AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

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Finance and Administration Committee
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Chair,

Queensland Inquiry into *Work Health and Safety and Other Legislation Amendment Bill 2015*

Thank you again for the opportunity to comment.

As you are aware, ACCI represents a collated view from its membership. ACCI supports the applications and submissions that are provided by our ACCI members.

This response is provided without prejudice to ACCI or its members' views.

General comment

ACCI remains committed to the development of national policy to improve work health and safety and workers' compensation arrangements across Australia.

A fundamental tenet is that work health and safety (WHS) is a shared responsibility. Health and safety representatives, PCBUs and entry permit holders all play a very important role - every worker has responsibilities and all are important. That is why consultation, cooperation and co-ordination are incorporated into the model WHS legislation.

The objective of authorised WHS entry permit holders should be to rectify any health and safety concerns. This can best be achieved through early consultation, coordination and cooperation.

The right of entry to business property is a privilege and should first consider prompt, positive resolution between the parties, if possible before entry and before completing a notice of entry form (e.g. Qld Form 63). Indeed the form could include a statement on the steps taken to resolve reasonable concerns before a notice of entry is completed.

Legislation should encourage co-operative rather than adversarial approaches. It should not be an enabler of misuse. Work health and safety should not be used as a tool to obtain workplace relations outcomes and WHS legislation should not provide such an opportunity.

The amendments in April 2014 to the Queensland WHS Act 2011 to require 24 hours notification to exercise a right of entry recognised the need for early genuine consultation. This should not be removed now.

Similarly, the primary objective of notification of serious incidents is the achievement of better work health and safety outcomes. The proposed amendments for additional notification pose a disproportionate regulatory burden that is not justified by WHS outcomes.

In response to your specific questions for additional information:

1. **Replacement of s 36 (What is a serious injury or illness) adds (d)** *To amend current incident notification requirements to include an additional requirement for employers to notify the WHS Regulator when a worker, voluntary or paid, is absent for more than four (4) days due to a workplace injury.*

The model WHS Act currently requires notification of the most serious incidents that arise out of the conduct of a business or undertaking. The incident becomes notifiable if it results in death, serious injury or illness or is a *dangerous* incident.

A serious injury or illness means work related injury that results in:

- immediate hospital treatment as an in-patient
- immediate treatment for serious injuries (for example amputation, scalping, a spinal injury, loss of a bodily function or a serious laceration, burn, head injury or eye injury), or
- medical treatment within 48 hours of exposure to a substance.

One important reason for notification of these serious incidents to the Regulator is to trigger preservation of the incident site and evidence, and another is immediate action or intervention by the Regulator.

ACCI has three major concerns with the suggested addition to current triggers:

1. The **length of absence** in itself is not directly proportional to the interest that the Regulator should take. A workplace tendon injury for example, can be debilitating for the victim and may cause many days (or weeks) of absence. But it is not always of significant interest to the Regulator. It may initiate internal organisational review and investigation, but does not require notification. And an acute chemical exposure from a spill might not result in four days absence but might nonetheless be of significant interest to the Regulator.
2. Notification of all absences of four days will in many cases encumber businesses with **unnecessary paperwork and clog the system with many cases that are not significant or of interest to the Regulator**. Indeed, it will become difficult to identify which are worthy of consideration.
3. Trends in the incidence of musculo-skeletal disorders at a workplace are certainly issues for the PCBU. But the **Regulator has a different role**. Here regulator intervention could be provision of assistance or awareness programs on manual handling, etc. This should be available without a notification system.

The governing question for when an incident is worthy of notification should surely be whether action is required by the Regulator. Many four-day absences do not call for Regulator action. A workplace tea kettle burn may result in four or more day's absence; a car accident may well result in four days absence; so might a heart attack, or anxiety or depression, these may be important for the PCBU to manage and review but manifestly, these are not relevant to the WHS Regulator.

<u>Absence</u> is not sufficient. A four day absence should not in itself be a trigger for notification.

For such an incident to be accepted as a workplace injury, this determination would mostly occur through the workers compensation system. The workers compensation test is a no fault system. There may, in fact, be no clear causal link or implication for the work being undertaken. However workers compensation patterns are a measure currently used to identify trends. Poor performers or patterns can be flagged that may initiate an intervention by the Regulator.

It is acknowledged that a Regulator should use evidence to identify trends and thereby aid in prevention of further incidents. Assistance, education and awareness should be encouraged and are an appropriate response to a trend or pattern provided by robust data.

Notification is for immediate response. It is unclear how it is envisaged that capturing all incidents where there is an absence for the 4 days would require the Regulator to intervene. As noted, the time absent from work is not the only criteria.

ACCI maintains its view that prior to the imposition of additional regulatory requirements, it should be demonstrated that it would provide improved safety outcomes.

2. Amendment to allow immediate assistance of any person to assist HSRs without 24 hours' notice

The model WHS legislation there are two main applications for authorised WHS entry permit holders. They can:

- inquire into suspected contraventions of work health and safety laws and
- consult and advise such workers about work health and safety matters.

ACCI members maintain that those who are entering to assist a HSR or seek entry as entry permit holders must be genuine. Further, that assistance needs to be clearly defined and adds to the WHS outcome.

A person seeking to rely on a reasonable concern about an imminent risk to his or her health and safety should have the burden of proving that the imminent risk exists. This must also be recorded clearly. There are advantages in specifying the detailed reasons for entry. As outlined above the aim should be to resolve reasonable concerns well before a notice of entry is completed. This would also assist meet the WHS legislative requirements to understand the scope of the concern and scope of any inquiry. Early consultation is encouraged and early notification within 24 hours is a minimum requirement.

ACCI would suggest rather than discouraging genuine consultation, an amendment be considered to the Queensland Notice of Entry form (Qld Form 63). Fulsome evidence should be required rather than an exercise that merely requires ticking a listed statute box and an additional section should be included outlining evidence of initial consultations undertaken to resolve these concerns.

2.1 Potential for Misuse of discussions and assistance

Work health and safety should not be used as a tool to obtain workplace relations outcomes and WHS legislation should not facilitate this.

ACCI members have experienced and reported health and safety issues that have been misused for industrial purposes.

- There is a key difficulty with permitting right of entry to hold discussions on WHS matters at any time. Our members have reported misuse of the **length of such discussions.** If a PCBU allows an official to enter the workplace to hold discussions and those discussions are protracted, at what point are they considered to be an unreasonable and intentional disruption to work? There are issues around the **timing of such discussions**.

- **Repeated attempted entry to hold discussions**, has been reported during a period where the parties are in negotiations on an enterprise bargaining agreement. It is reported that officials use health and safety as an industrial tool, whether or not repeated attempted entry is reasonable. There is always the need to take into account the circumstances at the workplace but **entry by a number of officials at one time** can be a deliberate tactic which makes it difficult for PCBUs to escort officials (officials have been reported to spread out in different directions). **How many officials and how many discussions would be unreasonable**?

- Where multiple WHS entry permit holders attend a workplace on the same occasion, **each WHS entry permit holder should be required to submit an individual report.**

- Failure by a WHS entry permit holder to provide a report **should be grounds for a suspension or revocation of the WHS entry permit holder's permit**.

- A PCBU should be able to **report suspected abuses of WHS right of entry** and it should be investigated by Regulator within a reasonable period of time.

  If the entry permit holder believes that there are reasonable grounds for entry under section 117 of the WHS Act they can enter the workplace at any time to inquire into the potential contravention. In such cases there should be **participation by a representative of the PCBU (such as the site safety manager). This is is entirely consistent with the consultative approach** to health and safety envisaged by the WHS Act (Section 3).

2.2 Genuine Assistance requires knowledge

'So far as is reasonably practicable' is an important concept which qualifies the duties in the Model WHS Act. The WHS entry permit holder or providing assistance must have a clear in depth understanding of so far as is reasonably practicable.

It is fundamental that an entry permit holder understands that a PCBU duty is qualified by reasonably practicable. And have an understanding of how reasonably practicable relates to risk management and how it links with hierarchy of controls.

WHS is a complex area in which regulations, codes of practice and guidelines change frequently. Anyone who enters a business for WHS purposes should have specialised up to date WHS knowledge and relevant industry experience.

ACCI believes that requiring at least 24 hours' written notice during usual working hours in all circumstances before entering a worksite would help to curb the misuse of WHS, and that some WHS knowledge is needed to be able to provide appropriate assistance.

In summary

The primary objective of notification of serious incidents is the achievement of better work health and safety outcomes. ACCI does not believe that an absence of 4 days for workplace injury in and of itself will provide the information for successful Regulator intervention. Increasing the number of notifications with its added record keeping cannot be justified.

ACCI also notes that consultation, cooperation and co-ordination is fundamental to successful WHS outcomes and is therefore included in WHS legislation. The objective of authorised WHS entry permit holders and those entering to assist, should be to rectify any health and safety concerns and as early as possible. Hence ACCI strongly supports 24 hour notification to PCBU. And ACCI maintains that assistance needs to be clearly defined and add value to WHS outcomes.

Should you require any further information please contact this office.

Yours sincerely

Carolyn Davis

Manager Work Health, Safety and Worker's Compensation Policy

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