



Ensuring safe Workplaces for Queensland Workers

Supporting the reinstatement of the *Work Health and
Safety Act 2011 (QLD)*

Submission to the Finance and Administration
Committee (QLD) on the *Work Health and Safety and Other
Legislation Amendment Bill 2015 (QLD)*

3 June 2015

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WHO WE ARE

The Australian Lawyers Alliance (“ALA”) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.

In Queensland, the ALA has been an active stakeholder in policy development on many areas involving injuries and disability.

INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Finance and Administration Committee on the *Work Health and Safety and Other Legislation Amendment Bill 2015* (QLD) ('the Bill').

We provide a short submission in this instance regarding the proposed changes to the *Work Health and Safety Act 2011* (QLD) ('the WHS Act') and the *Electrical Safety Act 2002* (QLD). We agree with the bill in principle and believe it should pass. We strongly support mechanisms that ensure Queensland workers are working in safe environments.

OUR POSITION

Every Queensland worker should be able to go to work and come home safely and uninjured. Unfortunately we know that is not the case. Our members deal first hand with the impacts of unsafe work practices on workers and their families.

According to the Workers' Compensation Regulator 2013-14 Statistics Report, 92,007 Queensland workers made statutory claims last year because they had been injured at work. In the same period, 4,215 made common law claims. In 2013-14, 63 claims that were made related to a workplace fatality. On a national level, Safework Australia reports that 56 Australian workers have died at work since the start of the year.

The ALA believes that allowing workers access to preventative measures that can ensure that their workplaces are safe and secure is of paramount importance, not only in Queensland but more broadly.

The ALA welcomes measures that enhance genuine consultation, cooperation and respect between employers and workers whilst also further inhibiting the possibility of workplace incidents.

CEASING WORK UPON AN IDENTIFIED WORKPLACE RISK

The ALA notes that clause 21 will insert a new section 85 the WHS Act. New section 85 restores the right of trained health and safety representatives (HRS) to direct a worker to cease unsafe work. This change also makes the Queensland legislation consistent with model national Work Health and Safety laws.

In the ALA's experience, although workers do have the right to cease unsafe work under section 84 of the Act, workers cannot recognise and prevent each and every safety risk at work. HRS and work health and safety (WHS) permit holders have training to recognise and prevent safety risks in the workplace. Furthermore, in many instances workers may not feel comfortable that they can raise safety concerns with their employer and have them acted on appropriately. It is likely that a worker may refuse to comply with a direction of their employer if they fear they could be disciplined or dismissed. If a trained WHS or HRS permit holder however, who is independent of the employee, can make a direction to cease work then it follows that an employee is more likely to cease work and avoid serious injury.

RIGHT OF ENTRY

The ALA also notes that clause 23 of the Bill replaces section 119 of the Act. This amendment restores the right of entry for WHS permit holders to gain access to workplaces for the purpose of inquiring into a suspected contravention of the WHS Act.

The previous Government amended this provision so that notice of entry by a WHS permit holder is required at least 24 hours, but not more than 14 days, before entry. The requirement to provide such notice nullifies the purpose of right of entry under the WHS Act and reduces the likelihood that a WHS permit holder will be able to prevent a suspected contravention and, as a consequence, prevent workplace injuries. A work injury or fatality can happen in an instant on an unsafe worksite, and in many circumstances having to wait 24 hours or longer to inspect a work site places workers at further unnecessary risk of injury. These changes restore the purpose of a right of entry and strengthen efforts to reduce workplace injuries.

Our members receive numerous reports from clients of some employers removing or interfering with evidence of poor safety, before it can be scrutinised by proper authorities.

The efficacy of WHS initiatives is always a fine balance between carrot and stick. The vast majority of employers take their WHS obligations seriously. However, timely right of entry is a crucial tool in ensuring that employers who take unnecessary risks with their workers' lives are accountable for such dangerous and irresponsible conduct.

We note that the WHS Act adopts the nationally agreed model Work Health Safety laws which provide a nationally consistent framework for the health and safety of workers and workplaces. The ALA welcomes Queensland's realignment with the current model WHS laws.

INTERACTION WITH CHANGES TO WORKERS COMPENSATION

The previous Government's removal of right of entry for WHS permit holders was made soon after the introduction of a threshold of greater than 5% degree of permanent impairment to access common law damages. These changes effectively removed access to common law claims, where an employer is negligent, for 60% of Queensland's injured workers.

Whilst this Bill does not address the changes to the permanent impairment thresholds, it is important to note that while the notice period requirement for right of entry prevents WHS permit holders from inquiring into suspected contraventions, injured workers cannot claim damages if their employer is negligent. The dual operation of these provisions means that negligent employers may be protected while injured workers rights are taken away.

The provisions of this bill are therefore an important step forward in restoring the rights of injured Queensland workers.

ELECTRICAL SAFETY

The ALA welcomes the reestablishment of the role of a Commissioner for Electrical Safety in clause 4. The ALA also welcomes clause 7 of the bill in its reestablishment of the electrical safety education committee and the electrical equipment committee.

Workers and employers benefit by the provision of safe and healthy workplaces where parties involved share responsibility for improvements in work health and safety practices to prevent workplace incidents. These new provisions help ensure this.

NOTIFICATION OF ABSENCES

The ALA notes clause 16 of the Bill replaces section 36 of the Act. This amendment moves to reinstate the historical requirement for employers to notify the regulator when a worker is absent from work for more than four days due to a workplace injury or illness. We would be interested to know what monitoring processes are planned to ensure adherence to this requirement.

The ALA welcomes this change capturing work-related musculoskeletal and mental disorders, both of which are priority disorders in the Australian Work Health and Safety Strategy 2012-2022.

Workplace injuries causing absences longer than four days should come to the regulator's attention. This is to ensure the regulator is aware of injuries in the workplace and that knowledge can be used preventatively to ensure no further injuries of a similar nature are sustained.

CONCLUSION

In conclusion the ALA supports the restoration of the right of entry for WHS permit holders to gain access to workplaces for the purpose of inquiring into a suspected contravention of the WHS Act. The ALA also supports the reestablishment of the Electrical Safety Commissioner

and the mechanism for reporting absences longer than four days caused by a workplace injury.

Ultimately, the ALA supports measures that help protect Queensland workers from sustaining injuries in the workplace and foster constructive mechanisms that ensure issues of workers' safety are dealt with promptly and effectively.

The ALA commends the Bill to be passed and thanks the committee for the opportunity to be consulted.