



CIVIL CONTRACTORS FEDERATION

QUEENSLAND BRANCH



## SUBMISSION

### WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL 2015

This submission is made by the Civil Contractors Federation Queensland Branch (CCF QLD) on behalf of its members who have expressed a concern regarding the impact of the proposed amendments on their businesses and its functionality.

### ABOUT CCF QLD

The CCF is the peak industry body for the civil construction industry in Australia. We provide our members with assistance, expertise and support on industry issues.

CCF prides itself on being the voice of the civil construction industry and advocates for the interests of our members to all levels of government. With Branches in all states and territories, as well as a National Office, CCF understands the local, state and national issues facing the civil construction industry.

The Queensland Branch of the CCF has training centres in Brisbane and Townsville, as well as an office in Cairns. We represent contractor and associate members across the state; from as far north as Cairns and as far south as the Tweed.

We strive to ensure our members:

- are represented and advocated for – by making sure their voice is heard at a local, state and national level
- are informed – by providing them with sound advice and the latest information
- are equipped – by giving them access to tools and resources that help their business succeed
- are well trained – by designing and delivering high-quality industry specific training
- are connected – by bringing them together with useful contacts, suppliers and each other
- benefit from their membership – by delivering access to exclusive member only offers and discounts.

CCF has two types of memberships. Contractor members, who undertake work as civil construction contractors in the civil construction industry; and associate members, who provide supplies and services to the civil construction industry.

Our contractor members range in size from small businesses to multinational companies and are involved in a range of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, wharves and other civil infrastructure that support Queensland communities.

## PROPOSED WORK HEALTH AND SAFETY AMENDMENTS

### I. Replacement of s 119 (Notice of entry)

The proposed Section 119 states:

**“119 Notice of entry**

- (1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this division, give notice of the entry and the suspected contravention, as prescribed by regulation, to—
  - (a) the relevant person conducting a business or undertaking; and
  - (b) the person with management or control of the workplace.
- (2) Subsection (1) does not apply if to give the notice would—
  - (a) defeat the purpose of the entry to the workplace; or
  - (b) unreasonably delay the WHS entry permit holder in an urgent case.
- (3) Subsection (1) does not apply to an entry to a workplace under this division to inspect or make copies of documents mentioned in section 120.”

(Writer’s underlining)

**The Explanatory Memorandum states:**

“The Bill will achieve the policy objectives by amending legislation to:

- allow WHS entry permit holders to enter a workplace immediately if they suspect a contravention has occurred and provide notice of entry as soon as is reasonably practicable afterwards, removing the requirement to provide at least 24 hours’ notice of entry;”

Under the provisions of the *Fair Work Act 2009* (“FW Act”) in regard to the investigation of breaches a permit holder is permitted by Subdivision A, Division 2 of Part 3-4 of the FW Act to investigate suspected breaches of the FW Act, the current enterprise agreement or an order by Fair Work Commission.

However the right of entry is limited to circumstances where:

- (a) the suspected breach relates to or affects a member of the union;
- (b) the union is entitled to represent the industrial interests of that member; and
- (c) that member performs work on the premises.

A permit holder must also reasonably suspect a breach has occurred or is occurring, and particulars of the suspected breaches must be included on the entry notice.

The FW Act does not actually create any right of entry for WHS purposes. It adds additional requirements to the exercise of rights of entry for union officials under the WHS Act. Where there is conflict between the FW Act and the WHS Act, the FW Act prevails.

The following additional requirements are imposed by the FW Act for WHS purposes are:

- (a) the person entering the premises must have an entry permit under the FW Act;
- (b) the permit holder must comply with any conditions attaching to his or her FW Act entry permit
- (c) entry must occur during working hours;
- (d) a permit holder may not enter, or must leave, premises if he or she fails to produce a copy of his or her entry permit on request;
- (e) a permit holder may not enter, or must leave, premises if he or she fails to comply with a reasonable request of the employer or occupier to comply with occupational health and safety requirements at the premises;
- (f) a permit holder must not, in exercising rights under these provisions, intentionally hinder or obstruct any person or otherwise act in an improper manner; and

- (g) if the permit holder seeks to exercise a right under the OHS Act to inspect or access an employee record while on the premises, he or she must give at least 24 hours written notice of his or her intention to exercise the right and the reasons for doing so<sup>1</sup>.

**Further Section 487(1) of the FW Act provides:**

*“Entry under Subdivision A or B*

*(1) Unless the FWC has issued an exemption certificate for the entry, the permit holder must:*

- (a) *before entering premises under Subdivision A—give the occupier of the premises and any affected employer an entry notice for the entry; and*
- (b) *before entering premises under Subdivision B—give the occupier of the premises an entry notice for the entry.”*

*(Writer’s underlining)*

**Issues**

The proposed amendment in Subsection (1) states *“A WHS entry permit holder must as soon as is reasonably practicable after entering a workplace under this division, give notice of the entry and the suspected contravention...”*

Whilst this submission does recognise the role of a WHS entry permit holder, the proposed amendment would allow any WHS permit holder to enter a workplace without the prior knowledge of any business. As the business does have an overall duty towards maintaining the health and safety in its workplace (a failure could result in prosecution) persons entering a work premises without prior notification does pose a risk. We believe that the 24 hour notice should be retained for the following reasons:

- it allows the employer to be aware of the entry (and presence) of a permit holder on site;
- it allows the employer to be made aware of the alleged contravention;
- it will ensure consistence and conformity with the provisions of the FW Act as set out above;
- the submission promotes certainty for employers.

Further the provision that the *“WHS entry permit holder must as soon as is reasonably practicable after entering a workplace under this division, give notice of the entry and the suspected contravention”* does not provide any time line when such a notice should be provided. This provision *“as soon as is reasonably practicable after entering”* is too open ended and could lead to abuse by an unscrupulous permit holder.

**2. Replacement of s 36 (What is a serious injury or illness)**

**The proposed Section 36 states:**

**“36 What is a serious injury or illness**

*In this part, **serious injury or illness** of a person means an injury or illness—*

- (a) *requiring the person to have immediate treatment as an in-patient in a hospital; or*
- (b) *requiring the person to have immediate treatment for—*
- (i) *the amputation of any part of the person’s body; or*
- (ii) *a serious head injury; or*

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<sup>1</sup> Section 487(3) of the FW Act

- (iii) a serious eye injury; or
- (iv) a serious burn; or
- (v) the separation of the person's skin from an underlying tissue (for example, degloving or scalping); or
- (vi) a spinal injury; or
- (vii) the loss of a bodily function; or
- (viii) serious lacerations; or
- (c) requiring the person to have medical treatment within 48 hours of exposure to a substance; or
- (d) causing the person to be absent from the person's voluntary or paid employment for more than 4 days;

and includes any other injury or illness prescribed under a regulation but does not include an illness or injury of a prescribed kind.”

### **The Explanatory Memorandum states:**

“The Bill allows the definition of ‘serious injury of illness’ to be further extended by subordinate legislation due to the breadth of possible injuries or illnesses. This extension is not intended to amend the provisions in question - they would still be read in the same way and any extension of the definition is limited to the objects of the WHS Act. Complex national legislative schemes, such as the one for work health and safety, needs to be facilitated by strong regulation making powers.”

### **Issues**

The addition of Section 36(d) unnecessarily expands the definition of serious injury or illness to include an absence “an injury or illness”<sup>2</sup>

It is submitted that this inclusion is unjustified and unwarranted for the following reasons:

- it denigrates the intent of the original legislator to clarify and/or define a serious injury or illness;
- all the other subsections of Section 36 deals with obviously serious ailments whilst the inclusion of subsection(d) could be “harmless.” For example an employee absent due a influenza infection for more than 4 days.
- it could place an unnecessary burden on an employer where normally such an absence would not have been regarded as a serious injury or illness.

## **3. Insertion of new s85**

### **“85 Health and safety representative may direct that unsafe work cease**

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after—
  - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and
  - (b) attempting to resolve the matter as an issue under division 5.

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<sup>2</sup> Section 36 of the proposed amendment

- (3) *The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under division 5 if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.*
- (4) *The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).*
- (5) *The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.*
- (6) *A health and safety representative cannot give a direction under this section unless the representative has*
  - (a) *completed initial training prescribed under a regulation mentioned in section 72(1)(b); or*
  - (b) *previously completed that training when acting as a health and safety representative for another work group; or*
  - (c) *completed training equivalent to that training under a corresponding WHS law.*

### **The Explanatory Memorandum states:**

*“The power to direct unsafe work to cease will also be governed by the obligation to consult with a PCBU prior to issuing a direction to cease work. For example, Part 5 Division 5 of the WHS Act requires parties to make a reasonable attempt to resolve an issue, and where this fails, enables the issue to be referred to the regulator. Where it is not reasonable to consult with a PCBU due to imminent safety risk, consultation with a PCBU must occur as soon possible after the direction is issued. A PCBU may also direct a worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties and does not affect the service period of the worker’s employment.”*

### **Issues**

It is submitted that the provisions of the current legislation provides sufficient safeguard in this respect. The fact that the power of a trained HSR to direct a worker to cease unsafe work will be qualified in that a HSR must form a reasonable concern that performance of the work would expose the worker to risk is extremely broad and subjective.

Further whilst the explanatory memorandum states that *“The power to direct unsafe work to cease will also be governed by the obligation to consult with a PCBU prior to issuing a direction to cease work”*, the proposed amendment (apart from subsection(2)) does not indicate or reference clearly enough an obligation to consult prior to issuing such a direction. Subsection (1) should read *“Subject to the provisions of Part 5 Division 5 of the WHS Act, a health and safety representative may direct a worker who is in a work group represented by the representative to cease work....”*

Further Subsection 5 should include the word “immediately” as in its current proposed form the period for notification has been left open ended. This subsection should read

*“The health and safety representative must **immediately** inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.*

#### 4. Insertion of new s68

##### **“68 Appointment of commissioner**

- (1) *There is to be a commissioner for electrical safety.*
- (2) *The commissioner is to be appointed by the Governor in Council by gazette notice.*
- (3) *The commissioner is to be appointed under this Act, and not under the Public Service Act 2008.*
- (4) *The commissioner's term of appointment is the term, not longer than 5 years, stated in the gazette notice appointing the commissioner.*
- (5) *Subsection (4) does not prevent the commissioner from being reappointed.”*

##### **Issues**

The re-establishment the role of a Commissioner for Electrical Safety and re-establish the Electrical Safety Education Committee and the Electrical Equipment Committee is creating a bureaucracy that is unnecessary and uncalled for.

## **SUMMARY**

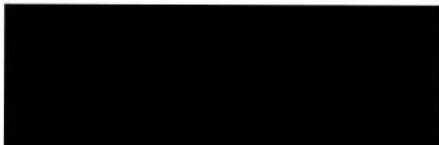
CCF QLD is of the firm belief that the existing legislation is sufficient to protect Workplace Health and Safety. Our members are concerned that an additional layer of red tape during a time where the industry is experiencing a significant downturn will reduce productivity and drive up costs. This is of course a negative at any time, but made all the more so as many of our members have gone through or are going through significant restructures and redundancies to deal with the current industry downturn.

Workplace Health and Safety is absolute paramount to CCF QLD members and the present Workplace Health and Safety Act (WHS Act) provides a legislation that not only allows for the election of a Workplace Health and Safety Representative (WHSR) by the workers for the workers, but also ensures that management and workers work together to achieve better safety outcomes.

With the WHSA in place, there are sufficient legal requirements for workplaces to adhere to, allowing the WHSR to work closely with management to ensure that work places are safe and to obtain negotiated outcomes if safety issues cannot be resolved.

CCF QLD members are of the opinion, that in order to further improve the safety of workers, WHS needs to be addressed at the grassroots by providing training programs targeting the psychology of decision making with respect to WHS needs. Oftentimes, workplace injuries are caused by impulsive, good faith actions, therefore, the style of safety training requires a thorough review with a focus on how these impulsive actions can be reduced or avoided. To devise such training programs, significant investment with psychologists, psychiatrists and safety experts would be required.

CCF QLD appreciates the Queensland government’s intention of increasing Workplace Health and Safety on construction sites, however, rather than introducing a new legislation, the Government should investigate ways of offering greater or subsidised site safety training, which would be of real benefit to the industry.



**Damian Long**  
President  
Civil Contractors Federation  
Queensland Branch

