

Electrical Safety and Other Legislation Amendment Bill 2025

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Submission to the
State Development, Infrastructure and Works Committee

Electrical Safety and Other Legislation Amendment Bill 2025

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1. The Queensland Council of Unions (**QCU**) is the peak council of registered unions in Queensland representing 25 affiliated unions and around 400,000 workers. We have a proud history of representing the voices of Queensland workers since 1885, and have been advocating for their industrial, social, and political interests since that time.
2. We welcome the opportunity to make a submission to the State Development, Infrastructure and Works Committee's (**the Committee**) inquiry into the Electrical Safety and Other Legislation Amendment Bill 2025 (**the Bill**).
3. The QCU's submission relates to the amendments proposed in the Bill to the *Work Health and Safety and Other Legislation Amendment Act 2024* (**WHSOLA Act**). Specifically, the omission of section 52 of the WHSOLA Act, and other consequential amendments, which in effect repeal new section 155A of the *Work Health and Safety Act 2011* (**WHS Act**), which has not yet commenced as it is waiting proclamation.
4. However, we note that there has been no consultation on the proposed amendments. Instead, the Explanatory Notes to the Bill state:

*'The proposed amendments to the ES and WHS frameworks were not released for community consultation. The Parliamentary Committee process will provide an appropriate forum for the community and any impacted persons to raise issues in relation to these proposed amendments.'*¹

5. Parliamentary Committee oversight of Bills is not and should not be used as a substitute for consultation with Queenslanders and stakeholders impacted by any proposed piece of legislation. This is the second time this Government has introduced changes to the WHS Act without consultation or regard to due process.
6. The objective of a Parliamentary Committee Inquiry into a Bill is to provide detailed scrutiny of proposed legislation, ensuring that its provisions are carefully examined and that the perspectives of stakeholders, experts, and the community are considered. The process allows the Committee to identify potential issues, assess the Bill's impact, and provide recommendations to Parliament, contributing to more informed and transparent lawmaking.

¹ Explanatory Notes, Electrical Safety and Other Legislation Amendment Bill 2025 10.

7. And while Parliamentary Committee scrutiny provides an opportunity for stakeholders to comment on a Bill, it is not a substitute for proper public consultation. Genuine consultation occurs before legislation is introduced, allowing affected individuals and groups to contribute to the development of proposals, raise concerns, and shape outcomes. The Committee process, by contrast, is reactive and cannot fully replace early engagement with those impacted by the proposed changes.
8. It should also be noted that work health and safety (**WHS**) laws are designed to benefit and protect workers by providing a preventative framework to protect against illnesses, injuries, and fatalities arising from the conduct of a business or undertaking. The absence of consultation with workers and their representatives – unions – demonstrates a disregard for their safety and is a fundamental concern regarding the proposed amendment to the WHS Act.
9. Turning to the proposed repeal of section 155A of the WHS Act, if proclaimed to commence, the provision would prescribe the following:

155A Power of regulator to give particular information to particular persons

- (1) This section applies if an inspector issues any of the following notices (each a **relevant notice**)—
 - (a) an improvement notice about a contravention of a provision of this Act at a workplace;
 - (b) a prohibition notice about an activity that is occurring, or may occur, at a workplace;
 - (c) a non-disturbance notice relating to a site at a workplace.
- (2) The regulator may, at the request of an entitled person, give the person information contained in the relevant notice, other than information that is—
 - (a) personal information about an individual; or
 - (b) confidential commercial information.
- (3) For subsection (2), a person is an entitled person if the person is—
 - (a) a health and safety representative for a worker for the workplace to which the relevant notice relates; or
 - (b) a WHS entry permit holder representing a relevant union for a relevant worker for the workplace to which the relevant notice relates.
- (4) In this section—

relevant union see section 116.

relevant worker see section 116.

10. This provision importantly facilitates the practical application of section 70(1)(cb) of the WHS Act which prescribes that a person conducting a business or undertaking (**PCBU**) given an improvement, prohibition or non-disturbance notice must give a copy of the notice to the relevant health and safety representative (**HSR**) as soon as reasonably practicable.

11. Improvement notices relate to circumstances where an inspector reasonably believes that a person is contravening a provision of the WHS Act or has contravened a provision of the WHS Act in circumstances that make it likely that the contravention will continue or be repeated, and require a person to remedy the contravention, prevent a likely contravention from occurring, or remedy the things or operations causing the contravention or likely contravention.²
12. Prohibition notices relate to circumstances where an inspector reasonably believes that an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard or an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, and prohibit a person who has control over the activity from carrying on the activity, or carrying on the activity in a stated way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.³
13. Non-disturbance notices relate to circumstances where an inspector reasonably believes that it is necessary to facilitate the exercise of their compliance powers to require a person to preserve a site at which a notifiable incident has occurred for a stated period or prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a stated period that is reasonable in the circumstances.⁴
14. Given the nature of these notices, it is reasonably foreseeable that recalcitrant PCBU's may be reluctant to share the relevant information with their workers, particularly when it may provide them with a reasonable concern that carrying out associated work would expose them to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard. In these circumstances, a worker has a right to cease work,⁵ and an HSR with the same reasonable concern may exercise their right to direct workers to cease work.⁶ Recalcitrant PCBU's may also be reluctant to provide the relevant information to their workers because it may provide an HSR with a reasonable concern that warrants the exercising of other powers and functions, such as inspecting the workplace or any part of the workplace,⁷ requesting further information about the issue,⁸

² *Work Health and Safety Act 2011* s 191.

³ *Ibid* s 195.

⁴ *Ibid* ss 198 and 199.

⁵ *Ibid* s 84.

⁶ *Ibid* s 85.

⁷ *Ibid* s 68(2)(a).

⁸ *Ibid* s 68(2)(f).

or representing the affected workers with a view to resolving the issue,⁹ including via the issue resolution procedure or a work health and safety dispute.¹⁰

15. In circumstances where a PCBU refuses to give a copy of the relevant notice to an HSR in contravention of their obligation to do so, pursuant to section 70(1)(cb) of the WHS Act, section 155A provides the HSR with an avenue other than appointing an inspector to attend the workplace to assist in resolving the issue or dispute resolution to obtain a copy of the notice.
16. The giving of a notice to an HSR under section 70(1)(cb) is identified as a 'WHS matter' for the purposes of work health and safety disputes.¹¹ However, the Queensland Industrial Relations Commission does not always have the capacity to deal with these matters quickly, nor does an HSR necessarily always want to approach these matters in an adversarial manner. While an HSR may alternatively appoint an inspector to attend the workplace to assist in resolving the issue, this is viewed by many PCBUs as no less adversarial than dispute resolution. Consequently, many HSRs are reluctant to exercise these rights for fear of reprisal (the QCU is aware of many cases of HSRs being relentlessly targeted by their employer for actively trying to protect themselves and their colleagues from harm to their health, safety and welfare, often resulting in the HSR suffering psychological harm themselves). For obvious reasons, HSRs representing workers in hierarchical workplaces, such as Police Officers and Firefighters, can be even more reluctant to exercise these rights.
17. Section 155A addresses this by establishing a mechanism for informal administrative release of the information from the regulator to the HSR. This allows an HSR to obtain the relevant notice in a less adversarial way and timelier than having to file a dispute. This is important with time sensitive WHS issues and/or risks to health or safety emanating from an immediate or imminent exposure to a hazard which may require an HSR to swiftly understand the nature of the WHS issue and exercise their powers and functions expeditiously to protect the workers they represent against harm to their health, safety and welfare.
18. The 2022 *Review of the Work Health and Safety Act 2011* identified that '[f]or HSRs to be able to perform the role envisaged by the WHS Act, it is necessary for [them] to be

⁹ Ibid s 68(1)(a).

¹⁰ Ibid Part 5, Divisions 5 and 7A.

¹¹ Ibid s 102A.

completely integrated into the identification and resolution of safety issues at a workplace',¹² and identified an HSR's right to receive information as a key issue that required clarification to ensure this is fully realised.¹³ Further, the reviewers concluded that '[i]t is impossible for an HSR to be effective in the performance of their functions and powers if they are not apprised of the safety issues that have been identified at a workplace'.¹⁴

19. Section 155A relates directly to these observations, particularly as it relates to the right to receive historical information that may apprise an HSR of recurring safety issues in the workplace. It is appropriate in these circumstances for the regulator to have a discretionary power to informally release this information to an HSR rather than requiring an HSR to make an access application under the *Right to Information Act 2009*. The associated cost, administrative burden and especially the processing periods for such applications (minimum 35 business days) are not consistent with the object of the WHS Act – it does not promote the provision of information to HSRs in relation to work health and safety, so that they can provide fair and effective workplace representation to the workers they represent to ensure they are protected against harm to their health, safety and welfare from risks arising from work or from particular types of substances or plant.¹⁵ It also does not facilitate timely, final and effective resolution of WHS issues,¹⁶ or accord with the intention of the WHS Act to resolve issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue (i.e., resolving issues 'once and for all' to the extent that is possible in the circumstances).¹⁷

20. Section 155A provides the same mechanism for the release of the information to WHS entry permit holders (**EPHs**). This is an important safeguard for HSRs who are reluctant to identify themselves as the person who is asking for the information for fear of reprisal. It also ensures that workers who are not represented by an HSR are entitled to the same fair and effective representation from their union as those represented by an HSR. This accords with the object of the WHS Act by providing a fair and effective model of workplace representation.¹⁸

¹² Charles Massey, Craig Allen and Deirdre Swan, *Review of the Work Health and Safety Act 2011* (Final Report, December 2022) 43.

¹³ *Ibid* 40.

¹⁴ *Ibid* 44.

¹⁵ *Work Health and Safety Act 2011* s 3(1)(a), (b) and (d).

¹⁶ *Ibid* s 81(2).

¹⁷ Explanatory notes, *Work Health and Safety Bill 2011* 54.

¹⁸ *Work Health and Safety Act 2011* s 3(1)(b).

21. The object of the WHS Act is clear about the recognised role unions have in promoting improvements in WHS practices and assisting workers to achieve a healthier and safer working environment.¹⁹ However, that role will only ever be as constructive as the laws allow it to be. Section 155A provides unions with another tool to carry out their intended role effectively, particularly as it relates to recidivist PCBUs and inconsistent compliance and enforcement approaches by the regulator to their recidivism. Access to historical WHS information can assist unions with gathering the necessary evidence to resolve WHS issues in the alternative pathways provided by the WHS laws, such as filing a dispute.
22. The QCU notes the Deputy Premier's concerns in his explanatory speech for the Bill in respect of 'how easily [section 155A] could have been abused' given '[t]here is no limit on how many requests can be made or how often, there is no limit on the number of notices that can be requested, and no limit on how far back the requests can be made' and '[t]here is no requirement... to explain the reason for requesting the information from the regulator'. It is important to note, however, that section 155A does not provide an obligation on the regulator to provide the relevant notice or information related to the notice to an HSR. The decision to release the information is discretionary. Section 155A(2) clearly states that the regulator 'may' (not 'must') give an entitled person (i.e., an HSR) information contained in the relevant notice.
23. The concerns raised by the Deputy Premier could reasonably be addressed in policy set by the regulator to assist and guide how relevant decision makers consider the exercising of the discretion in section 155A, including matters related to public interest and the reason or purpose of the request. Pursuant to section 153(1) of the WHS Act, 'the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of the regulator's functions'. This would include developing the relevant policy.
24. Clause 13 of the Bill proposes to omit section 64(1) of the WHSOLA Act which would also address the Deputy Premier's concerns. This section amends section 271 of the WHS Act to include a new sub-section (1A) to apply section 271 to information obtained under section 155A, meaning that information obtained under that provision is subject to the existing requirements in the WHS Act in respect of confidentiality of information. These requirements, subject to the use or disclosure of personal information as regulated under the *Privacy Act 1988* (Cth), would include that a person must not: i) disclose to anyone

¹⁹ Ibid s 3(1)(c).

else the contents of or information contained in any document; ii) give access to any document, or iii) use information or any document obtained under section 155A for any purpose other than those prescribed in section 271(3), as is the case with other information obtained under the WHS Act.

25. The purpose of section 271 is detailed on page 24 of the Explanatory Notes for the Work Health and Safety and Other Legislation Amendment Bill 2023:

'Section 271 (Confidentiality of information) in the WHS Act provides that a person who obtains information or gains access to a document in exercising any power or function under the Act must not disclose the information, give access to the document or use the information or document for any purpose. Section 41(Confidentiality of information) of the [Safety in Recreational Water Activities Act 2011] serves the same purpose. There are exceptions set out in sections 271 and 41 which permit disclosure of information, giving access to a document or use of information or a document.'

26. At the public briefing for the Bill, the Committee heard from the regulator about the 'additional administrative burden' created by section 155A. The QCU submits to the Committee that this should not be, in isolation, the principal issue informing the Committee's consideration of the repeal of section 155A. It should be balanced against the rights of an HSR to 'request and receive information concerning the work health and safety of workers in the work group' they represent.²⁰ In consideration of that balance, the QCU further submits that section 155A is not as administratively burdensome on the regulator as information sharing provisions in other jurisdictions.

27. For example, section 103 of the *Occupational Health and Safety Act 2004* (Vic) requires an inspector, as soon as practicable after entering a workplace, to give an HSR a written report concerning the entry that includes the following information (which is more than simply the 'information contained in the relevant notice'):

- a. the time of the entry and departure,
- b. the purpose of the entry,
- c. a description of things done while at the place,
- d. a summary of the inspector's observations while at the place,
- e. the procedure for contacting the regulator and the inspector for further details of the entry,

²⁰ *Work Health and Safety Act 2011* s 68(2)(f).

- f. the procedure for seeking review of any decision made by the inspector during the entry, and
- g. if the inspector takes photographs or makes sketches or recordings, the report must also include a statement that the photographs have been taken or sketches or recordings have been made, and that they are or will be available for inspection at a specified place.

28. For these reasons, the QCU recommends the following to the Committee:

Recommendation 1

The amendments proposed in the Bill to the *Work Health and Safety and Other Legislation Amendment Act 2024* not be passed.