



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

5 June 2015

Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Email: fac@parliament.qld.gov.au

Dear Sir/Madam,

Queensland: Work Health and Safety and Other Legislation Amendment Bill 2015

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI represents over 300,000 businesses in every state and territory and across all industries. Our network employs around 4 million employees, ranging from the top 100 companies to small and medium businesses.

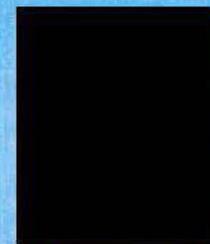
ACCI welcomes the opportunity to provide feedback on Queensland's *Work Health and Safety and Other Legislation Amendment Bill 2015*

ACCI supports the applications and submissions that are provided by ACCI members. This feedback is provided without prejudice to ACCI or its members' views.

ACCI has been actively involved in the endeavours of Safe work Australia to develop national policy to improve work health and safety and workers' compensation arrangements across Australia. This has meant the development of a model Act and model regulations for adoption as laws in each of the States and territories and Commonwealth.

The process of consolidating the existing legislation and developing the model legislative framework in work health and safety (WHS) has meant many concessions, compromises and agreement. The model legislation is a positive step towards strengthening health and safety outcomes in Australian businesses and will be further improved by the adoption of the model legislation in all States.

Consistent application of the legislation including compliance and enforcement across jurisdictions is much needed. However where legislation has had time to be implemented and reviewed, amendments improving clarity and practical application are encouraged.



WEB: www.acci.asn.au



Specific comments on the Queensland Amendment Bill 2015 : Amendments to the Work Health and Safety Act 2011 (WHS Act):

1. Immediate Access by work health and safety (WHS) entry permit holders

Amendment

*To enable work health and safety (WHS) entry permit holders to gain immediate access to a workplace if they suspect a contravention has occurred and provide notice of entry as soon as is reasonably practicable afterwards, and
To allow HSRs to request the immediate assistance of any person at the workplace, removing the requirement for at least 24 hours' notice before the assistant can access the workplace;*

ACCI comment

Under the model WHS legislation there are two 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.

It must be clear that the person that seeks to rely on a reasonable concern about an imminent risk to his or her health and safety, has the burden of proving that the imminent risk exists. This must also be recorded clearly. Some ACCI members have reported health and safety issues that have been misused for industrial purposes.

ACCI supports notification 24 hours prior to entry or access to a workplace. This should be the minimum allowable standard to provide both consistency with other provisions in the WHS Act and Fair Work legislation, and give notice to a PCBU to ensure they can appropriately respond.

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. 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.

ACCI strongly encourages consistent application and enforcement across WHS jurisdictions of entry permit requirements. Some key points include

- A PCBU who has management or control of the workplace must be able to request an authorised inspector from the relevant regulatory body to accompany any right of entry by union officials.
- A PCBU should be able to report suspected abuses of WHS right of entry. The regulator would then be required to investigate the complaint and report back to the complainant within a reasonable period of time.
- It should be grounds for the suspension or revocation of the WHS permit holder's permit if the WHS permit holder has been found to have intentionally breached WHS right of entry laws or has breached WHS right of entry laws on multiple occasions.

- WHS right of entry permit holders should be required to have completed site specific induction before being able to enter a site.

As an example of the need for site specific induction in *Darlaston v Parker*, the Federal Court of Australia found that three CFMEU officials had breached the then Workplace Relations Act 1996 (Cth) while on a building site under a right of entry permit on 3-4 December 2008. The three union officials failed to follow a reasonable safety instruction, namely to undergo a brief safety induction before entering the site. The Court also found that CFMEU official, Thomas Mitchell, was also in breach of the Act by not following a reasonable request to come down from scaffolding, CFMEU official, Brian Parker, was in breach for hindering and obstructing workers, and Thomas Mitchell was found to be acting in an improper manner when he intentionally drove his car into a cyclone fence, endangering a bystander.

- Regulators must be transparent and apply consistent rules to satisfy that permit holders are fit and proper persons
- ACCI Members note that there are difficulties distinguishing those that are genuinely entering to assist a health and safety representative. Assistance needs to be clearly defined and applied consistently. ACCI has been advised of instances where a union official is requested as an assistant by a health and safety representative, despite not possessing appropriate qualifications or expertise that would enable them to assist.
- Members also note that there are difficulties distinguishing those that are genuinely entering to consult. This needs to be clearly defined and applied consistently. Local site management (in addition to PCBU) need to be aware that an entry is to take place and the WHS basis for the consultation.

2. Allow HSRs to direct to cease work

Amendment

To allow a trained Health and Safety Representatives (HSRs) to direct workers in a work group represented by the representative, to cease work if they have a reasonable concern that the work poses a serious and immediate or imminent risk to their health and safety; Attempts to resolve and Consultations must occur

ACCI comment

The right to cease unsafe work should remain with the individual worker. In the model legislation individual workers have the statutory right to cease work on safety grounds. This acknowledges that individual workers can be best placed to make this decision. Clear grounds for this belief must be provided. And an issues resolution procedure established. Health and safety representatives would still be able to provide advice to workers but should not have extra rights to cease work. Further this may add a layer of confusion. It could be that this extra layer means there is uncertainty when and how a worker could cease work.

3. Replacement of s 36 (What is a serious injury or illness) adds (d)

Amendment

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.

ACCI comment

Evidence should be provided that this additional record keeping requirement would provide a needed safety outcome. Other mechanisms such as workers compensation claims other than notifications could be used to gain regulator data.

4. Remove Penalty for failure to provide notice for RoE to inquire

Amendment

Remove the penalty for failing to provide notice of entry to inquire into a suspected contravention of the WHS Act, consult and advise workers and make copies of documents relevant to a suspected contravention.

ACCI comment

ACCI maintains that 24 hour notice of entry to PCBU recording the grounds for concern is required and is an important part of issue resolution. It encourages a shared responsibility for WHS, the consultation cooperation and co-ordination that is incorporated into the WHS legislation. It should be grounds for the suspension or revocation of the permit. If the permit holder has been found to have intentionally breached WHS right of entry laws or has breached WHS right of entry laws on multiple occasions this should be considered serious. A serious breach should invoke a penalty, there should NOT be a removal or reduction of penalty for an individual who has breached their conditions

5. Reduce Penalty for breach of WHS Permit Conditions

Amendment

Reduce the maximum penalty for contravening WHS entry permit conditions from 200 penalty units to 100 penalty units; and

ACCI comment

It should be grounds for the suspension or revocation of the WHS permit holder's permit if the WHS permit holder has been found to have intentionally breached WHS right of entry laws or has breached WHS right of entry laws on multiple occasions. Where such a breach is such a serious contravention that it invokes a penalty, there should NOT be a reduction of penalty for an individual who has breached their conditions.

Yours sincerely


Carolyn Davis

Manager Work Health, Safety and Worker's Compensation Policy

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