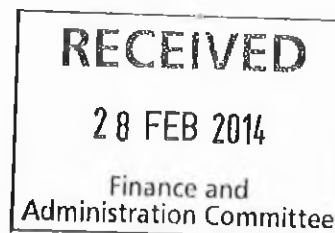


28 February 2014



The Research Director

Finance and Administration Committee

Parliament House, Alice & George St's

BRISBANE QLD 4000

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Dear Director

INQUIRY INTO THE WORK, HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL 2014

SUBMISSIONS OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY, INDUSTRIAL UNION OF EMPLOYEES, QUEENSLAND

The Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland (CFMEUQ) is concerned about the effects that the *Work, Health and Safety and Other Legislation Amendment Bill 2014* (the **Bill**) will have on our members, and members of the public, if passed into law in its' current form and makes the following submissions:

1. **The Bill represents a unilateral change to the National harmonised work health and safety legislation.**
 - 1.1. The *Work, Health and Safety Act 2011* (Qld) (the **WHS Act**) is the result of a significant effort by many parties to implement harmonised work, health and safety laws throughout Australia. The benefits of this include simplification and reduced compliance costs for employers who operate across multiple jurisdictions, and workers who work in multiple jurisdictions are aware of their rights and obligations regardless of where they are working.
 - 1.2. The Bill would undermine the effort and resources expended in creating the harmonised legislation to the detriment of employers and workers. It is submitted that the Finance and Administration Committee (the **Committee**) should delay the making of recommendations until such time as the Select Council on Workplace Relations has considered the Bill. To proceed unilaterally at this time would see Queensland's safety laws stand alone in Australia to the detriment of employers and workers.

1.3. In 2002, the Hon. Tony Abbott, then Minister for Employment and Workplace Relations said¹:

Ministers welcome the national approach it engenders to improving Australia's occupational health and safety performance and state their commitment to achieving the national targets . . .

(emphasis added)

The Bill seeks to undermine this commitment given by Mr Abbott in that it unilaterally amends the National position on work health and safety legislation.

1.4 The Bill if passed in its' current form will render training provided pursuant to work health and safety laws in other jurisdictions to persons now working in Queensland otiose, creating increased cost burdens on employers².

2. The Bill at clauses 6,7, and 11 seeks a reduction in a Health and Safety Representative's powers to prevent injury and death.

2.1 Cl 11 of the Bill seeks to remove the power of a Health and Safety Representative (HSR) to direct that unsafe work cease. It should be noted that the current WHS Act provides that:

- a) a HSR must be elected by employees in their designated workgroup before a direction that work cease can be issued³;
- b) a HSR must have received accredited training before a direction that work cease can be issued⁴;
- c) workers are not obligated to follow this direction; and
- d) a HSR must consult with the employer prior to, or as soon as practicable after, issuing such a direction⁵.

2.2 It is submitted that the current provisions provide ample balance between the rights of the employer and the rights of the employees.

2.3 Further, it is submitted that the current provisions are consistent with the stated aim of the Hon. Jarrod Bleijie, Queensland Attorney-General and Minister for Justice (the Minister), that, "As a Government we are committed to having the safest workplaces in Australia"⁶. Safe workplaces are those where injuries and deaths are prevented. Prevention comes from reducing and avoiding the risks, which can in some circumstances only be achieved by ceasing unsafe work.

2.4 While individual workers will retain the power to cease work where that work poses a serious risk to the worker's health or safety emanating from an immediate or imminent exposure to a risk or hazard⁷, removing the HSR's ability to direct that work cease will see cessations occur

¹ Forward to *National OHS Strategy 2002 – 2012*, Safe Work Australia, 24 May 2002; p.iii

² See for example s 90(4)(c) *Work Health and Safety Act 2009* (Qld)

³ Part 5, Subdivision 4 *Work Health and Safety Act 2009* (Qld)

⁴ s 85(6)(a) *Work Health and Safety Act 2009* (Qld)

⁵ s 82(2) – (5) and s86, *Work Health and Safety Act 2009* (Qld)

⁶ Hansard, 13 February 2014

⁷ s 84 *Work Health and Safety Act 2011* (Qld)

less appropriately. The requirement that HSR's receive training ensures that such work only ceases where necessary. Workers who have not had this training may not appreciate the hazard, or their rights under the WHS Act. This training of HSR's should ensure that cessations of work do not occur unnecessarily, nor that workers are avoidably exposed to a hazard.

- 2.5 CFMEUQ is aware of individual workers suffering mistreatment for raising safety concerns⁸. Individual workers should not be put in the position of having to unilaterally cease work without the assistance of their trained and elected HSR.
- 2.6 The WHS Act provides that a HSR can be disqualified from the role if they exercise a power or perform a function for an improper purpose⁹. CFMEUQ is unaware of a HSR in the construction industry, or indeed any industry, being disqualified for such a reason. It can only be assumed that the powers of HSR's under s.85 of the WHS Act are not being misused, and there is no reason to repeal this provision.
- 2.7 Further it is submitted that at cl's 6 & 7, the Bill's introduction of a 24 hour notice period before a HSR seeks the assistance of any person introduces an unnecessary delay. It is unclear how this furthers the *Policy objectives and the reasons for them* of the Minister in amending in the WHS Act¹⁰.
- 2.8 This further hinders and obstructs HSR's in performing their duties of reducing and eliminating exposure to hazards, and in the premises, the HSR's abilities to prevent injuries and deaths.
- 2.9 Without any referable policy objective or aim (that is, the role of HSR's is not referred to in any of the Minister's material or speeches on the Bill), it is impossible to see how the proposed amendments regarding a reduction in HSR's ability to reduce and eliminate exposure to hazards is justified.
- 2.10 Further the Bill at cl 7 introduces a regulatory burden on employers, which runs counter to the stated aims and objectives of the Bill¹¹.

3. The Bill at clauses 13 to 15 seeks to hinder and obstruct Entry Permit Holders in their investigations of suspected contraventions of the WHS Act.

- 3.1 The Bill seeks to impose a 24 hour notice period on Entry Permit Holders (EPH) exercising a right of entry to workplaces where there is a reasonable suspicion of a contravention of the WHS Act.
- 3.2 As submitted herein at paragraph 2.3 this is contrary to the Minister's stated aim and objective.

⁸ see for example Federal Circuit Court matters BRG265/2013, BRG419/2013 and Fair Work Commission matter numbers C2013/1563 and C2013/4224

⁹ s 65 and Part 4, Division 3, Subdivision 4A *Work Health and Safety Act 2011* (Qld)

¹⁰ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

¹¹ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes and Hansard, 13 February 2014

- 3.3 It should be noted that the current WHS Act only provides entry for an EPH without notice where there is a reasonable suspicion that a contravention of the WHS Act has occurred, or is occurring and relevant workers are affected. That is, there is no unfettered right of an EPH to enter a workplace without prior notice.
- 3.4 The Bill at cl's 13 to 15 in conjunction with cl's 6 and 11 seeks to further burden individual workers in regards to exercising their right to avoid exposure to hazards. The combined effect of these proposed amendments will see workers exposure to hazards increase and potentially see workers exposed to discriminatory conduct¹².
- 3.5 The Minister cites colloquial stories of EPH's misusing their entry powers pursuant to the existing s.117 but fails to provide any specific examples. It should be noted that the WHS Act provides remedies where an EPH misuses their powers but the Minister is unable to cite a single example of such action under the WHS Act. It can only be assumed that no successful prosecution under these provisions has been conducted.
- 3.6 The Minister cites *Director, Fair Work Building Industry Inspectorate v Myles & Ors* [2013] FCCA 2229 as an example of misuse of EPH's powers under the WHS Act¹³. This matter was an action pursuant to contraventions of s.500 of the *Fair Work Act 2009* (Cth) and in no way impugns the actions of EPH's under the WHS Act and is for the present purposes irrelevant and of no assistance.
- 3.7 The Minister also cites a Fair Work Commission matter number [2013] FWC 10168¹⁴. This matter does not involve any EPH's, nor any allegations regarding the WHS Act, nor do any of the allegations arise from actions in Queensland. It is also for the present purposes irrelevant and of no assistance.
- 3.8 The Minister cites the fact that Inspectors responded to 57 right of entry disputes at construction workplaces "Between 2011-12 and 2012-2013". While it is unclear what period of time the Minister is referring to, there have been no prosecutions by Inspectors of EPH's in the construction industry despite having the power to do so. Further, the Minister does not cite how many disputes regarding workers exposure to hazards have been attended by Inspectors. It is suspected that this number significantly exceeds the number of instances that an Inspector has been called to intervene in a right of entry dispute.
- 3.9 If the Minister's assertion that the number of instances of an Inspector being called to intervene in a right of entry dispute is relevant to considerations of the Bill, CFMEUQ submits that the number of instances of an Inspector being called to intervene in a dispute regarding workers exposure to hazards is also relevant and such data should be obtained prior to further considerations of the Bill by the Committee.
- 3.10 If the speculation at paragraph 3.8 herein is correct, it is submitted that the data relied upon by the Minister would support a strengthening of EPH's entry powers, not a diminution.

¹² See paragraph 2.5 herein.

¹³ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

¹⁴ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

3.11 Further the Minister cites colloquial stories from Inspectors that “overall none (sic) of the issues identified were considered to be an immediate or imminent risk to workers or others at the workplace”¹⁵.

3.12 it is submitted that the Minister is applying the incorrect test in that the Minister has confused s.19 of the *Fair Work Act 2009* (Cth) (FW Act) with s’s 84 and 85 of the WHS Act. Regardless, EPH’s employed by the CFMEUQ have identified the following exposures to serious risk to health or safety emanating from imminent or immediate exposure to a hazard during workplace entries pursuant to s.117 of WHS Act:

John Holland Airport Link Project (note: there was a fatality on this project)

Failure to install fall arrest creating fall from heights hazard



¹⁵ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

Failure to install complete scaffolding and edge protection creating fall from heights hazard.



Failure to install complete scaffolding and edge protection creating fall from heights hazard.



Degraded sling used to crane loads creating crush injury hazard



Failure to install edge protection creating fall from heights hazard



Failure to secure ladder footings creating fall from heights hazard (note markings in first photo showing where ladder has slipped while being accessed by worker)



Failure to install edge protection on penetration creating fall from heights hazard



Failure to install sufficient edge protection creating fall from heights hazard



Failure to install edge protection and install complete scaffolding creating fall from heights hazard



Various projects and sites in Queensland
April 2013

Failure to install edge protection creating fall from heights hazard



June 2013

Failure to install fall protection at man and material hoist entrance (checker plate visible in photo is access to hoist) and failure to prevent contact between live power lead and metal hoist creating fall from heights and electric shock hazards



Failure to install edge protection creating fall from heights hazard



Failure to install complete scaffolding, edge protection and barricading creating fall from heights hazard



July 2013

Failure to secure scaffolding and failure to properly store materials creating scaffold collapse hazard



August 2013

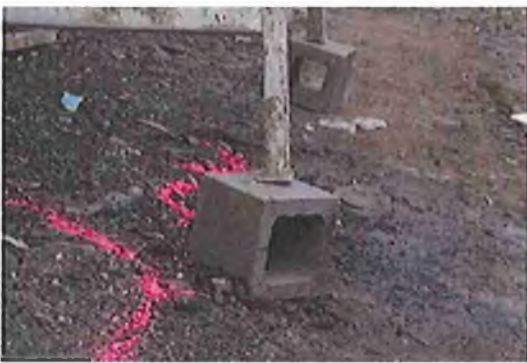
Failure to install shoring on excavation wall and failure to install edge protection (note building in background is a school that was open at the time)



Failure to provide traffic control creating vehicular accident hazard (note mother and child in path of reversing concrete truck)



Failure to secure footing of scaffolding creating scaffold collapse hazard



September 2013

Failure to install edge protection and barricading around openings in formwork on live deck creating (note concrete finisher used adjacent to unprotected edge)



Failure to install edge protection and barricading around openings in formwork on live deck creating (note concrete finisher used adjacent to unprotected edge)



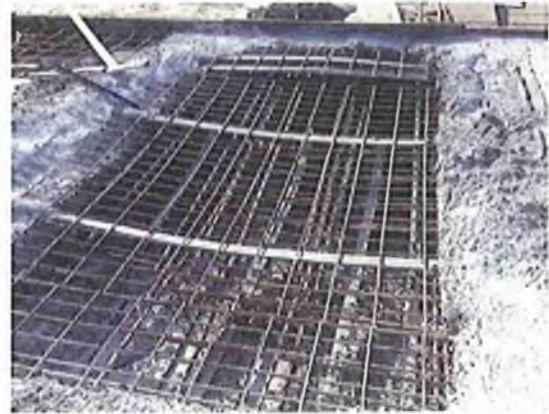
Failure to secure scaffolding causing scaffold collapse and hazard



Failure to install edge protection and shoring and battering on excavation creating fall from heights and cave-in hazards



Failure to shore and prop formwork resulting in deck collapse and failure to install edge protection creating crush injury and fall from heights hazards.



Gap in scaffolding greater than permitted by regulations creating fall from heights hazards



Non-compliant sole-boards creating scaffold collapse hazard



Failure to install edge protection creating fall from heights hazard



October 2013

Failure to install edge protection creating fall from heights hazard



November 2013

Uncapped starter bars, incomplete scaffolding, failure to install edge protection on live deck creating fall from heights and penetration injury hazards.



Perimeter scaffolding incomplete, incompatible scaffolding components used, no barricading of scaffolding and no edge protection on live deck creating fall from heights and scaffold collapse hazards



February 2014

Failure to install edge protection and fall arrest system creating fall from heights hazard



3.13 It is clear from the photographic evidence herein that the hazards referred to represent exposures to serious risk to health or safety emanating from imminent or immediate exposure to a hazard. It is also clear that each photograph depicts a clear contravention of the *Work Health and Safety Regulations 2011* (Qld) or the WHS Act.

3.14 It should be noted that the examples cited at paragraph 3.12 herein were largely on construction sites that had HSR's and safety committees (and even on a large Queensland Government funded project), yet but for the EPH exercising their entry rights pursuant to s.117 of the WHS Act the workers would have continued to have been exposed to these hazards.

3.15 It should be noted that many of the contraventions cited herein at paragraph 3.12 involve the risk of falls from heights. Falls from heights represented 51 of 211 deaths in the construction industry from 2007-08 to 2011-12¹⁶.

3.16 The Minister cites that inconsistencies between right of entry provisions in the FW Act and the WHS Act creates "complexity and confusion"¹⁷. CFMEUQ refutes this. The FW Act provides

¹⁶ Safe Work Australia Construction Fact Sheet, 26 November 2013 (available at <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/430/Construction-Fact-Sheet-2011-12.pdf>)

¹⁷ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

right of entry to officials of unions to hold discussions with members or eligible members¹⁸, or to investigate suspected contravention of the FW Act or workplace instruments¹⁹.

3.17 There could be no, or should not be, confusion between industrial matters addressed by the FW Act and safety matters addressed by the WHS Act. It should be expected that a person conducting a business or undertaking is familiar with these simple and few right of entry provisions. It should be noted that matters addressed by the FW Act right of entry provisions could not be classed as urgent, as opposed to safety contraventions which should be dealt with as a matter of urgency if the Minister is to be held to the Government's stated objective of having the safest workplaces in Australia.

3.18 The Minister seeks to rely on an industrial stoppage of 42 days²⁰ to diminish powers of EPH's regarding contraventions of safety. Again, industrial issues and matters of safety should not be confused.

3.19 The effect of the Bill, if passed in its' current form, would be to place increased responsibility on the Department of Employment and Industrial Relations Workplace Health and Safety Inspectorate to ensure exposure to hazards for Queensland workers is reduced or eliminated. This is at a time where the Queensland Government has brought down a budget for 2013-14 with a \$7.7 billion deficit²¹. It is unclear why the Minister would, by introducing this Bill, place the Government in the position of having to choose between a reduction in safety in Queensland workplaces, or an increased spend on the Workplace Health and Safety Inspectorate.

4. The Minister is placing unwarranted weight on colloquial, unsourced stories from the construction industry.

4.1 The Minister refers to the construction industry at length in the *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes and Introductory reading speech on 13 February 2014 for the Bill. It is submitted that safety should be a priority for all stakeholders, including EPH's, in the construction industry.

4.2 From 2007-08 to 2011-12, 211 workers in the construction industry were killed in workplace incidents in Australia. This represents 4.34 deaths per 100,000 workers, nearly double the national average of 2.29²².

4.3 The Safe Work Australia National OHS Strategy 2002-2012, endorsed by the Hon. Tony Abbott, rightly prioritises the construction industry.

4.4 It should come as no surprise to the Minister that there is a greater level of activity by EPH's in the construction industry compared to other industries, and no adverse inference should be drawn.

¹⁸ s.484 *Fair Work Act 2009* (Cth)

¹⁹ s.481 *Fair Work Act 2009* (Cth)

²⁰ see *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) Explanatory Notes

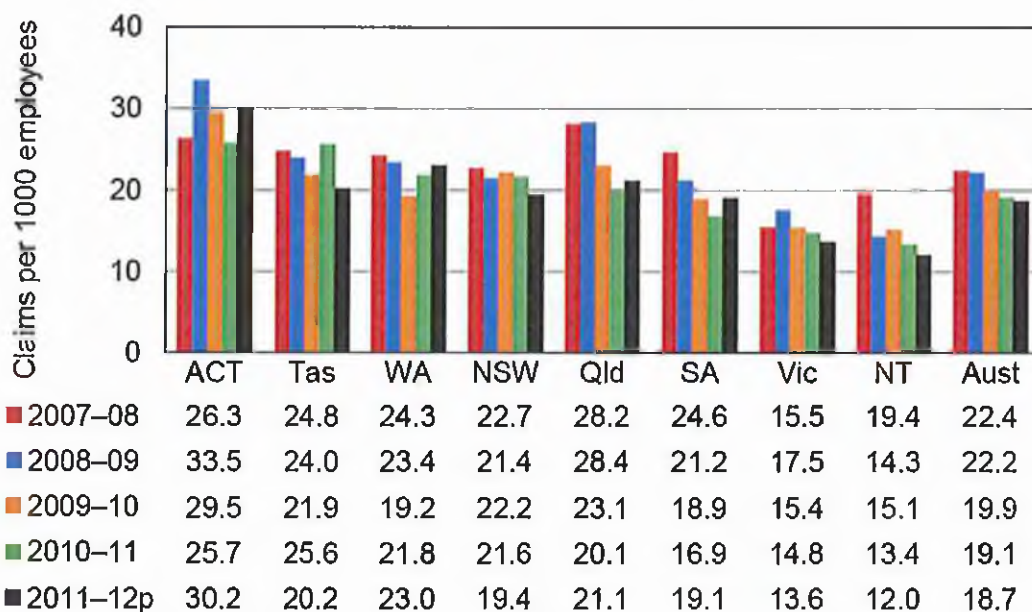
²¹ <https://lnp.org.au/static-news/queensland-state-budget-2013-14/>

²² Safe Work Australia Construction Fact Sheet, 26 November 2013 (available at <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/430/Construction-Fact-Sheet-2011-12.pdf>)

4.5 Statistics collected by Safe Work Australia demonstrate that the rate of serious claims for compensation for workplace injuries in the construction industry in Queensland is unacceptably high when compared to other states.

4.6 The following graph²³ shows that:

- a) Queensland has the third highest rate of serious claims per worker in Australia, behind ACT which given the small number of workers may not be statistically relevant, and Western Australia which like Queensland is home to many large civil construction projects;
- b) Queensland is one of four states or territories that saw an increase in the number of serious claims in the construction industry from 2010-11 to 2011-12.



4.7 CFMEUQ believes that the statistics on fatalities and serious injuries in the construction industry generally, and particularly in Queensland are unacceptable. The Bill will see an increase to the exposure of Queensland workers in the construction industry to hazards which will inevitably see an increase in fatalities and serious injuries. This is unacceptable to CFMEUQ, and hopefully also to the Minister.

5. Conclusions

5.1 The Committee should not consider the Bill until such time as the Select Council on Workplace Relations has considered the Bill.

²³ Safe Work Australia Construction Fact Sheet, 26 November 2013

- 5.2 The Committee should recommend that cl's 6,7,11,and 13 to 15 not be passed by the Parliament.

Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland

28 February 2014