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Good Afternoon

Please see attached the submission by the Electrical Trades Union of Employees Queensland in response to the Work Health and Safety and other legislation amendment bill 2014.

I request that you confirm receipt of our submission.

Kind Regards
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Review of the Work Health and Safety and Other Legislation Amendment Bill 2014

February 2014

Submitted By

THE ELECTRICAL TRADES UNION OF EMPLOYEES QUEENSLAND

The Electrical Trades Union of Employees Queensland (the ETU) is an Organisation registered under the *Industrial Relations Act 1999* (Qld).

The ETU is a union of over 13, 000 members[1] representing employees employed in, or in connection with, the electrical industry and we make this submission on their behalf in response to the *Work Health and Safety and Other Legislation Amendment Bill 2014* ("the Bill").

Despite the short timeframe to review and respond to the proposed amendments, a number of concerns have been identified. Principally the Union is concerned that the proposed amendments reduce workplace health and safety rights and protections for workers in favour of convenience for business. Any reduction to regulation of workplace health and safety that lowers the standard of protections for Queensland workers is unacceptable.

In the explanatory notes reference is made to "the impact of the WHS laws on business, including unanticipated or inequitable compliance costs...and disruption this creates for business", however what is not recognised is the fact that if PCBUs were compliant with their work health and safety obligations in the first place compliance costs and disruption to business would not be an issue. It is reasonable to deduce that unanticipated costs to business means that Work Health and Safety issues are being identified and rectified, leading to improved workplace health and safety standards for workers.

The explanatory notes also refer to complaints made to the WHS regulator in respect of right of entry disputes. While it highlights that WHS inspectors responded to 57 right of entry disputes between 2011-2012 and 2012-2013, it does not state how many occasions right of entry provisions were exercised without issue during this period, nor does it state the number of complaints that were actually found to be valid. On its own this figure provides little insight into the purported ineffectiveness of existing right of entry provisions and serves only to demonise WHS permit holders whose purpose is to ensure adherence to Work Health and Safety laws and prevent workplace accidents and fatalities from occurring.

An extensive consultation process took place with stakeholders in order to establish national harmonisation of work health and safety legislation and regulation. The process included input from "regulators, union and employer organisations, industry representatives, legal professionals, academics and health and safety professionals", as well as hundreds of additional written submissions from interested parties, including individuals[2]. Any variation to current Work Health and Safety legislation undermines the guiding principle of a harmonised system, which is to ensure that all workers in Australia have access to the same standards and protections of health and safety at work.

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

Currently in order for a health and safety representative within a workplace to direct workers to cease unsafe work, as a minimum, they must have completed approved training that provides them with the knowledge and expertise to appropriately identify situations where "to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard"[3].

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[1] As at 31 January 2014

[2] Safework Australia, *Harmonisation Background*. Available at: http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/background/pages/background

[3] Wok Health and Safety Act 2011 (Qld) s 85

Furthermore, the established parameters for when a health and safety representative can invoke his/her right to direct workers to cease unsafe work are so stringent that the capacity to do so is limited only to extreme circumstances.

While there is the capacity to raise safety concerns with the PCBU, WHS regulator or inspector directly, this is of no benefit when the risk is so serious and immediate or imminent that to proceed through a consultation/reporting process in the first instance would be too little too late.

When it comes to safety, there needs to be a multifaceted approach to ensure the health and safety of workers. The argument that there are other mechanisms contained within the Act, is not sufficient justification to erode existing provisions that were included in the legislation as part of a holistic approach to work health and safety, following an extensive consultation process.

The benefit of HSRs maintaining these powers is that they provide an additional set of eyes on the ground to ensure individual worker and PCBU compliance with workplace safety rules and regulations, provisions of the Act and safe systems of work on a day to day basis. While this is in the interests of the entire workforce and the PCBU, it is particularly important in the prevention of incidents with workers who are more susceptible to workplace injuries such as inexperienced, young or non-English speaking workers.

When querying ETU organisers and delegates as to examples of when HSRs have used these powers to direct workers to cease unsafe work, it became clear that this is not something that occurs very often and only in the case of serious risk of imminent or immediate exposure to a hazard, due to the established consultation guidelines that already exist within the Act being appropriately followed. Where there are allegations of misuse, the Act contains suitable provisions to remove a HSR and disqualify them from further performance of these duties[4].

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 removal of the requirement under the WHS Act for a PCBU to provide a list of HSRs to the WHS regulator is a politically motivated amendment, so the current State Government can argue that it is meeting its election promise to "reduce red tape". PCBUs are rightfully still required to compile and display an up-to-date list, in the workplace, of each HSR and deputy HSR, so the reduction in work for PCBUs with this amendment is minimal at best.

However, if PCBUs do not have an obligation to provide this up-to-date information to the WHS regulator there is a legitimate risk that ensuring these records on site are current may become less of a priority for PCBUs to the detriment of workers.

Further, there is an additional disadvantage to the WHS regulator, if they do not receive these records they will have no way of tracking the number of HSRs that exist in workplaces, nor will they have current records to effectively disseminate important work health and safety information through a network of HSRs.

Require 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*;

The capacity of WHS permit holders to enter a workplace to inquire into a suspected contravention without having to provide at least 24 hours notice is a provision that already existed in Queensland

[4] Work Health and Safety Act 2011 (Qld) s65

workplace health and safety legislation prior to the implementation of the harmonised Work Health and Safety Act 2011 (Qld). The fact that this provision was preserved in the harmonised Work Health and Safety legislation is an indication that through the consultation process it was recognised that it is in fact necessary and effective.

Despite the very few examples of alleged abuse of right of entry powers there are many more examples of circumstances in which it has been essential for WHS permit holders to attend a workplace with less than 24 hours notice.

Example 1:

At the Brookfield Multiplex Indooroopilly Shopping Centre Redevelopment, two workers fell through a concrete slab whilst it was being poured. They fell 4.5 metres and it was only by luck that this incident did not result in a fatality. Upon notification of the incident Union Officials used their right of entry powers to immediately attend site and investigate suspected contraventions. On the day of this incident, the slab that the workers fell through was one of two that were scheduled to be poured that day. Upon investigation it was identified that there was a range of non compliance issues relating to the incident including that:

- The slab did not have adequate support for the form work
- There was no engineers sign off prior to beginning the pour
- No exclusion zone under the area – which in and of itself had the potential to seriously injure or kill five workers, working within the area.

All of these issues were also found to exist with the other slab that was in preparation to pour. Being able to get to site without notice gave the Union Officials time to notify the PCBU of the contraventions and suspend the pending pour until all the necessary control measures were put in place. Without WHS permit holders being able to attend site immediately to inquire into a suspected contravention, it is highly likely that the second slab would also have collapsed but the consequence that time could have been a fatality.

Example 2:

At the Matrix Construction Mosaic Fortitude Valley Project an incident occurred in which a plasterer nearly fell to his death. The worker fell out the building and it was only that he managed to grab hold of some bunting tape that he was able to stop himself from falling to his death. Upon notification of the incident Union Officials used their right of entry powers to immediately attend site and investigate suspected contraventions. It was established that this incident had occurred because there was not adequate edge protection and as such it was necessary that all work on the perimeter edge ceased, until work could be performed safely in the area. While inquiring into the suspected contraventions that had led to this near fatality, a further 45 breaches to the OHS standards were identified. Had WHS permit holders not been able to attend site immediately, a similar incident could have occurred but with more serious consequences.

There are many benefits associated with WHS permit holders being able to enter a workplace to investigate a suspected contravention without providing a minimum 24 hours notice, not least of all to prevent a serious workplace incident and/or fatality, and there is no effective substitute.

WHS permit holders are required to complete prescribed training, which gives them specific skills and expertise to identify safety contraventions that could lead to workers' health and safety being put at risk. While the Act does provide a suite of mechanisms to identify and address safety issues, WHS permit holders are independent of the workplace and as such provide a mechanism to ensure the safety concerns of workers are identified and addressed, without danger of being influenced by workplace pressures. It is true to say that like a WHS permit holder the WHS regulator has inspectors

that are independent of the workplace and possess specific skills and expertise to identify safety contraventions, but the reality is that the department is vastly under resourced and as a result is forced to function in a reactive rather than proactive manner. WHS permit holders assist WHS inspectors by increasing the number of people inquiring into suspected contraventions and ideally eliminating risks to workers before an incident and/or fatality occurs.

Furthermore, while workers will maintain the ability to raise safety concerns with health and safety representatives, should all of the proposed amendments in this Bill proceed, the most significant power and function of health and safety representatives —to direct workers to cease unsafe work – will be removed, further limiting protections for workers.

Requiring a WHS permit holder to provide at least 24 hours notice of entry for suspected contraventions will diminish protections for workers, as this is used only in circumstances in which there is an immediate and imminent risk to workers safety, that if left for 24 hours could result in a serious injury or fatality, as demonstrated in the above examples. Further, if PCBUs are given advance notice each time a WHS permit holder is going to attend their workplace, there is a real risk that safety issues will be fixed up prior to but only for inspections rather than PCBUs and workers being safety conscious at all times. This is an undesirable side effect, whereby overall standards would fall and could subsequently lead to an increase in workplace incidents.

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

As is the case with the proposed amendment that requires an entry permit holder to provide at least 24 hours notice prior to entry, if the PCBU can refuse access to a person assisting a HSR for not giving 24 hours notice, this will adversely impact on workers.

There are circumstances in which a HSR will require assistance to ensure that the Health and Safety of workers are adequately protected. If there is an immediate and imminent risk to workers safety and the HSR needs assistance or specific expertise from a suitably qualified person, it is unreasonable that the issue should be left for 24 hours when such a delay could result in serious injury or fatality of a worker.

The WHS Act already gives the PCBU the power to refuse access to any person assisting a HSR if they do not have a valid entry permit or any other reasonable ground[5]. There are legitimate situations where a person assisting a HSR is required to access a site with less than 24 hours notice and to stipulate in the WHS Act that they must provide at least 24 hours notice is detrimental to the protection of workers, when ensuring the safety of all workers at all times should be the priority of any Work Health and Safety legislation.

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

This amendment completely undermines the principles of national Work Health and Safety harmonisation.

There are negative implications for both workers and PCBUs who work across multiple state jurisdictions if codes of practice can be varied or revoked without national consultation, as it will create inconsistencies in Work Health and Safety rights and obligations. This will create additional work and expense for PCBUs who will need to ensure awareness and compliance with differing legislative and regulatory requirements and potentially facilitate additional training for workers to

[5] Work Health and Safety Act 2011 (Qld) s71(4)-(5)

ensure their awareness of work health and safety rights and obligations across the different jurisdictions. For workers this could easily create confusion as to their rights and obligations.

Aside from the issue of inconsistency, failure to adhere the national consultation process, excludes any obligation for the minister to consult with industry stakeholders before making amendments to codes of practice. No minister has the knowledge or expertise, to make suitable informed variations to codes of practice. Failure to consult could result in flawed amendments that are detrimental to the health and safety of affected workers.

We call on the Finance and Administration Committee to give consideration to the negative impacts on workers covered by this Act, should the proposed amendments be implemented and in the interests of workers across Queensland, refuse to support the proposed amendments.