

Submission to the Finance and  
Administration Committee:

***Inquiry into the *Work Health and  
Safety and Other Legislation  
Amendment Bill 2015****

Master Electricians Australia





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## Introduction

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**Master Electricians Australia Ltd (MEA)** is a not-for-profit industry association representing electrical contractors. Originating as the Electrical Contractors Association Queensland in 1937, MEA has been representing electrical contractors for more than 76 years, making it one of the longest-standing industry associations of its kind. MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate.

MEA is a dynamic and modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. The organisation's website is: [www.masterelectricians.com.au](http://www.masterelectricians.com.au).

MEA currently has a membership base of close to 3000 electrical contractors Australia-wide; approximately 1800 are Queensland based companies. The vast majority of these are small businesses with fewer than 20 employees.

### **1. Return of Electrical Safety Commissioner**

MEA certainly appreciates the importance of workplace health and safety and would not seek to oppose any legislative measures that would ultimately result in an improvement for safety in the building and construction industry. It is for this reason that we fully support the re-instatement of an Electrical Safety Commissioner, Electrical Safety Education Committee, and Electrical Equipment Committee. We only recommend that these Committees, along with the appointed Electrical Safety Commissioner, be representative of the electrical industry to ensure the advice and recommendations provided to government is backed by industry experience and expertise.

However, we also believe that certain aspects of the Bill are flawed and will ultimately not serve the overarching goal of improving health and safety. At the same time, these changes have the genuine potential to compromise the productivity of the building and construction industry in Queensland, damaging both contractors and workers in the process. Our concerns with the Bill are outlined below.

### **2. Object of the Act**

It is the view of MEA that the object of the Act misplaces the emphasis on the role of unions and employer organisation in work health and safety practices.

Presently it is an object of the Act that unions and employers organisation take a constructive role in promoting improvements in work health and safety practices.

MEA submits that the emphasis should be placed on persons conducting businesses and the workers. The role of industrial organisations should be to act as a facilitator and promoter of improvements.

Further, that productivity should not be an unreasonable casualty of work health and safety practices.

Accordingly, clause 3 (1) should be amended to reflect this onus:

***(c) assisting persons conducting businesses or undertakings and workers to achieve a healthier, safer and more productive working environment where unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and***

### **3. Delaying works through misappropriated safety concerns**

Misuse of safety reasons to gain access to construction sites for industrial purposes has long been a tactic of construction unions. Once on site union organisers exercise a range of industrial pressures under the guise of safety inspections/concerns. The conduct of the unions speciously using safety arguments to pursue industrial campaigns or to 'flex' industrial muscle is a longstanding matter and highlights the significant productivity impacts resultant from 'safety issues' capriciously raised on construction sites.

Productivity in the construction industry has been perpetually hampered by this type of conduct which is largely hidden from statistical information gathered about the number of days lost to industrial action.

Primary contractors and subcontractors are almost always between a figurative rock and a hard place as a result of the completion deadlines and force majeure types of clauses common to building contracts.

Furthermore, the impact of these lost days is most significantly felt by the mid to lower tier subcontractors working under the primary contractor. These subcontractors are already pressured by primary contractors to tender for work with extremely thin margins in order to win the work and they cannot sustain the cost of unreasonable lost time.

#### **Example – Handbrake-gate**

In September of 2014 there was a spate of 'safety issues' arising from the misuse of a handbrake on forklifts on construction sites in the South-East Queensland region. One such site affected by a rolling forklift 'safety issue' was a residential construction site in Brisbane's Fortitude Valley (Qld).

On prompt inspection it was found that the only explanation for the rolling forklift, which was operating on the ground floor, was that the operator had failed to engage the handbrake. In response the electrical employees, working predominantly fitting out the emergency evacuation lighting and systems on the floors above, stopped worked.

In total the handbrake incident cost the employer close to a full week of work as employees, through encouragement by their union representatives, would not return to work. The employer was forced to engage labour hire staff to complete the work that the employees refused to do.

It was again the case that this site, which had been plagued by these kinds of issues during construction, was nearing completion. The refusal by the electrical workers to attend site coincided with the impending Fire Department inspection and approval of the building. Had the subcontractor failed to meet this deadline the inspection would have been delayed by weeks and they would have breached their contract incurring significant financial penalties under the contract.

#### **Submission**

This is an example of specious safety issues raised in order to delay works on site for reasons other than a genuine and imminent safety matter. The MEA submits that the Committee should consider how the proposed changes to the WHS Act will do anything other than facilitate this type of conduct; as it has done in the past.

Further, there needs to be a mechanism by which parties are able to be penalised for those who pursue these types of capricious safety disputes.

Finally, the Committee should consider whether there is evidence to support this change.

Contractors of all sizes working on these types of construction projects must not be pressured into making decisions based on the threat of union involvement in safety matters.

It is not a good enough reason for the Government to simply state that these changes are necessary to ensure consistency with the status quo when the status quo is widely accepted as being open to abuse. Without supporting evidence the basis for this change will be seen to be simply an ideologically partisan approach to onsite conduct and not the product of good governance.

#### **4. HSRs stopping work**

The ability of HSRs to insert themselves into the managerial prerogative of the PCBU's obligations to manage safety on site is another tool by which construction unions disrupt works on projects.

Nothing resulting from the 2014 amendments to the *Work Health and Safety Act 2011* prevents a HSR from exercising their right to raise safety concerns to the PCBU; with consultation on the matter or involvement of WorkSafe as required.

The ability for a HSR to direct an employee or workgroup to stop work overrides the PCBU's responsibility under section 19 to ensure the health and safety of workers. The responsibility for the duty of care does not lie with the HSR but the PCBU. As such, the HSR should not have the final say on whether to cease work. There are other consultative mechanisms within the Act that allow the HSR to escalate its concerns without overriding the PCBU's primary duty of care.

Furthermore, there are penalties in the Act for PCBU's who fail to meet these obligations but, other than disqualification from the role, there is no penalty for a HSR who capriciously or vexatiously ceases work and fails to establish that:

- 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.

Given that fear and intimidation by unions is still a hall mark of behaviour on construction sites this change places HSRs directly in the path of hostile union organisers. It is not appropriate that a provision of the Act about workplace safety should create a situation where a HSR is caught between their employer or a primary contractor and the pressure of a union organiser.

In practical terms when work is stopped on site for a safety concern it is common that the vast majority of workers on site will return to 'the sheds' until the matter is resolved. It is often the case that a resolution cannot be affected immediately and workers will not be able to return to that aspect of the site. Further, commonly the involvement of union organisers in the communication chain disrupts the ability of the PCBU to redirect work on site and too often workers remain 'in the sheds' far longer than is reasonable.

#### **Example – A Leaky Toilet**

In July 2013 on a major construction project to complete an Oral Health building within the precinct of the new Queensland Children's Hospital the entire construction site of some 280

employees across 6 levels of approximately 6000m<sup>2</sup> was shut down because of a 'safety issue' presented by a 30m<sup>2</sup> area of floor where a toilet had leaked waste water.

The site was shut down for almost a complete week in response to the issue. Despite the primary contractor expediently managing the immediate 'safety issue' in the area the employees, based on the representations by their union organisers, walked off the job. Ultimately the primary contractor and the affected subcontractors on site were forced by the actions of the unions to make an application to the Fair Work Commission to stop or prevent, what could only be characterised, industrial action (matter C2013/5072).

The FWC hearing ran well into the night to establish whether there was a legitimate reason for the employees to remain off site and whether the conduct was considered industrial action.

The tribunal member in this matter determined that the union parties had taken industrial action and as a result made an order precluding the union and employees from taking further industrial action for one month, up to the completion of the project.

Furthermore, while these orders by the FWC are a decision by a Court and are legally binding it is not uncommon for construction unions to ignore these orders and recommence or continue with industrial action.

It is this prevalence to misuse safety mechanisms that halts work on construction sites that harms productivity on construction projects. Further, the disruptive effect of the union in this case prevented employees from returning to work to other parts of the site when it was clearly reasonable to do so.

HSRs and the affected workers must be more than passive in the response to work ceasing on site. There must be an active, facilitative and meaningful participation in the process of finding alternative work. Too often employees leave site as a result of some party, other than their employer, telling them the site will remain closed.

Finally, the process by which a HSR may be disqualified for inappropriate use of their powers amounts to a court hearing which is a long and costly process for the PCBU. Even if the PCBU is successful another suitability elected HSR, as backed by employees and other industrial parties, will step into the role.

### **Submission**

The Committee should consider what measures there are in place to ensure that the powers of a HSR are exercised appropriately and whether penalties should apply to a HSR who misuse their powers.

Further, the rights of a HSR and any person assisting to direct that unsafe work cease must include the obligation to seek and actively facilitate alternative work and that they must not unreasonably refuse to undertake alternative work. Employers should be empowered to deduct a minimum 4 hours wages from those employees who unreasonably refuse to undertake alternative work.

MEA suggests that the Bill should further amend sections 86 and 87 to reflect this obligation:

#### **86 Worker to notify if ceases work**

A worker who ceases work under this division must—

- (a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this division unless the worker ceased work under a direction from a health and safety representative; and

- (b) remain available to carry out suitable alternative work; and

**Insert:**

- (c) *as soon as practicable, employees, either through the workgroup health and safety representative or individually, must seek and facilitate redeployment to alternative work from their employer.*

## **87 Alternative work**

- (1) If a worker ceases work under this division, the person conducting the business or undertaking may direct the 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.

**Insert:**

- (2) *If an employee who has ceased work, unreasonably refuses to undertake alternative work, the employer must not make a payment to an employee in relation to:*
  - (a) *if the total duration of the refusal on that day is at least 4 hours--the total duration of the refusal on that day; or*
  - (b) *otherwise--4 hours of that day.*

If the Committee does ultimately recommend that HSRs should again be given the power to stop work on site every instance should be reviewed by the WorkSafe Queensland to ensure that the HSR has appropriately applied their powers. And if necessary dictate that they undertake additional education and training at the HSR own expense and inform the QIRC that action has been taken. Further breaches and recommendations from Worksafe Qld to the QIRC can then simply recommend that the after repeated or serious failure to operate as their obligations intend should result in a disqualification from holding a HSR position.

## **5. HSRs relationship with a 'person assisting'**

In addition for the ability of a HSRs to stop works on site the relationship to persons assisting the HSR to carry out their duties paves the way for the exercising of other 'interests'.

It is often the case that a 'person assisting' is predominantly a reference to a union organiser; as union organisers are commonly dual qualified in a WHS entry permit holder. There are no measures in the proposed provisions requiring these 'persons assisting' to limit the focus of their presence on site to the matter for which they've been requested to attend. There is also no penalty for a person assisting who oversteps their duty in this regard.

Where the involvement of a person assisting results in a HSR ceasing work the 'person assisting' should be subject to penalty measures equal to a HSR. In addition, a person assisting should be exposed to civil remedies.

Furthermore, it is the subject of numerous legal actions that the construction unions will not limit their conduct and investigations to the 'rule of law'. Restoring these 'persons assisting' provisions simply gives a 'foot in the door' for further lawlessness on construction sites.

HSRs on construction sites are commonly delegates or members of unions and this dual interest creates a conflict between their responsibility to their employer as an employee and the interests of their union with respect to how they treat safety issues on site.

The Government has stated that the rationale for decreasing the maximum penalty for contravening WHS entry permit conditions from 200 penalty units to 100 penalty units is to restore consistency with the model WHS laws. However, these changes will likely only result in a higher rate of industrial disputes with industry participants having a history of ignoring the 'rule of law'; viewing fines as just part of conducting their business. Without a genuine penalty basis as a deterrent, the status quo is sure to be abused or ignored by thons parties who take advantage of the law, seeking conflict and disputation under the guise of workplace health and safety for worker.

## **6. Extending the definition of 'serious injury or illness'**

The Bill proposes at Clause 16 to amend the definition of 'serious injury or illness' to include an additional requirement to notify the regulator of a workplace injury or illness causing a person to be absent from the persons voluntary or paid employment for more than four days. This goes beyond the provisions of the harmonised 2011 version of the Work Health and Safety Act 2011.

The Committee must establish the evidentiary basis for this extension of the definition of "serious injury". The explanatory notes to the Bill fail to articulate the basis for this **new** requirement.

The Committee should consider the prevalence of employees with, or who develop, back related conditions, whether work related or otherwise, who may experience aggravations throughout their employment. These aggravations may or may not result in compensable injuries. Regardless, treatments may vary from rest to more significant medical interventions.

It would be reasonable to expect that 'rest' would be a more common treatment than significant medical intervention. The Committee should consider the burden that will be placed on the inspectorate investigating or simply administering every instance that an employee takes a week off for a 'tweaked back'; which requires rest and time to settle before returning to work.

Further, the Committee must consider the cost of any additional administrative burden this will place on businesses to report to the department and the lost productivity associated with reporting these types of instances.

It is submitted that the existing definition of serious injury or illness is sufficient to cover the Act's intention of providing the inspectorate with the ability to investigate those more serious matters.

## **7. Industry safety performance**

There is no doubt that safety is the primary concern for an employer and ensuring employee safety in a high risk industry such as electrical is a constant process. However, safety has, for many years, been used as a mechanism for industrial disruption by employee organisations particularly those organisations operating in the construction industry.

In order to establish a basis for the restoration of certain powers the Government must consider safety performance rather than the desires of employee organisations or view to return to the status quo.

It is submitted that the performance of the safety systems that businesses are implementing in their workplaces to prevent workplace injuries has resulted in a downward trend of compensable injuries across the construction industry.

This is supported by data that shows the downward trend in the number of new claims in the construction industry and building installation services. The data has been provided by WorkCover Queensland and is current as at 30 April 2015.

New claims (stat)*		New claims (stat)*	
Year	Construction	Year	Building Installation Services
10/11	9,936	10/11	2,453
11/12	10,091	11/12	2,561
12/13	9,187	12/13	2,162
13/14	8,969	13/14	1,923
14/15	8,468	14/15	1,819

\*Factoring applied for 2014/2015 projections

There is no evidence of an upward trend of compensable injuries that supports the need to restore these powers.

Public data available on WorkSafe Queensland's website shows that fatalities across all industries have fallen over the previous 3 periods from January 2013 to June 2014; from 16 to 8. Over this period the number of fatalities that have been classified as occurring on construction sites each period is reported as 2; a total of 6.

Review of the mechanisms of death shows that fatalities on construction sites have been predominantly; 4 out of 6, a result vehicles crushing or colliding with individuals. Fatalities as a result of work being performed on the construction of the project itself a rare.

Further, the WHSQ inspectorate gives the greatest resource allocation by industry, 2009-10 to 2012-13 (as at end September 2012) as a per cent of total activities based on time to the construction industry receives the highest level of attention from the inspectorate.

Industry Group	2011-12	2012-13	2013-14 YTD
Construction	47%	39%	40%
Transport, postal and warehousing	4%	4%	3%
Manufacturing	14%	12%	11%
Health care and social assistance	1%	2%	2%
Public administration and safety	1%	6%	5%
Agriculture, forestry and fishing	2%	3%	4%
Education and training	1%	3%	3%
Other*	30%	31%	32%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>a</sup> Source data supplied by BSSU October 2013

\*Includes where industry is not recorded, Mining, and 'other' industries such as 'Accommodation and Food Services', 'Administrative and Support Services', 'Arts and Recreation Services' and 'Professional, Scientific and Technical Services'

During this period the performance of safety by these businesses has shown a considerable improvement.

Campaign	Campaign timeframe	Workplace visits			
		2011-12	2012-13	2013-14 YTD	Total visits for campaign

Construction housekeeping	October 2010-June 2014	2081	1745	148	3974
Construction falls from heights	October 2010-June 2014	1481	1636	287	3404
Construction mobile plant	October 2010-June 2014	604	386	37	1027
Asbestos Registers	January 2012-June 2016	465	1530	290	2285
Service stations <sup>b</sup>	January 2012-June 2014	n/a	230	130	360
Quad bikes <sup>b</sup>	January 2012-June 2014	n/a	89	17	106

<sup>a</sup> Source data supplied by BSSU October 2013

<sup>b</sup> These campaigns were in the planning stage throughout the first half of 2012 calendar year. Workplace assessment site visits did not commence until August 2012.

As such, it is clear that the best mechanism for improving safety is a well resourced department rather than giving HSRs the ability to stop work or provide for greater scope for unions to pursue their agendas on site.

In fact, implementing these laws may have the opposite impact by compromising the effectiveness of safety systems implemented by employers with unnecessary interruptions from HSRs that do not relate to any genuine safety concerns. This is in addition to the loss of productivity that employers must absorb without justification.

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