

**STRONGER
TOGETHER**

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

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Dear Director

I refer to your correspondence dated 14 February 2014 regarding proposed amendments to the *Work Health and Safety Act 2011* (the Act).

Amendments reducing the powers of WHS Permit Holders

A number of the proposed amendments seek to reduce the powers of WHS permit holders to immediately assist members at the workplace where there is a suspected breach of safety requirements. Specifically, it requires permit holders to provide 24 hour notice to the employer prior to entry and introduces increased penalties for non-compliance with this notice requirement.

It is submitted by the Australian Workers' Union that removing the ability of a trained permit holder to immediately enter a workplace and assist workers who are potentially exposed to an immediate risk will increase the likelihood of injury and/or disease. It will place thousands of workers who work across thousands of workplaces more at risk because they cannot immediately call upon the support of their union.

Further, placing a 24 hour space between a trained permit holder being able to access a site where there is a suspected safety contravention logically enhances the risk to workers on site.

The purported reasoning by the LNP Government for these amendments is the alleged misuse by some permit holders. The AWU is not aware of any evidence put forward by the LNP Government which justifies this assertion.

Further, if an employer believes that there has been a contravention by a permit holder they have the ability under section 138 of the Act to have the holder's permit revoked by the Queensland Industrial Relations Commission (the commission). The AWU is not aware that any employer has taken up this option.

Further, the AWU is not aware of any employers who have raised concerns about any permit holders entering sites for the purpose of investigating and consulting on suspected

breaches of the Act. In correspondence dated 22 July 2013 the AWU pressed the department to outline where permit holders had breached the Act and where employers had accessed section 138 of the Act to manage alleged contraventions. The department responded in correspondence dated 12 August 2013 and was unable to provide any evidence of breaches or employers accessing the commission to resolve alleged misuse.

It is submitted by the AWU that the reasoning put forward by the LNP Government for the proposed amendments is disingenuous and that the right of employees to ensure suspected safety contraventions are immediately dealt with far outweighs the ability of employers to be unaccountable and relax safety standards.

This risk is all the more serious when statistics in the *Safe Work Key Work Health and Safety Statistics 2012* (the report) are considered. The report provides that "in 2009-2010, four industries (agriculture, forestry and fishing, transport and storage, manufacturing and construction) had incidence rates substantially above the all industries rate ... these industries ... were identified as priority industries ...". These priority industries are also areas where the AWU has substantial membership and the proposed amendments will certainly have a negative impact on managing risk in these industries.

Amendment to remove the power of health and safety representatives to direct workers

The AWU submits the proposed amendment to remove the power of health and safety representatives (HSRs) to direct workers to cease unsafe work will seriously reduce the protection of thousands of workers.

This proposed amendment will remove the last line of defense that a worker has in their workplace to prevent injury or disease. HSRs are trained and committed workers who look out for their fellow workers during the course of their duties. The power given to a HSR at section 85 of the Act to direct workers to cease work only allows such direction to occur when there is an immediate or imminent risk and also requires consultation with management. It also provides for workers to undertake alternative duties until the risk is mitigated. This power is not unreasonable.

The logical outcome of this proposed amendment is that workers must continue performing unsafe work notwithstanding a trained HSR knows that it is unsafe. This does not make sense.

When you consider this proposed amendment in conjunction with recent amendments made to the *Workers' Compensation and Rehabilitation Act 2010* which impose a 5% threshold to common law damages for permanent impairments there will be an increased potential of workers to suffer a permanent injury or disease due to an unconscionable employer without adequate compensation. This will have a profound impact on that worker and their family.

The AWU can bring to the attention of the Committee a typical example from 28 May 2013 when following an incident at the Cleveland Youth Detention Centre an AWU member discovered that the stores area was potentially contaminated with asbestos containing material (ACM). The response of the employer, the Department of Justice and Attorney-General, was to conduct a rudimentary clean up and request employees to re-enter the

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work area. Under the current legislation, the AWU official, delegate and HSR were able to access the site immediately, conduct discussions and an inspection where it was determined that a potential risk still existed. A ban was then placed on the work area. The response of the line manager was to make a request for "volunteers" to attend the work area while the ban was in place. Fortunately, no one took up this "request" and the direction to cease work in the area was enforced until an A class asbestos removalist was able to conduct a thorough clean up and provide a clearance.

The amendments being proposed in this Bill would remove the ability of workers, their HSAs and officials to manage such a potential exposure and would have workers either exposing themselves to ACM or being open to discipline for refusing to follow a lawful direction.

The AWU strongly submits that the proposed amendments are reckless and not in the public interest. As such, the Committee should recommend that they be revoked.

If you require any further information in relation to this matter please contact Mark Raguse on (07) 3221 8844.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Ben Swan', written in a cursive style.

**BEN SWAN
SECRETARY**

Secretary: Ben Swan