

Responses to questions raised by the Finance and Administration Committee Inquiry into the Work Health and Safety and Other Legislation Amendment Bill 2015 at the departmental briefing held on 3 June 2015

Queensland Treasury

Issues

- The Finance and Administration Committee (Committee) conducted a public departmental briefing of the Work Health and Safety and Other Legislation Amendment Bill 2015 (the Bill) on 3 June 2015.
 - During the hearing it was agreed that departmental officers would provide further information to the Committee in relation to a number of matters. Those matters and the department's response to those matters are set out below.
- 1. With regard to the consultation process, could you please advise the Committee who was consulted and the type and timing of that consultation? [Transcript reference page 3]**

Details of the targeted consultation undertaken on the Bill is provided at Attachment 1.

In addition it is important to note the extensive consultation processes undertaken during the development of the model work health and safety laws. The harmonisation of work health and safety (WHS) laws formed part of the Council of Australian Governments' National Reform Agenda aimed at reducing the regulatory burden and creating a seamless national economy. The objects of harmonising WHS laws through a model framework are to protect the health and safety of workers, improve safety outcomes, reduce compliance costs for business, and improve efficiency for health and safety regulators.

Model WHS Act

The national model Work Health and Safety Act (model WHS Act) was developed and agreed under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. At the national level, the model WHS Act was developed in close consultation with a tripartite sub-committee of Safe Work Australia (the Strategic Issues Group – SIG-WHS) consisting of representatives from each jurisdiction, the Australian Council of Trade Unions (ACTU), the ACCI and Ai Group.

The public comment period for the exposure draft of the model WHS Act commenced on 28 September 2009 and closed on 9 November 2009. The exposure draft of the model Act was released as part of a consultation package which included the draft model WHS Act, draft key administrative regulations, a discussion paper and a draft Regulatory Impact Statement (<http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/ris/pages/ris>). 480 submissions were received and the majority of the submissions were supportive of the need for harmonisation of WHS laws.

The exposure draft of the model OHS Act has been amended to take into account public comment, following consultation with Safe Work Australia representatives and members of the Parliamentary Counsel's Committee (PCC) who were responsible for drafting the model laws.

It should be noted that the development of the model WHS Act was based on decisions of the Workplace Relations Ministers Council on the recommendations of the *National Review into Model Occupational Health and Safety Laws*. The findings of the review were informed by the 243 submissions received during the extensive public consultation conducted as part of the Review.

Model WHS Regulations and Codes of Practice

Extensive consultation was undertaken during the drafting of the model WHS Regulations and Codes of Practice including the developing the Consultation RIS and Decision RIS. This has included the establishment of Temporary Advisory Groups (TAGs) for the following subject areas: licensing, confined spaces, major hazard facilities, chemicals, electricity, plant, asbestos, general workplaces, construction, and manual tasks. The role of these groups was to provide advice and assistance to Safe Work Australia in the decision-making process. These groups are tripartite and include subject-specific technical experts. Approximately thirty TAG meetings were undertaken to clarify policy issues impacting on the development of model WHS Regulations and Codes of Practice.

Five Safe Work Australia Members' meetings and 27 SIG-WHS meetings were held to oversee the development of the model WHS Regulations and Codes of Practice. In addition, all jurisdictions, the ACCI, Ai Group and ACTU provided comment on the methodology for the Consultation RIS prior to its development.

Preliminary consultation was undertaken with unions, industry and jurisdictional representatives during the development of the Consultation RIS that accompanies the package of draft model WHS Regulations and Codes of Practice and the Public Discussion Paper that was published for public comment in December 2010 for a four-month period.

A total of 1343 submissions were received during the public comment period. The move towards harmonised work health and safety legislation was generally welcomed as reducing inconsistencies, duplication and compliance costs. Following public comment a number of changes were proposed and adopted to the model WHS Regulations to remove unnecessary duplication and prescription.

Local consultation during the development of the model WHS laws

At state level there was ongoing consultation on the WHS Bill, regulations and codes of practice with representatives of the Queensland Council of Unions (QCU); Australian Workers Union (AWU); Construction, Forestry, Mining and Energy Union (Construction Division); Electrical Trades Union (ETU), Builders Labourers Federation (BLF); AIG; Master Builders Queensland (MBQ); Housing Industry Association (HIA); Construction Contractors Federation (CCF); Chamber of Commerce and Industry Queensland (CCIQ); Queensland Resources Council (RSC), Queensland Trucking Association (QTA); the Electrical Safety and WHS Boards, the WHS Industry Sector Standing Committees (construction, manufacturing, transport and storage, retail and hospitality, and rural) and the then Commissioner for Electrical Safety.

2. Can you please provide details of the feedback received from stakeholders during the consultation process? [Transcript reference page 6]

Details of the feedback received from the targeted consultation undertaken on the Bill is also provided at Attachment 1.

3. Can you please provide details of the prohibition and improvement notices issued for the 12 months prior to the previous amendments and subsequent to the previous amendments? [Transcript reference page 7]

Statutory notices issued prior to the previous amendments

There were five prohibition notices and 12 improvement notices issued in the two years 2011-12 and 2012-13.

The five prohibition notices were issued for the following matters (1 unknown):

- crane hoist rope broke and load of planks damaged;
- failure to provide safe and adequate access to and around site;
- malfunctioning crane, control to stop winch failed and hook continued to lower; and
- 900kg fly boom fell to ground.

The 12 improvement notices were issued in the following areas:

- 36% - general workplace management issues, for example access, housekeeping, facilities, lighting
- 15% - scaffolding issues
- 11% - falls or falling object issues
- 9% - traffic management issues
- 7% - issues with cranes
- 21% - multiple issues in the one event.

Statutory notices issued subsequent to the previous amendments

There were five prohibition notices and 34 improvement notices issued in the two years 2011-12 and 2012-13.

The five prohibition notices issued for the following matters:

- failure to provide adequate protection from the risk of falling greater than 2 metres
- failure to provide adequate protection from the risk of falling objects onto members of the public in the adjoining property
- use of uncertified and untested plant to lift 44 gallon drums
- multiple instances at one workplace of forklifts being operated without seatbelts
- cutting an electrical cable that was still energised.

The 34 improvement notices were issued in the following areas:

- 41% - general workplace management issues, for example access, housekeeping, facilities, lighting
- 32% - falls and falling objects
- 9% - scaffolding
- 9% - traffic management

- 6% - electrical safety
- 3% - hazardous chemicals.

4. Can you please provide details of the complaints currently before the QIRC? [Transcript reference page 7]

There are 6 matters currently before the QIRC and all are applications to revoke WHS entry permits. One application to revoke a WHS entry permit was withdrawn as the WHS entry permit holder has resigned from their employment. All 6 matters are applications to revoke a WHS entry permit under section 138 of the Work Health and Safety Act 2011 – see attached pdf for further details of the applications.

5. With regard to the 24 hour notice provisions, could you please advised how many kinds of disputes were at the gate, at the workplace, between a PCBU and a permit holder occurred prior to the previous amendments? How many times was an inspector called out to deal with a complaint? [Transcript reference page 9]

Disputes prior to the previous amendments

At the public hearing on 5 March 2014 in relation to the Work Health and Safety and Other Legislation Amendment Bill 2014, the department noted there were 57 right of entry disputes for 2011-12 and 2012-13. This was prior to the amendments in 2014.

Disputes for the 12 months post the amendments in 2014

At the public hearing on 3 June 2015, departmental representatives noted 92 disputes in relation to right of entry matters since the 2014 amendments commenced in May 2014. However the department requests to revise this figure to 120. This discrepancy has arisen as a result of a subsequent search of the inspector database which now includes disputes that were addressed over the phone rather than a visit from an inspector.

The 120 union right of entry complaints make up less than 1% of the total number (12,889) of service requests (complaints and incident notifications for WHS and ES) received by the department in the same period.

6. Further to question 5 above, could you please provide the Committee with an overview of what the disputes were about? [Transcript reference page 10]

Details of WHS entry permit dispute records is provided in the attached spreadsheet.

7. Could you please advise the Committee of the details of the six completed disputes that have been through the dispute resolution process? [Transcript reference page 10]

The 6 matters currently before the QIRC have not yet been decided. To date the department is not aware of any WHS entry permits that have been revoked or suspended by the QIRC.

8. Could you please provide details general trends with workplace health and safety injuries over the past five years? [Transcript reference page 10]

The Queensland statistics below are sourced from the 16th edition of the National Comparative Performance Monitoring (CPM) reports published by Safe Work Australia. The CPM reports provide trend analysis on the work health and safety and workers'

compensation schemes operating in Australia and New Zealand. Copies of the report are available from:
<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/cpm-16>

CPM16: Serious work-related injuries - Incidence rate (per 1,000 workers) - Queensland

Industry	2008-09	2009-10	2010-11	2011-12	2012-13
Construction	27.7	23.5	20.3	21.3	19.2
Manufacturing	32.2	28.0	26.3	26.0	23.9
Agriculture, Forestry and Fishing	32.7	31.3	27.1	27.0	27.2
Transport, Postal and Warehousing	23.9	22.1	21.5	22.3	20.1
All industry average	16.4	15.5	14.8	14.6	13.9

NOTE: Serious work-related injuries is defined as 'a serious claim is one that results in compensation being paid for an absence from work of one working week or more. This definition excludes claims arising from a work-related fatality or claims for injuries that occurred during a recess period away from the workplace. It also excludes claims for permanent impairment that did not result in one or more weeks off work. Claims for injuries incurred on a journey to or from work are not included.'

CPM16: Serious work-related injuries – Annual percentage change in incidence rate

Industry	2009-10	2010-11	2011-12	2012-13	2008-09 to 2012-13
Construction	-15.2%	-13.6%	4.9%	-9.9%	-30.5%
Manufacturing	-13.0%	-6.1%	-1.1%	-8.1%	-25.9%
Agriculture, Forestry and Fishing	-4.3%	-13.4%	-0.4%	0.7%	-16.6%
Transport, Postal and Warehousing	-7.5%	-2.7%	3.7%	-9.9%	-15.9%
All industry average	-5.5%	-4.5%	-1.4%	-4.8%	-15.4%

CPM16: Traumatic fatalities at the workplace - Number of fatalities

Industry	2008-09	2009-10	2010-11	2011-12	2012-13
Construction	11	9	10	12	4
Manufacturing	2	6	5	4	4
Agriculture, Forestry and Fishing	17	12	20	13	12
Transport, Postal and Warehousing	5	4	4	5	3
All industries	47	34	47	43	37

ATTACHMENT 1

Consultation on the Work Health and Safety and Other Legislation Amendment Bill 2015

Stakeholder	Date	Type of consultation	Feedback
Australian Workers' Union	29 April 2015	Face to face meeting	Supported the proposed amendments to Work Health and Safety Act as drafted in the Bill.
Chair, Electrical Licensing Committee	5 May 2015	Teleconference	Supported the amendments to the Electrical Safety Act as drafted in the Bill.
Chair, Electrical Safety Board	5 May 2015	Face to face meeting	Supported the amendments to the Electrical Safety Act as drafted in the Bill.
Chamber of Commerce and Industry Queensland	19 May 2015 (rescheduled from 4 May 2015)	Face to face meeting	Noted the proposed amendments. Raised concerns over the potential regulatory burden on employers in relation to the additional incident notification requirement and the need to further promote the current combined incident notification/workers' compensation claim form available through the One Stop Shop.
Construction Forestry Mining and Energy Union	22 April 2015	Face to face meeting	Supported the proposed amendments as drafted. Raised some concern over the operation of section 39 (Duty to preserve incident sites), in terms of how it may apply to cumulative injuries such as musculoskeletal disorders.
Electrical Trades Union	27 April 2015	Face to face meeting	Supported the proposed amendments to the Electrical Safety Act and Work Health and Safety Act as drafted in the Bill.
Master Builders Association Queensland	5 May 2015	Face to face meeting	Noted the proposed amendments, however raised concerns over potential misuse of the WHS entry permit provisions and noted the importance of promoting the current national guidance on this matter. (Note the national guide can be found at: http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/interpretive-guideline-workplace-entry)
Master Electricians Australia	7 May 2015	Face to face meeting	Supported the ES changes but did not support the WHS entry permit changes

National Electrical and Communication Association	8 May 2015	Face to face meeting	Raised some concerns over the impact of the timing of the proposed amendments and pressure it places on the enterprise bargaining process. Did not support the proposed changes for WHS entry permit holders and queried what the existing safeguards were to prevent misuse of these powers.
Queensland Council of Unions	30 April 2015	Face to face meeting	Supported the proposed amendments to the Electrical Safety Act and Work Health and Safety Act as drafted in the Bill.
Shop Distributive and Allied Employees' Association	30 April 2015	Face to face meeting	Supported the proposed amendments to Work Health and Safety Act as drafted in the Bill.
Work Health and Safety Board	21 May 2015	Face to face meeting	Provided with overview of the amendments and committee process.