Queensland Council of Unions

President: **John Battams** General Secretary: **Ron Monaghan**

28 February 2014

The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

By email: fac@parliament.qld.gov.au

To The Research Director

Please find enclosed the Queensland Council of Unions submission in relation to the Work Health and Safety and Other Legislation Amendment Bill 2014.

Yours sincerely

John Martin
Research & Policy Officer

Level 5, TLC Building
16 Peel Street
South Brisbane 4101
Tel: (07) 3010 2555
Fax: (07) 3844 4865
Email: info@qcu.asn.au
Web: www.qcu.asn.au

Queensland Unions
...working for a better life

Queensland Council of Unions

QCU Submission to the Finance and Administration Committee.
Work Health and Safety and Other Legislation Amendment Bill 2014.

Prepared by:
Pamela Grassick
[redacted]

The following submission is made on behalf of the Queensland Council of Unions to the Finance and Administration Committee. It covers matters related to the introduction of the *Work Health and Safety and Other Legislation Amendment Bill 2014* to the Queensland Parliament[1].

If implemented, the matters contained in the Bill will lead to a reduction of workers' rights and an increase in deaths, illnesses and injuries of workers in Queensland. The unnecessary death, illness or injury of a single worker is unacceptable, particularly since the proposed changes to the Act have no clear benefit for industry.

Deviation from national harmonisation

The changes to the Act would breach National Harmonisation and reduce standards in Queensland to below that of other states. National harmonisation was a lengthy process in which all parties to the negotiations were consulted and reached agreement with compromises on both sides. Regulators, employers and unions saw that national harmonisation was necessary to reduce the red tape that resulted from having to follow different provisions in different jurisdictions. There is a massive ongoing cost saving from remaining in a harmonised framework.

The proposed changes to the Act would not only result in a lower standard of protection for Queensland workers and more administrative and training costs for business, but would also create an additional burden for the regulator since there is a large cost saving involved in maintaining consistency between guides, interpretive notes, campaign materials and training course materials.

Right of entry without notice

The proposed amendments seeks to require at least 24 hours prior notice by WHS entry permit holders before they can enter a workplace to inquire into a suspected contravention.

The proposed changes arise from a strong anti-union focus which was evidenced in the speeches made to parliament about the changes that the LNP government would make to the nationally harmonised legislation if they achieved power.[2] These views reflected the opinions of a small number of lobby groups and did not begin to approach the scope and complexity of the two-year consultation around national harmonisation. Right of entry was discussed, considered and ultimately recommended or agreed by the Review Panel of the National Review into Model Occupational Health and Safety Laws, the SWA SIG-WHS, Safe Work Australia Members and the Workplace Relations Ministers Council, all with the support of Queensland. Following the 2011 State election, the LNP government held only two consultative meetings before making the changes.[3]

The proposed changes arise from ideology and not necessity.

---

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

[2] Queensland Parliament. Record of Proceedings (Hansard), 10th May, 2006 https://www.parliament.qld.gov.au/documents/hansard/2006/2006_05_10_WEEKLY.pdf

[3] Department of Justice and Attorney-General. Workplace Health and Safety Queensland. (2013) *Proposed outcomes from the review of the model work health and safety laws in Queensland. Discussion Paper*. Brisbane: Qld Govt.

The reality of workplaces is that they pose many life-threatening risks that must be dealt with immediately to save the lives of workers, customers, workers in neighbouring premises and rescue personnel. In a perfect world, these issues would be resolved internally, but - in reality - the existence of recalcitrant employers necessitates processes external to the workplace. Inspectors provide one avenue for this, but employer groups, unions, WHS experts and regulators ultimately agreed that the limited resources of the inspectorate meant that that union right of entry *without delay* was an important alternative issue resolution avenue.

The amendment ignores both the overwhelmingly constructive use of this provision by unions and the positive outcomes that have been achieved. Some employers predicted union abuses of this provision, but this has not happened. Figures from the Queensland Regulator show that there have been less than 57 complaints about union right of entry (the number that concern right of entry without notice has not been released).[4] Even if all of the 57 complaints were around right of entry without notice, this only amounts to about one complaint per fortnight, compared with 9,919 total complaints (95 per week)[5] and 140,099 accepted compensation claims (1,347 per week)[6] in the same period.

The legislation as it stands provides a number of avenues if abuses were to occur. These include: the conditions that the Act places on Entry Permit Holders (EPH) (i.e. they must have a reasonable suspicion that a contravention has occurred or is occurring); the need for the EPH to be trained in a course approved by the regulator; the requirements for the EPH to abide by laws while at the workplace; the PCBUs ability to refuse to comply with requirements while the EPH is at the workplace if they have reasonable excuse; limitations on when and where the EPH rights may be exercised; the exclusion of residential premises used for work; the need for the EPH to be registered; the ability of the Industrial Registrar to impose conditions on an entry permit; the employers right to request that the permit be revoked; the regulator's right to revoke the permit; the requirement of the EPH not to act in an improper manner or to hinder or obstruct the PCBU or workers (s.138); the right of the PCBU to ask the regulator to resolve disputes; the ability to impose fines and sanctions on the EPH.[7]

There are no figures available for the number of EPHs who have had their permit revoked or fines imposed. A meeting of QCU affiliates was only aware of one case which was for administrative reasons (not reasons of misuse) and was eventually reversed.

The current legislation resulted from the Council of Australian Governments' National Reform Agenda's aim to reduce compliance costs and red tape for business, improve efficiency for regulators, protect workers and improve WHS. These objectives are currently being met and workplace death, injury and illness rates are improving. If Queensland defaults from the nationally harmonised legislation, red tape and compliance costs will increase for cross-jurisdictional businesses, and health and safety standards will slip backwards.

Proposed removal of the HSR's right to direct workers to cease unsafe work

Currently, s.85 of the Act allows a HSR to direct a worker in their work group to cease work if the HSR has a reasonable concern that doing the work would expose the worker to a serious risk

---

[4] Queensland Parliament (2014) *Work Health and Safety and Other legislation Amendment Bill 2014. Explanatory Notes.*

[5] Queensland Government (2014). *Workplace Health and Safety Queensland Performance.* http://www.deir.qld.gov.au/workplace/statistics/whsq-performance/index.htm#activity

[6] Queensland Government (2014). *Workers Compensation Claims Data.* http://www.deir.qld.gov.au/workplace/statistics/workers-comp-claims-data/index.htm

[7] *Work Health and Safety Act, 2011 (Qld)*

emanating from an immediate or imminent exposure to a hazard. If it is reasonable to do so, the HSR must first consult with the PCBU and attempt to resolve the matter.

It is important to note that this right to direct a worker to cease work is not an industrial action as it only relates to the task or activity that is creating the serious, imminent risk. Under sections 86(b) and 87 the worker must continue working, and can be directed by the PCBU to do alternative work at the same or another workplace. The targeting of HSRs as part of an "anti-union" agenda is unjustified, not only because directing a worker to cease work is not industrial action, but because only 18% of HSRs are members of a union.[8]

The proposal is that this section of the Act be entirely removed. The major justification for this removal is that it is not necessary since other mechanisms under the Act (PCBU's duty to consult, the existence of issue resolution procedures and the ability of workers to contact the regulator) provide sufficient protection for workers.

This justification misunderstands the current provisions of the Act in three fundamental ways:

- The provisions of s.85 apply where there is a serious risk emanating from *immediate* or *imminent* exposure. This would cover situations such as the immediate or imminent risk of explosion, collapse of structure, burns, release of toxic chemicals or the use of plant in a manner that is clearly unsafe. Mechanisms such as general consultation, using issue resolution procedures or contacting the regulator are clearly not designed as primary, immediate responses to these types of situation.

- The removal of this provision is utterly counter-productive when taking into account how these provisions are most commonly used by HSRs. A recent survey of 496 HSRs showed that 17% have directed workers to cease work in 12 month period before the survey.[9] Talking to HSRs during training courses clearly reveals that this higher than expected proportion is explained by the fact that HSRs often use the cease work provisions to enforce the employer's safety rules, the Act or general safe working principles (by, for example, telling the worker to stop what they are doing and do it a safer way). This is particularly important since HSRs are workers who work with other workers and are therefore not as remote as supervisors and managers are apt to be. Since HSRs may have no supervisory authority for directing other workers, the use of the cease work provisions gives the HSRs an alternative source of authority and credibility.

- Where HSRs use the provisions to improve poor WHS standards in a workplace (rather than to enforce safety rules), this gives particular protection to workers who – for a variety of reasons – feel unable to approach the employer themselves. As one example, young workers make up a fifth of all work-related injuries[10] and are much more likely to be unsure of their rights and responsibilities[11]. Their limited experience means that they depend heavily on other workers to tell them if something is unsafe and on the HSR to "speak up" for them.

---

[8] Safe Work (2014) *Survey of current HSRs regarding the use of provisions and opinion of impact of changes to the WHS Act.* Safe Work: Brisbane. Data and Summary available on request from pg@safework.qld.edu.au

[9] *ibid*

[10] Safe Work Australia (2013) *Media Release 20th March 2013. Young workers – a burning issue for Australian workplaces.* http://www.safeworkaustralia.gov.au/sites/swa/media-events/media-releases/pages/mr20032013

[11] Department of Justice and Attorney-General. Workplace Health and Safety Queensland. (2014) *Young workers.* Brisbane: Qld Govt. http://www.deir.qld.gov.au/workplace/young-workers/young-workers/index.htm

In total, 77% of HSRs believe that the changes proposed in the legislation would reduce their ability to make the workplace safer.[12]

The Act also provides sufficient safeguards against the misuse of this provision, including the specification that HSRs must be trained in a regulator-approved course. This 5-day training course gives the HSR a level of practical and theoretical knowledge which – coupled with their direct on-the-job experience of the task at hand – means that they are often in a far better position than either the workers themselves or the employer to understand the risks. In giving the HSRs the power to direct unsafe work to cease, the Review Panel (in sections 28.36 and 28.37 of their Final Report[13]) stated that:

> *HSRs, given their training and operation on a day to day basis in the workplace, may be better place than an individual worker to be able to progress discussions with the person conducting the business or undertaking and have more experience in the use of the resolution process...Concerns raised in submissions and consultation about the potential for misuse by an HSR of the power to direct a cessation of work, can be met by the provisions that we recommend for the disqualification of an HSR.*

This was accepted without comment by the Workplace Relations Ministers Council.

In cases where HSRs are misusing the provisions, the Act has sufficient provisions to disqualify HSRs under Subdivision 4A. There is no information available from the regulator about the number of HSRs who have been disqualified. The QCU is not aware of a single case.

PCBU to provide a list of HSRs to the regulator

The proposed amendment will remove the requirement under the WHS Act for a PCBU to provide a list of HSRs to the WHS regulator.

It is surprising that the regulator no longer wants a list of HSRs given the amount of time and effort that they spend trying to disseminate information about WHS to Queenslanders. The regulator depends upon unions, employer bodies and professional networks to distribute material so that they do not need to rely on passive information distribution methods such as workers logging into the website or volunteering for mailing lists. HSRs are perfectly placed to distribute information within workplaces. Workers are also more likely to pay attention if the material comes from a source that they trust. HSRs are also usually be aware of literacy problems that workers have and have received training about the need for information to be communicated and distributed verbally (via tool box talks etc.) rather than in a written forms. This means that HSRs can disseminate important information which would otherwise be extremely difficult to get out into the community.

Furthermore, the regulator having a list of the HSRs not only legitimises and lends weight to the role of the HSR, but also provides a motivation for the PCBU to see that provisions requiring the up-to-date manifest of HSRs are met and that these HSRs are trained.

---

[12] Safe Work (2014) *Survey of current HSRs regarding the use of provisions and opinion of impact of changes to the WHS Act.* Safe Work: Brisbane. Data and Summary available on request from pg@safework.qld.edu.au

[13] Review Panel of the National Review into Model Occupational Health and Safety Laws (2009) *Final report.* Australian Government: Canberra.

Removal of national consultation for Queensland Codes of Practice
This amendment would allow for codes of practice (COP) adopted in Queensland to be approved, varied or revoked without requiring national consultation.

The QCU opposes Queensland defaulting from the nationally harmonised legislative framework. The government has stated that they are focused on reducing regulatory red tape. We believe that the changes would have the opposite effect from that which is intended. Cross-jurisdictional employers would have increased burdens because they would need to comply with separate legislation and provide different training courses in different jurisdictions.

Overall, the changes suggested to Act will not reduce red tape or compliance costs to industry or make for a more efficient regulatory system. They will, however, lead to lowered standards of health and safety and increase the number of injuries, illnesses and deaths in Queensland workplaces.