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Finance and Administration Committee

Independent Education Union
Queensland and Northern Territory Branch

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Submission Re: Work Health and Safety and Other Legislation Amendment Bill 2014

Introduction

IEUA-QNT welcomes the opportunity to provide feedback regarding the Finance and Administration Committee's inquiry into the Work Health and Safety and Other Legislation Amendment Bill 2014.

IEUA-QNT is an industry union representing ~17,500 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory. As an industry union, IEUA-QNT regularly participates in education and industrial debate at both State and National levels through a system of committees comprised of members and union officers.

Introduction

IEUA-QNT is concerned that the Work Health and Safety and Other Legislation Amendment Bill 2014 appears to be a direct attack on unions, rather than a genuine attempt to improve workplace health and safety outcomes. The bill itself[1], the explanatory notes introduced with the bill[2], and the Minister's introductory speech[3], all fail to explain how the proposed changes will lead to improvement of health and safety outcomes and instead, frame current legislation as working in opposition to normal business operation and cast union officials into an adversarial role that does not reflect their true contribution to workplace safety. On p. 4 of the explanatory notes for example, proposed increases in maximum penalties for permit holders who violate right-of-entry conditions are justified by a statement that this reflects "the impact abuse of these powers has on business operations"[2]. It is disappointing that the government has chosen to deemphasise the benefits of a positive, collaborative approach where employers, employees, union representatives and WHS officials work together to achieve improvements in health and safety and focus on a misguided commitment to reduce legislation by 20%[4,5] by 2018.

We note that the Finance and Administration Committee has previously endorsed a more constructive, collaborative approach. In their 2013 report on an inquiry into the

[1] Queensland Parliament (2014) Work Health and Safety and Other Legislation Amendment Bill 2014. Queensland Parliament: Brisbane
https://www.legislation.qld.gov.au/Bills/54PDF/2014/WorkHealthSafetyOLAB14.pdf

[2] Queensland Parliament (2014) Work Health and Safety and Other Legislation Amendment Bill 2014 Explanatory Notes. Queensland Parliament: Brisbane.
https://www.legislation.qld.gov.au/Bills/54PDF/2014/WorkHealthSafetyOLAB14.pdf

[3] Bleijie, J. (2014) Explanatory Speech: Work Health and Safety and Other Legislation Amendment Bill
http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/140213/Work.pdf

[4] Office of Best Practice Regulation (2013) Initial Report of Reducing the Burden of Regulation in Queensland.
http://www.qca.org.au/Red-Tape-Reduction/Reducing-Regulatory-Burden/Framework-for-Reducing-regulatory-Burden/Final-Report/Final-Report#finalpos

[5] Nicholls, T. & Frecklington, D. (2013) Government response to Office of Best Practice Regulation Report
http://www.qca.org.au/Red-Tape-Reduction/Reducing-Regulatory-Burden/Framework-for-Reducing-regulatory-Burden/Final-Report/Final-Report#finalpos

Queensland Worker's Compensation Scheme[6], the Committee endorses recommendations of a previous review[7] that advocates a consultative, integrated approach to workplace health and safety because the most effective method of keeping compensation payments down is to prevent accidents and injury in the first instance.

In structuring our response to the Bill, we point out how each of the proposed amendments to the existing legislation opposes this principle of collaboration and consultation, including, where possible, case studies that demonstrate how existing provisions support and maintain a more positive and productive WHS culture.

Requirement for at least 24 hours notice by WHS entry permit holders before they can enter a workplace to inquire into a suspected contravention to align with the other entry notification periods in the WHS Act and the Fair Work Act 2009

A primary aim of the current WHS Act was to encourage unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and to assist businesses and workers to achieve a healthier and safer working environment. This aim will not be met if rights to be on site when a risk is suspected are restricted.

Advance notice of entry is not currently required in the case of suspected breaches of health and safety because these are issues of fundamental importance. The first and most obvious concern in relation to this modification of the existing legislation is, therefore, that it impedes action in cases of urgent safety risk and allows unscrupulous employers additional time to cover up workplace issues.

In defending the modification, the LNP indicates that there remains a "duty on persons conducting a business or undertaking to consult with workers on health and safety matters and a mandatory requirement to follow an issue resolution process"[8]. Relying on Individuals to adhere to safety requirements out of duty is however, not as powerful as ensuring they are legally compelled to do so. An example from our files illustrates the power of the legal imperative: A laboratory technician in a secondary school made repeated requests to administration to have a malfunctioning chemical fume cupboard (an essential piece of safety equipment located in the Science department) repaired. Administration repeatedly refused this request, on grounds that the repairs were prohibitively expensive. Only when union officials became involved, and pointed out the school's legal obligation to comply with WHS legislation, did the Principal consent to allocation of funds for the repair.

Even where employers are not intentionally abrogating their responsibilities under the current legislation, union involvement has positive consequences. In one case study, a school Principal authorised a building extension that used copper chromium arsenate (CCA) treated timber, which was left exposed and unvarnished. CCA-treated timer is a restricted chemical product that is not permitted for use in children's

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[6] p. 200, Finance and Administration Committee (2013) Inquiry into the Operation of Queensland's Workers' Compensation Scheme. Queensland Parliament: Brisbane.
www.parliament.qld.gov.au/docs/find.aspx?id=5413T2695

[7] Stewart-Compton, R. (2010) Report of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme.
http://www.deir.qld.gov.au/workplace/resources/pdfs/wc-structural-review-report.pdf

[8] Queensland Parliament (2014) Work Health and Safety and Other Legislation Amendment Bill 2014 Explanatory Notes. Queensland Parliament: Brisbane.
https://www.legislation.qld.gov.au/Bills/54PDF/2014/WorkHealthSafetyOLAB14.pdf

play equipment[9]. Although the school had no elected WHS representative, union members contacted their local organiser when they became concerned about children playing around the building and being exposed to chips and splinters from the CCA-treated wood. When the union organiser contacted the Principal and explained the members' concerns, the Principal agreed to have the untreated wood varnished. In this case, the employer was simply unaware of the risk, until it was pointed out by health and safety representatives and/or union officers.

This is an important point as it illustrates the positive consequences of union involvement in health and safety matters.

As is, the government is failing to acknowledge that their proposed amendment would not only deprive workers of access to support and advice, it also has the potential to increase employer liability in cases where preventing entry of a union official results in harm to a worker.

Increase penalties for non-compliance with WHS entry permit conditions and introduce penalties for failure to comply with the entry notification requirements

IEUA-QNT's principal objection to this modification of the existing legislation is based on the fact that increasing the penalty for failure to comply with entry notification requirements is clearly motivated by a desire to punish unions, particularly as there is no proposal for an equivalent increase in penalties faced by employers who endanger their employees.

The insinuation that, unless constrained, union officials wilfully and flagrantly disregard notification requirements is also unfounded. IEUA-QNT has never had to invoke immediate right of entry to any worksite, has never been found non-compliant and has never been accused of non-compliance in any right-of-entry matter.

Require at least 24 hours notice before any person assisting a health and safety representative can have access to the workplace

Within any workplace, health and safety representatives are elected, from the employee body, with the specific aim of ensuring that there is someone who is officially responsible for raising health and safety concerns with management. The inclusion of workers in necessary WHS consultation therefore depends upon those WHS representatives having unfettered access to appropriate support and advice. Any restriction of a representative's access to that support and advice is a restriction of the right, and constraint on the responsibility, for workers to be informed of workplace health and safety issues.

This provision therefore lacks insight into the nature of the WHS environment. If officials are not granted access to a site, they cannot provide an accurate assessment of the magnitude and extent of risk, meaning the employer will face *greater liability in the event of harm to a worker that could have been avoided.*

In the explanatory notes accompanying the bill, government does acknowledge that this provision is likely to diminish existing protection for workers by removing the surprise element from safety inspections, but argues that it will allow time for safety

[9] Australian Pesticides and Veterinary Medicines Authority (2005) The Reconsideration of Regulations of Arsenic Timber Treatment Products (CCA and Arsenic Trioxide) and their Associated Labels: Report of Review Finding and Regulatory Outcomes Summary Report. Review Series 3. Australian Pesticides and Veterinary Medicines Authority: Canberra. www.apvma.gov.au/products/review/docs/arsenic_intro.pdf

concerns to be addressed through other mechanisms[10]. What government does not acknowledge is that the apparent diminution of employer responsibility justifies a more subjective approach to the appraisal of risk and encourages less stringent approaches to management of hazards.

The government argument that safety concerns can be raised directly with the workplace health and safety regulator[10] is insufficient to counter this. Lodging an appeal with the regulator is a slow and ineffective way to respond to immediate safety threats and an absence of consultative and reporting structures in the workplace will only increase the number of claims to be dealt with. Further, it encourages employers to abdicate their responsibility to design and implement robust and effective mechanisms for resolution of WHS issues. As explained above, this has significant legal repercussions for both employees and employers.

Relying chiefly on employers to identify and manage risks is both inefficient and dangerous. In many cases, employers are simply unaware of the level of risk associated with a particular event or issue. In one case study from our files, a union representative and elected WHS representative contacted our union because he was concerned about administrative plans to demolish two old, asbestos-containing structures on a school site. When the union official contacted school administrators about the member's concerns, they were unable to produce required documentation[11] such as an asbestos register and management plan. When the union official explained that the school had a legal obligation to produce and maintain these documents, and comply with other procedural requirements, the administrative team were able to adopt a more rigorous, safety conscious approach to the demolition.

Contrary to the government's claim that they are reducing red tape[12], the proposed changes also represent a loss of efficiency in the system. If a union official is called to a site to assess a safety risk, the task is performed as part of their regular duties. In comparison, calling on the regulator requires investment of additional government time, money and resources.

Comments made by the Minister[12] also imply that union officials are uniquely predisposed to engage in unethical and unprofessional abuse of right-of-entry privileges, but there is no evidence that this is the case. In reality, any given employer is no more or less likely to abuse their position of power than any given union official.

Remove the power of health and safety representative to direct workers to cease unsafe work

The power to issue cease work orders in response to health and safety risks is an essential mechanism for protection of workers. In the absence of explicit information about arising risks, and direct instructions to cease work, many employees would continue working, unaware of the risks they may be facing. Further, trained health

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[10] Queensland Parliament (2014) Work Health and Safety and Other Legislation Amendment Bill 2014 Explanatory Notes. Queensland Parliament: Brisbane. https://www.legislation.qld.gov.au/Bills/54PDF/2014/WorkHealthSafetyOLAB14E.pdf

[11] Queensland Parliament (2014) Work Health and Safety Act 2011: Work Health and Safety Regulation 2011 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WorkHSR11.pdf

[12] Remeikis, A. (2014) Unions forced to give 24 hours' notice before worksite inspections, under new legislation. Brisbane Times, 14th February 2014. http://www.brisbanetimes.com.au/queensland/unions-forced-to-give-24-hours-notice-before-worksite-inspections-under-new-legislation-20140213-32nbi.html.

and safety representatives often have a better working knowledge of health and safety issues and are, therefore, better able to identify and assess risk.

Occasions where health and safety representatives have invoked stop work orders in the non-government education sector are rare. This can be largely attributed to the fact that schools routinely operate as high duty of care environments. As a consequence, most rely on trained health and safety representatives to negotiate health and safety issues with administration. This system is remarkably effective.

in one of our member schools, for example, the most recent round of enterprise bargaining produced an agreement that the school would establish nine health and safety work groups, with elected, and fully trained, health and safety representatives. The work groups meet regularly with management to develop and assess standards, rules and procedures relating to health and safety. Since this structure was set up cooperatively between the school, unions and staff, there has not been a single health and safety issue that was not resolved internally at a workplace level.

By undermining such constructive, collaborative interactions between employers, employees and union representatives, the proposed changes increase, rather than decrease, the likelihood of health and safety disputes escalating to the point of more substantial interventions such as industrial action.

in the context of this amendment to the existing legislation, it is also important to note that removal of the power to issue cease work orders is an issue with potentially more, and greater, significance in other industries. The nature of hazards encountered in the building and construction industry, for example, is such that there can be an immediate threat to life. A high degree of caution is, therefore, imperative and stop work orders are a legitimate and genuine mechanism of ensuring worker safety.

Remove the requirement under the WHS Act for a person conducting a business or undertaking to provide a list of health and safety representatives to the WHS regulator

The list of health and safety representatives provided to the WHS regulator is an invaluable resource for the Department of Justice and Attorney-General. As a professional network of individuals who have been through appropriate formal training, this group is able to disseminate information from government departments with a high degree of efficiency, ensuring that information reaches all employees.

Within a school context, it is particularly important to note that administrative staff are, necessarily, focussed primarily on day-to-day issues and have little time to monitor government communications and/or health and safety directives. This widely recognised impediment to health and safety, which is replicated in numerous industries, was in fact one of the main reasons why arrangements for alternative health and safety representatives were established.

The merger of various other pieces of legislation into the Workplace Health and Safety Act 1989, and subsequent revisions in 1995 and 2011, had the specific aim of fostering "cooperation and consultation between employers and employees and associations representing employers and employees and to provide for the

participation of those persons and associations in the formulation and implementation of health and safety standards"[13].

Current processes are designed to enhance the consultation process and give workers a voice. Their reversal is not only inefficient, it contradicts an underlying premise of contemporary workplace health and safety culture, as articulated in The Australian Work Health and Safety Strategy 2012-2022[14]: That all workers should contribute to identification and management of risk.

Allow for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation as required by the WHS Act

Removal of the requirement for national consultation in the case of changes to Codes of Practice sets a dangerous precedent. The purpose of the consultation process is to identify, enact and preserve the maximum practicable level of protection for all workers. To allow the state government to remove or modify Codes of Practice without input from other parties has potentially disastrous consequences.

Although we assume that consultation at a state level will still be required before a Code of Practice can be revoked, it is unnecessary and counter-productive to prevent employers and employees from being able to contribute, and respond, to national information and/or perspectives.

Codes of Practice, and enhanced roles of employee representatives, have formed the focus of much legislative change in the past decade and evidence suggests that they have had a significant, positive impact on workplace health and safety: Safe Work Australia report a national, 28% decline in work-related injuries between 2001 and 2012[15].

Electrical Safety Regulation 2002 to 300 penalty units

IEUA-QNT believes that this point requires clarification. At present, it is unclear whether the increase in penalty refers to all offences, or union-specific provisions.

If the purpose of the proposed changes is to promote safety then IEUA-QNT is generally supportive, but would like to point out that increased penalties act as a deterrent only when enforced.

Concluding Comment

Current workplace health and safety legislation has gone through numerous iterations, each of which has seen increased emphasis on the responsibility of all individuals (employees, employers, union officers and regulatory body staff) to work together to reduce health and safety risks and establish a positive, constructive health and safety culture. The amendments proposed in the Work Health and Safety and Other Legislation Amendment Bill 2014 represent a step backwards because they reduce the ability of non-employers to effect changes that protect and enhance the health and well-being of workers.

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[13] Queensland Parliament (1989) Workplace Health and Safety Act 1989. https://www.legislation.qld.gov.au/Repealed/repealed_W.htm

[14] safe work Australia (2012) Australian Work Health and Safety Strategy 2012-2022: Healthy, Safe and Productive Working Lives http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/719/Australian-WHS-Strategy-2012-2022.pdf

[15] Safe Work Australia (2012) National OHS Strategy 2002-2012: Progress Against Targets. http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/sr2010progressagainsttargets

Neither the bill itself, nor any of the supporting documentation, make any explicit reference to the importance of health and safety outcomes as such. Instead, the emphasis is on framing current legislation and practice as impediments to preferred business operations. This is a dangerous, and irresponsible, approach that threatens to undo much of the progress that has been made in regard to enhancing the safety and well-being of workers in all fields of endeavour.

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