing an improvement notice

A HSR has a power to issue a provisional improvement notice, under division 7 of the WHS Act. The QNMU strongly encourages unions to have access to regulator enforcement notices to assist members.

Issue and dispute resolution

Definition of union

An employee or officer of a union may attend the workplace for the purpose of participating in issue resolution. For instance, attending meetings, providing advice, and inspecting work, a thing, or a situation.

The QNMU's position is that representation of workers in negotiations and issue resolution that is external to a workplace, should be conducted by a relevant union, being a registered union under either the *Fair Work Act 2009* (Cth) or the *Industrial Relations Act 2016* (Qld) (IR Act).

A relevant union should be entitled to represent the industrial interests of a worker, workers, or a health and safety representative who are affected by the dispute, in accordance with two of the objects of the WHS Act to:

(b) provide for fair and effective workplace representation, consultation, cooperation, and issue resolution in relation to work health and safety; and

(c) encourage unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment.

As such, we support the Bill in providing for a new definition of union. These amendments are consistent with the policy position that has recently been adopted by the IR Act. Such changes ensure that that bodies granted the rights and privileges under the WHS Act also have corresponding obligations under the IR Act and provides members with the necessary protection that these Acts afford.

Discriminatory conduct matters

Amending the definition of *discriminatory conduct* to include 'treating a worker less favourably than other workers' is supported by the QNMU. This amendment strengthens the definition to more closely align with the standard provided in the IR Act. The QNMU highlights that broadening the WHS Act to capture less favourable treatment of existing workers, provides better access to justice for our members.

The QNMU also commends amendments to the WHS Act to enable civil proceedings relating to discriminatory or coercive conduct to occur in the Queensland Industrial Relations Commission (QIRC) rather than the Magistrates Court. Additionally, we welcome the amendments to recognise the substantial benefit of unions being able to commence proceedings for discriminatory or coercive conduct under Part 6, Division 3 of the WHS Act. The QIRC is a specialist employment tribunal with the skills, experience and understanding of relevant workplace matters and a low costs alternative jurisdiction. It is considered that

workers and relevant unions are more likely to access the jurisdiction, as has been the case for previous employment related matters than have been transferred from the Magistrate's Court to the QIRC. This amendment is a welcomed initiative that enables greater access for workers and their registered unions to protect workers and HRSs from discriminatory conduct.

Notice of dispute given to commission

In our view, the requirement to wait 24 hours after a request has been made to the regulator to appoint an inspector, should only apply to matters where there is an imminent risk. We welcome the amendment to section 102B (Notice of dispute may be given to commission) to remove the requirement for the dispute to remain unresolved for at least 24 hours after a party has asked the regulatory to appoint an inspector to assist before giving the industrial registrar written notice of the dispute.

The establishment of a mechanism that allows QIRC to quickly deal with matters in dispute, in relation to the WHS Act and WHS Regulation, is a step towards dispute resolution rather than punitive measures (WorkSafe Queensland 2017). Such a mechanism would be valuable to workers, their union, and industries.

Incident notification provisions

The proposed changes to the incident notification provisions are essential to ensure proper visibility and oversight of these matters by our safety regulators and an increased focus of the importance of managing these risks by Persons Conducting a Business or Undertaking (PCBUs).

Notification of serious incidents

The primary purpose of incident notification provisions is to enable the regulator to investigate serious incidents and potential WHS contraventions in a timely manner. It is evident that the current regime does not provide appropriate scope to capture the range of serious injuries and occupational violence risks that our members are exposed to.

Many of the injuries sustained by workers, that results in significant time away from the workplace, particularly those causing musculoskeletal disorders, are not required to be reported as they do not need immediate admission to hospital and are not considered a serious injury or illness under section 36 of the WHS Act. Consequently, the inspectorate may be unaware of injury trends and problems within a particular industry or workplace in a timely manner.

Given these injuries can lead to workers being unable to return to work, having sustained a permanent impairment, the QNMU recommends that they should be reflected as "serious injuries" under the WHS legislation.

The QNMU strongly suggests that the committee consider the instrumental findings of the Boland (2018) review:

"The incident notification provisions are not working as intended. The existing provisions generate significant confusion and do not adequately capture the initial intent of the laws. I recommend these provisions are reviewed; that they provide for a notification trigger for psychological injuries; and that they capture incidents, injuries and illnesses associated with new work practices, industries, and work arrangements".

As a result, the review recommended:

“Review incident notification provisions in the model WHS Act to ensure they meet the intention outlined in the 2008 National Review, that they provide for a notification trigger for psychological injuries and that they capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements.”
(Boland 2018)

The definition of *serious injury* is too narrow, and the review provides an opportunity to expand the definition to accommodate these matters.

The QNMU recently assisted a member working in mental health who was subject to serious assault by a client in their care after the client attempted to stab them in the neck with a sharpened object. Whilst the attempt to stab our member was avoided, the member did sustain an aggravation injury to their back and subsequently developed a serious psychological condition related to the incident. The member has not returned to the workplace since the assault occurred and has undergone surgical intervention related to their back injury but only as a result of ongoing medical review.

Given the seriousness of this incident there would be a reasonable expectation that such an event within a workplace would be reported to the relevant Work Health and Safety Regulator. When considered in the context of the definitions of what constitutes a *serious injury* or *dangerous incident* as prescribed by sections 36-37 of the WHS Act, no notification by the PCBU is currently required.

The QNMU recommends amending section 36 of the WHS Act to explicitly refer to injuries that result in a person to be absent from the person’s voluntary or paid employment for more than 4 days as a serious injury. This definition of serious injury reflects the previous *Workplace health and Safety Act 1995* and *Workplace and health and Safety Regulation 2008* and could assist with psychological injury notification.

This recommendation aligns with Recommendation 22 of the WHS Act Review Report:

That the Minister consider amending the definition of serious injury' to refer to where an employee has been absent from work for four consecutive days, or a more beneficial definition if one is identified through the considerations of incident notification that are occurring nationally in response to the Boland Review.

We also suggest amending section 37 of the WHS Act so that a dangerous incident includes “an exposure to occupational violence in the workplace”. The QNMU suggests adding a notation “that results in medical treatment other than first aid” should it be required.

Psychological injury notifications

The QNMU encourages a review of the WHS legislative framework to deal with the incidence of psychological injury in health care and the latent onset nature of these injuries, which currently is not required to be notified, as the focus of the notification model is on immediate injuries for catastrophic events. We view this as an oversight of the notification process.

The current notification requirement for psychological health, as outlined in the Boland review (2018), does not exist other than for “suicide” which falls within the parameter of notification of a workplace death.

The QNMU regularly assists members who are incapacitated by psychosocial hazards in the workplace. In some instances, psychological injuries have been deemed not to be a notifiable requirement of the employer as there are other possible non-work-related contributing factors resulting in the injury.

The QNMU considers notifications of psychological health a priority issue and urges the committee to revisit recommendation 20 of the Boland (2018) review:

Review incident notification provisions Review incident notification provisions in the model WHS Act to ensure they meet the intention outlined in the 2008 National Review, that they provide for a notification trigger for psychological injuries and that they capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries, and work arrangements (Boland 2018).

References

- Boland, M. (2018). "Review of the model Work Health and Safety laws Final report." from https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf.
- Cho H, et al. (2023). "Psychological safety, communication openness, nurse job outcomes, and patient safety in hospital nurses." *Research in Nursing & Health* 46: 445-453.
- Lawson, C., Whelan, E., Hibert, E., Grajewski, B., Spiegelman, D. & Rich-Edwards, J (2009). "Occupational factors and risk of preterm birth in nurses." *American Journal of Obstetrics and Gynecology* 51.
- Mullen, K., Gillen, M., Kools, S. & Blanc, P. (2015). "Hospital nurses working wounded: Motivations and obstacles to return to work as experienced by nurses with injuries." *Work* 50: 295-304.
- Safe Work Australia (2023). "Key work health and safety statistics Australia 2022." from <https://www.safeworkaustralia.gov.au/doc/key-work-health-and-safety-statistics-australia-2022>.
- WorkSafe Queensland (2017). "Best practice review of Workplace Health and Safety Queensland." from <https://www.worksafe.qld.gov.au/lawsandcompliance/best-practice-review-of-workplace-health-and-safety-queensland>.