

**Construction, Forestry, Mining and Energy Industrial
Union of Employees, Queensland**

**Submission to the Finance and Administration
Committee of the Queensland Parliament**

**Work Health and Safety and Other Legislation
Amendment Bill 2015**

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Introduction

The Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland (“CFMEU”) welcomes the opportunity to make this submission to the Finance and Administration Committee of the Queensland Parliament on the Work Health and Safety and Other Legislation Amendment Bill 2015 (“the Bill”).

The CFMEU is the principal union in the building and construction industry and has members across trades and non-trades classifications. The CFMEU has been at the forefront in fighting for its members’ workplace health and safety, through its predecessor unions, for over 150 years.

Vast improvements in workplace health and safety have been achieved over the years – not through any sense of ‘corporate citizenship’ on the part of employers, but rather through the collective efforts of trade unions and their members: from the introduction of the first wide-ranging safety laws in 1902, through to specific hazard preventions like scaffolding, materials and personnel hoists, workplace amenities and crib rooms, personal protective equipment, to bans on deadly substances such as asbestos and adequate workers’ compensation payments for workplace injury.

It is a fundamental right of every worker to go to work in the morning and return home safely at the end of the day. To that end, the CFMEU places a great deal of emphasis on training members, delegates and health and safety representatives, and on raising awareness about workplace health and safety in the wider community, most notably through its national “*Stand Up-Speak Out-Come Home*” campaign, which supports and encourages workers to speak up about health and safety at the workplace.

The CFMEU commends the Palaszczuk Government on acting swiftly to restore workplace health and safety protections for workers in Queensland and implementing its *Improving Safety for Queenslanders at Work* policy, which underpins the Bill.

The CFMEU supports the Bill insofar as it re-establishes genuinely consultative, cooperative and respectful frameworks through which workers, their representatives and indeed employers achieve better workplace health and safety outcomes, which were in place under the *Workplace Health and Safety Act 2011* (“the Act”) before amendments were made by the former Newman Government in 2014 to:

- Require WHS entry permit holders to provide at least 24 hours’ notice before they can enter a workplace to inquire into suspected workplace health and safety contraventions;

- Increase penalties for non-compliance with WHS entry permit conditions and introduce harsh penalties for any failure to comply with strict entry notification requirements;
- Require at least 24 hours' notice before any person assisting a health and safety representative, including trade union health and safety specialists, can have access to the workplace;
- Remove the capacity for elected workplace health and safety representatives to direct that workers cease unsafe work;
- Remove the requirement under the Act for a person conducting a business or undertaking to provide a list of health and safety representatives to the WHS regulator;
- Allow for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation as previously required by the Act; and
- Increase the maximum penalty that can be prescribed for offences in the *Electrical Safety Regulation 2002* to 300 penalty units.

The Newman Government's amendments to the WHS Act were the most radical departure from the overall consensus on approaches to the legal regulation of workplace health and safety in modern times.

In removing important protections for workers, the Newman Government's amendments transformed the Act's underpinning from one of *self-regulation* to one of *non-regulation*.

The Committee should do the right thing by working people and their families in Queensland and recommend that the Bill be passed without delay.

The building and construction industry

The former LNP Newman Government's amendments have had a significant impact on building and construction workers, and indeed their families. By its very nature, the building and construction industry is a dangerous and arduous industry in which to work. It is an industry which is characterised by a complex system of sub-contracting with many small employers, widespread use of 'labour hire' workforces and intense competitive pressures amongst employers. These characteristics can contribute to corner-cutting on safety issues, breakdowns in the chain of responsibility and difficulties in maintaining effective employee representation on safety issues from worksite to worksite.

Incidents such as falls, trips or slips (including from often extensive heights), vehicle collisions, impacting or falling objects, extreme body stress, electrocution, fire, exposure to hazardous

substances and indeed the elements are risks that invariably present themselves to workers' health and safety on building and construction sites.

According to data published by Safe Work Australia, over the five year period from 2007-08 to 2011-12, some 211 construction workers were killed as a result of work-related injuries. That figure equates to 4.34 fatalities per 100,000 workers in the building and construction industry, which is approximately twice the all-industry rate of 2.29 per 100,000 workers over the same period. The latest data from Safe Work Australia shows that last year, 28 workers in the building and construction industry died at work, compared to 17 in 2013 – a rise of some 64 per cent in 2014. Further, the building and construction industry alone accounted for 11 per cent of all serious workers' compensation claims from the years 2007-08 to 2011-12 – an average of 39 claims made per day.

It is in this vein that the former LNP Government's amendments to the Act, insofar as they substantially watered down workplace health and safety protections, were nothing short of shameful.

Legal responses to workplace health and safety

It is indisputable that the legal regulation of how work is organised and performed can have a significant impact on workplace health and safety outcomes – especially in sizeable, high-risk and indeed high-incidence industries such as the building and construction industry. This has been the almost unanimously held view since at least the 1960s, when there was a growing recognition that the traditional 'red light' model of workplace health and safety regulation, which relied on public inspectorates to enter and inspect workplaces and to initiate prosecutions, failed to prevent occupational disease, injury and deaths.

By 1970, this prompted the then Conservative UK Government to set up a Committee of Inquiry into legal responses to workplace health and safety, chaired by Lord Robens who handed down his Report in 1972. The Robens Report proved highly influential across the political spectrum, both in the UK and in other jurisdictions, as a benchmark for legal approaches to workplace health and safety. Indeed, all nine Australian jurisdictions have enacted legislation which is underpinned by the approach established in the Robens Report. For its part, Queensland enacted its first Robens-style legislation in the *Workplace Health and Safety Act 1989 (Qld)*, which was based on recommendations of the then National Party Minister for Employment, Small Business and Industrial Affairs of the Bjelke-Petersen Government, Vince Lester. A key tenet of that Act, and WHS Acts since

then, has been the involvement of all workplace parties in the management of workplace health and safety risks.

Robens-style workplace health and safety regulation foresees a critical role for employees and their representatives in upholding workplace health and safety standards. Indeed, a key recommendation of the Robens Report was for there to be a statutory duty on employers to *“consult with employees or their representatives at the workplace on measures for promoting safety and health at work [and to] provide arrangements for the participation of employees in the development of such measures.”*

Except under the former LNP Newman Government’s amendments, in all Australian jurisdictions, this recommendation has translated into statutory obligations and corresponding rights that:

1. Enable employees to elect their own workplace health and safety representatives;
2. Enable workplace health and safety representatives to inspect workplaces; and
3. Enable workplace health and safety representatives take action towards improving workplace health and safety, including by directing that specific improvements be made and/or that dangerous or unsafe work cease.

These aspects of Australian workplace health and safety legislation are consistent with international legal norms, namely the Occupational Safety and Health Convention (Convention No 155) of 1981, as read with paragraph 12 of the ILO’s Occupational Safety and Health Recommendation of 1981 and the Promotional Framework for Occupational Safety and Health Convention 2006.

Case Study

Michael Garrels is the father of Jason Garrels, who was killed at work in Queensland in 2012.

Jason was just 20 years old when he was electrocuted on a construction site in Clermont in February 2012.

Mr Garrels said it was vital that the more experienced employees in a workplace speak up.

“People at every level, especially those with experience, should speak up. Jason did not have the awareness, he would have thought everything was fine,” Mr Garrels said.

“If the workplace was a union worksite, I don’t believe the accident would have occurred.”

Mr Garrels has described the impact of Jason’s loss on the family and community as utter devastation.

"I hope that by encouraging others to speak out at work, we can save the next Jason," Mr Garrels said.

Critical role of trade unions in upholding workplace health and safety

Further, studies have pointed to the positive correlation between trade union involvement at workplaces and improved workplace health and safety outcomes.

Barrister-at-law and Academic Fellow at the University of Melbourne, Peter Rozen has observed that the growth in precarious employment and insecure work in Australia, which is indeed characteristic of most employment in the transient and project-based building and construction industry, has had the potential to weaken self-regulation under workplace health and safety laws as a result of workers' fears about being victimised for raising safety issues at the workplace.

As evidence of this, Rozen points to (amongst other things) a 2005 survey conducted by the Australian Council of Trade Unions, which revealed that 28% of employee workplace health and safety representatives who participated in the survey said they had been pressured by management not to raise workplace health and safety issues and, further, that 25% of those surveyed claimed to have been bullied or intimidated by management because they did so. Clearly, improper managerial pressure undermines the Robens notion of self-regulation and leads to poor workplace health and safety outcomes.

Conversely, empirical studies both in Australia and abroad support the notion that cooperative workplace health and safety regulation, buttressed by trade union representation, are crucial elements of improved workplace health and safety. Indeed, as put by Johnstone and Tooma, the evidence: *"[s]upports the notion that joint arrangements and trade union representation at the workplace are associated with better health and safety outcomes than when employers manage work and safety without representative worker participation."*

With particular regard to the building and construction industry, one US study compared workplace health and safety enforcement in union and non-union construction sites. The data collated for that study disclosed that unionised sites achieved better and improved workplace health and safety outcomes as a result of a higher probability of inspection and greater scrutiny during inspections, as compared to non-union sites.

The study found that employers at union sites were required to correct health and safety violations more quickly and bear higher overall penalties for those violations than employers with a non-unionised workforce. The study attributes the success of trade unions in monitoring workplace

health and safety to trade union training programmes, workshops, and trade union knowledge materials such as manuals and practitioner reports, and to the fact that the involvement of trade unions protects employee workplace health and safety representatives from managerial reprisals. This is consistent with the experience of the CFMEU, which, through a vast network of representatives on the job, the provision of support for workers organising, and the development and provision of information and knowledge, plays a critical role in upholding workplace health and safety at construction sites across Australia.

Provisions of the Bill

Serious Illness or Injury

The CFMEU supports clause 16 of the Bill insofar as it amends the definition of 'serious injury or illness' to include an additional requirement to notify the regulator of an injury or illness causing a person to be absent from the person's voluntary or paid employment for more than four days.

It is imperative that even in systems of self-regulation, that employers be held to account for workplace injury and illnesses which occur at work.

Where an employee is absent from work for more than four days, this should be a notifiable incident under section 35 of the Act insofar as it is likely – due to the length of time required to be absent from work – that the injury was serious.

Notice of Entry – Suspected Contraventions

The CFMEU notes that clause 23 of the Bill sets out the provisions regarding notice after entry by a WHS entry permit holder.

In particular, a new section 119(1) requires a WHS entry permit holder to provide notice, in accordance with the regulations, to the relevant PCBU and the person with management or control of the workplace as soon as is reasonably practicable after entering a workplace under section 117 of the WHS Act to inquire into a suspected contravention.

Further, section 119(2) provides that a WHS entry permit holder is not required to comply with the notice requirements in section 119(1), including to provide any or all of the information required by the regulations, if to do so:

- Would defeat the purpose of the entry to the workplace, or
- Would cause the WHS entry permit holder to be unreasonably delayed in their inquiry in an urgent case, i.e. in an emergency situation.

These are appropriate changes, which the CFMEU supports. Requiring a WHS permit holder to provide 24 hours' notice when exercising rights under the Act unduly puts workers' health and safety at risk.

The CFMEU further notes clause 25 of the Bill omits section 143A so that it is no longer an offence for a WHS entry permit holder to enter a workplace without providing notice under the sections 119, 120 or 122 of the Act.

It is wholly improper for it to be an offence to investigate workplace health and safety contraventions where and non-compliance with notice requirements occurs. The overriding concern of any workplace health and safety law should be the health, safety and welfare of workers. Section 143A was devised to penalise workers and their representatives, and to undermine workers' freedom of association.

In that vein, the CFMEU further supports clause 24 of the Bill, which amends section 123 of the Act to reduce the maximum penalty from 200 penalty units to 100 penalty units where otherwise and contraventions of entry permit conditions occur.

Notice of Entry – Assisting HSRs

The CFMEU endorses clause 17(2) of the Bill insofar as it omits subsections 68(3A), (3B), and (3C) of the Act so that HSRs are no longer required to give at least 24 hours' notice before the assistant's proposed entry to the workplace.

Often, the requirement for assistance can be urgent. HSRs should not face the prospect of proceedings being initiated against them because they have called on a permit holder to rectify workplace health and safety hazards. The role of HSRs is critical to the maintenance of workplace health and safety, and their position should not be undermined through notice requirements.

Further, the CFMEU endorses clause 18 of the Bill, which omits sections 71(5A) of the Act so that a person conducting a business or undertaking is no longer permitted to refuse to grant access to a workplace to a person assisting a HSR if the HSR has not given the required notice.

Too often, persons assisting, including workplace health and safety experts within the labour movement are hindered and obstructed in their attempts to ensure workplace health and safety compliance.

HSR 'stop work' function

The CFMEU strongly supports clause 21 of the Bill, which re-establishes HSRs' right to direct that unsafe work cease.

The CFMEU notes that under the Bill, a HSR may issue the direction under this clause to a work group member if:

- They have a reasonable concern that carrying out the work would expose the work group member to a serious risk to their health or safety; and
- The serious risk emanates from an immediate or imminent exposure to a hazard.

This aspect of the Bill, in conjunction with proposed section 85(2) of the Act (on consultation with the PCBU) enables HSRs to take appropriate action towards improving workplace health and safety, specifically through consultation towards removing work health or safety issue, or towards improvements to be made and/or that dangerous or unsafe work cease.

The integrity of this right is protected by (amongst other things):

- The proposed section 85(5) of the Act, which requires a HSR to inform the PCBU of any direction to cease work that the HSR has given to workers; and
- The proposed section 85(6) of the Act, which provides that only an appropriately trained HSR may exercise the powers under this provision.

There is little doubt that had the former Newman Government's amendments applied many decades ago, building unions and their members would have been exposed to significant fines for 'stop work' action that proved to be instrumental in saving many thousands of lives.

Conclusion

The Committee should recommend the immediate passage of this Bill.

CFMEU

Friday, 5 June 2015