# *FINANCE AND ADMINISTRATION COMMITTEE*

**Members present:**
Mr SW Davies MP (Chair)
Mrs EA Cunningham MP
Dr B Flegg MP
Mr R Gulley MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP
Mr MA Stewart MP

**Staff present:**

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms L Whelan (Executive Assistant)

## PUBLIC HEARING—INQUIRY INTO THE WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL 2014

### TRANSCRIPT OF PROCEEDINGS

**WEDNESDAY, 5 MARCH 2014**

**Brisbane**

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**Committee met at 11.19 am**

**CRITTALL, Mr John, Director, Construction and Policy, Master Builders Association;**

**CAMERON, Mr Dean, Principal Advisor and In-House Legal Adviser, Master Builders Association**

**DEARLOVE, Mr Mark, General Manager, Services Development, Master Electricians Australia;**

**O'DWYER, Mr Jason, General Manager, Workforce Policy, Master Electricians Australia**

**TROST, Mr Gregory, Manager Industrial Relations and Grower Services, Queensland Cane Growers Organisation Ltd**

**CHAIR:** Good morning, ladies and gentlemen. I declare open this public hearing of the Finance and Administration Committee inquiry into Work Health and Safety and Other Legislation Amendment Bill 2014. I am Steve Davies, the chair of the committee and the member for Capalaba. The other members of the committee are Mr Curtis Pitt, the deputy chair and member for Mulgrave, Mrs Liz Cunningham, the member for Gladstone; Dr Bruce Flegg, the member for Moggill; Mr Reg Gulley, the member for Murrumba; and Mrs Freya Ostapovitch, the member for Stretton. We have an apology from Mr Mark Stewart, the member for Sunnybank, who will be arriving some time during this session.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 13 February 2014. This hearing is a formal proceeding of parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence.

Thank you for your attendance here today. The committee appreciates your assistance. You have been previously provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will be recording the proceedings and you will be provided with a transcript. This hearing will also be broadcast. In order to assist Hansard, could witnesses please state their names and the agencies they are representing when they speak. I also remind witnesses to speak into their microphones. I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted or excluded from the hearing at the discretion of the committee.

We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode. I remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues you have raised in your submissions and we thank you for the very detailed submissions that we received. The purpose of today's hearing is to further explore aspects of the issues you have raised in the submissions. The committee will allow each of you to make an opening statement if you wish to avail yourself of the opportunity. However, in view of the short time available, we request that those statements be kept brief. The committee has a number of questions it wishes to put to you. There will be opportunity for you to make additional points during the hearing. Welcome, Mr Trost. Thank you for coming today.

**Mr Trost:** My apologies, Chairman.

**CHAIR:** I understand; traffic can be a nightmare. We will open it up to comments. If we can keep it to five minutes each and then, as I said, we will be able to explore. Mr John Crittall, would you like to begin?

**Mr Crittall:** Thank you very much, Mr Chairman and members. I am very pleased to be here. My name is John Crittall. I am the director of construction policy at Master Builders. Committee members, these changes that are being proposed are strongly supported by Master Builders. Master Builders is a union of employers with over 8,000 members in the housing, residential and commercial sectors of the industry. We have representatives of subcontractors in both sectors and we have representatives of major contractors and builders. The purpose of the changes, in our view, is to reinstate some balance into how safety issues are managed on-site to basically reflect the way in which the act was intended. We would argue quite strongly that there are widespread abuses of the current privileges allowed for entry permit holders, whereby employers and PCBUs and owners are not given the required notices. The law itself, by permit holders, is not being followed in terms of suspected contraventions. There are widespread instances where industrial action precipitates a safety issue under the guise of a safety issue that affects the whole site without any opportunity given to the contractors to rectify those particular issues that are in dispute.

We think these changes are modest changes that reflect the right-of-entry provisions in line with the Fair Work Act, which will give some consistency of understanding for employers in terms of how notice periods for entry are going to be consistent across the two pieces of legislation. We think that there is going to be greater respect for the role of the owner and the role of the PCBU in managing sites, particularly in the construction industry. We do not believe that we are stopping unions from their role in safety, but we believe that we are allowing them to offer advice and assist the industry in a more streamlined and structured manner. We also believe that there will be no diminution in safety standards as a result of these changes. In anything, it will enhance the consultative arrangements. It will put some pressure on companies to make sure they consult more broadly and use the structures of safety that are already in the legislation.

We think all of the changes will go a long way in managing safety in a more holistic manner for the building industry. Thank you.

**CHAIR:** Mr Cameron, would you also like to make a comment?

**Mr Cameron:** I support the comments of Mr Crittall.

**CHAIR:** Thank you very much. Mr O'Dwyer?

**Mr O'Dwyer:** We would support the opening statement of Mr Crittall and the Master Builders Association. We also support the increase in the penalties that have been identified in relation to the continuity of the Electrical Safety Act. The one area that we have made some submissions on, that we have made some suggestions to the current bill, is in relation to an alternative procedure, perhaps, about the cessation of work on site in relation to safety representatives. We have suggested an alternative that might be workable, whilst maintaining the overall obligation of the act and also the aims of the bill as it currently stands at the moment.

**CHAIR:** Thank you. Mr Trost?

**Mr Trost:** Thank you, Chairman. Firstly, I apologise for Mr Brendan Stewart, the Canegrowers CEO. We currently have our quarterly board meeting, so he is committed to that meeting. Therefore, I am here in his place. Canegrowers supports the proposed changes to the bill and we would wish to rely upon our written submission in this regard, cay it please the committee.

**CHAIR:** Thank you, Mr Trost. Are there any questions for the gentlemen?

**Mr PITT:** Thank you, Mr Chair. Good morning to you all and thank you for appearing before the committee this morning. I have a broad question to all at the table and maybe you can take turns at answering the questions. The changes to right-of-entry appear to be under the guise of stopping the inappropriate use of permits by permit holders. Can you each tell how many times members of your organisation have utilised the existing legislation under section 138 to revoke workplace health and safety permit holders if those permits are used inappropriately?

**Mr Crittall:** Mr Pitt, I will go first if the committee members here do not mind. Our industry, at the moment, in the commercial sector is confronted on a daily basis with particular officials from the CFMEU and the BLF primarily—although the Plumbers Union and the ETU will also use the same system—whereby on a daily basis, 'We are here under 117', which is the workplace health and safety provision in relation to a suspected contravention. 'Excuse me: show us your permit. What is your actual suspected contravention?' 'We are going to look at the scaffolding'; 'The dust is dusty'; 'The wind is windy'; 'We don't need to tell you anything'.

The union officials come on under the guise of 117 without any pretence any more about what the suspected contravention is, in complete disregard, in our view, about the reason why those provisos were put in the legislation. They should be arriving either as a result of a complaint or an issue that says 'We are coming to inspect something', rather than just 'We are here and when we do our inspection, whatever we find, we will give you a list at the end of the job'.

The reason why employers will not oppose and make representation to have permit holders have their permits revoked is that they are completely intimidated by the process. They are intimidated by union officials, they are intimidated by the strike action that normally precipitates one of these meetings, they are intimidated by the guise of safety being used for an industrial weapon, and they have absolutely no intention of making a complaint for fear of retribution. When we were seeking statistics, not for this hearing but for a previous round-table discussion with the minister, 12 companies would send in their lost-time records as a result of no-one following the right-of-entry breaches. We had over 480,000 hours of lost time in a six-month period on the proviso that none of the companies would be identified for providing Master Builders with that statistical evidence from their own extensions-of-time claims that they duly have to make under the contract. It is of no surprise to anybody in our industry that there is no-one taking permit holders to account, for fear of retribution. It is why our third royal commission is about to start. If employers could actually do that and seek some sort of justice in terms of the law being followed, then we would have record numbers.

**Mr PITT:** But you have not reported any—surely every single case is not based on intimidation. You have mentioned the lists. I am just curious that when the lists are presented to you at the end of the inspection—

**Mr Crittall:** The specific—

**Mr PITT:** Sorry, I am still asking the question. When the lists are presented at the end of the inspection period, are there genuine safety issues associated with those?

**Mr Crittall:** Absolutely, and I would concede that normally those lists are then attended to. The biggest single problem is not the list. In terms of imminent risk—and I think the previous government submission was trying to get to this point—it is not so much that issues do not get raised in our industry and it is not so much that they do not get resolved, because issues get raised and resolved every day. It is the process by which an issue is raised and resolved that has caused so much consternation in our sector—when everybody goes on strike over that list when in fact nothing is an imminent risk. There is no immediate risk. When the inspector gets called in—the reports are on the record now—yes, they found items but it did not mean that people had to go on strike, it did not mean that people had to lose wages, it did not mean that people were being exposed to imminent risk. That is the culture that this legislation, we believe, is going to try to manage. It is going to allow people to say, 'What is in dispute? Let's get an appropriate management response, get people out of the areas that are affected by the potential hazards, keep other people in the safe areas where possible and where appropriate, and manage the process.'

**CHAIR:** Welcome, Mr Dearlove. We gave the other witnesses here an opportunity to make a statement. Would you like to make a brief statement?

**Mr Dearlove:** Yes. My name is Mark Dearlove. I am the Services Development Manager for Master Electricians Australia. I have previously had a fairly extensive safety career in both the government and the electricity supply industry. I guess, very much along what the other gentlemen have said, my role is to try to make safety as practicable as possible. This is the biggest challenge for our members in terms of having safety requirements that are practicable and having benefits that are commensurate with the costs of those safety requirements. This has always been the biggest challenge for the safety industry—that is, to get that balance—because a lot of people would say it is safety but it is safety at any cost. Unfortunately that is just not feasible. We must have safety requirements that are practicable for our members and that are able to be applied to meet the safety outcome that we are all looking for but that are commensurate with the costs of achieving that outcome. That is what the safety legislation is all about. But unfortunately some of the provisions hijack that a bit to a level that is not practicable.

**Dr FLEGG:** Mr Crittall, you have given us quite a powerful testimony today in indicating the sorts of problems that your members are having with the situation as it stands at the moment. Are you able to estimate what the cost to your industry of the misuse of entry permits might be and, when a particular job or a particular employer has an industrial issue, such as an enterprise bargaining situation, is the use of these entry permits increased proportionately with the fact that there is some industrial dispute going on in another area? So there are two parts to the question.

**Mr Crittall:** Dr Flegg, that is a profoundly difficult question to answer on a number of levels. The survey that we did was purely around lost time. We know that on a major project the preliminary costs range between $20,000 and $50,000 a day depending on whether you have tower cranes in the air and gantries sitting there idle. We could measure the time that they lost. We could not measure the cost. But it would run into the millions of dollars.

The second aspect of the question is about the way in which we manage projects when there are breaches. We contend quite strongly that the culture of identifying the issues and moving people out of those affected areas and keeping the site working is completely contrary to the way in which the union behave in terms of the industrial aspects of managing safety. So on a routine daily basis, if we know a contractor is having an industrial problem, either because of an enterprise agreement or not having a union enterprise agreement, our very next response will be: 'Check your safety. The unions have a list of how to stop the project to get your attention because of the particular industrial issue. That is what they will use on a daily basis to get your attention to attend to whatever industrial issue is before them.'

**Dr FLEGG:** Would any of the other witnesses like to comment in relation to their own industry?

**Mr O'Dwyer:** We have made mention in our submission to probably two of the larger disputes that have happened relatively close to Brisbane in the last 12 to 18 months, being the Queensland Children's Hospital but also a dispute that happened last year with the oral health centre project. If I give you the example of the oral health centre project, a temporary toilet failed on one floor. It is quite a large building. I think it has seven floors. That site was out for three days. The PCBU in my view acted appropriately. They cordoned off the area that was affected. They put in place a cleaning regime to make sure there was no risk to health and safety from infection. That site was out—all seven floors were out—for three days over this one small toilet—

**CHAIR:** Mr O'Dwyer, were there other toilets there?

**Mr O'Dwyer:** Absolutely, so it was not an imminent risk. Another issue that I have had particularly with one of our members on, again, a site within South-East Queensland was a dust issue, which Mr Crittall mentioned before. In that case we had the inspectors actually turn up and deem the situation to be safe. The plasterboard that was being used and cut was well within the confines of the code of practice for dust management. But, again, in that large building, being some several stories high, all floors were deemed to be unsafe. Some of those floors were enclosed and had been finished; others were actually open to the elements with good ventilation. In that particular case that is where that ventilation work was being done. Again, the site was completely shut down.

I will raise one point about the costs and the impacts on the employers. If you are an employer and you are subcontracting, particularly for our members, you are last in doing the electrical work and you are pushed for time with project managers. You have a situation where a principal contract with a project manager might have liquidated damages for time delays of $120,000 a day. I do not know too many small electrical contractors that could cope with going to that level of having work delayed and having guys off site because of a safety breach that was not genuine. It is that intimidation. The unions et cetera know that those penalties are applied in the contract. It is a very big stick that contractors just do not want to end up getting caught up with.

**CHAIR:** Mr O'Dwyer, in that situation with oral health where the site was shut down for three days, what power does the inspectors have to come in and say, 'Hang on, it actually is safe,' and override the permit holder who came in and said it was unsafe? So we have these experts—we heard from previous testimony that these guys have been trained for two or three years as inspectors and they are often industry specific, too, with a wide range of experience—who come in and they cannot actually say, 'Hang on, it is safe. Start the site up again.'

**Mr O'Dwyer:** They can but, if the union officials who are also representatives and have accreditation are saying to their members it is not safe, you have a situation then that it goes off basically a court process to get an injunction so that they can go back to work. That is a situation where you have two parties disagreeing about what is and is not safe, and it is a situation then that there has to be some injunction taken out and an order put in place to say workers have to return to work.

**CHAIR:** How would this legislation stop that? They could do that after 24 hours potentially anyway, couldn't they? A permit holder cannot enter that site for 24 hours under this new legislation potentially. Therefore, the toilet is broken and they have cleared it off—

**Mr O'Dwyer:** It would certainly limit those sorts of areas, absolutely. In terms of this legislation, yes, it would certainly limit that.

**CHAIR:** It gives them a chance to remedy it.

**Mr O'Dwyer:** It would certainly raise the situation where, if there were any murmurings, I suppose, from the on-site health and safety representatives that are there or if there were a dispute, inspectors could be called to resolve the dispute early rather than waiting for that to come in.

**Mr Crittall:** Excuse me, Chair, I would like to answer that question you raise because I think it does change the dynamic. A notice to say that the union are coming in 24 hours allows the companies to get their safety committee together, organise their safety representatives—their union elected safety representatives—and perhaps conduct an inspection themselves to say, 'The union are coming to tomorrow. Let's do an inspection to make sure there are no issues.' They may or may not engage an inspector from the department to come and give their advice, because the inspector is empowered to issue provisional improvement notices to rectify things. They could say to them: 'We believe a union is coming tomorrow. They have given us the right notice. Can you come down?' So I think it would change the whole dynamic. Companies that ignore the union notice will do it at their peril. Companies that are active will get their committees together and say, 'We need to do an inspection,' or 'We need to conduct some activities or audits to make sure that the site is running well.'

**Mrs OSTAPOVITCH:** We must not forget we have just heard that if there is an imminent danger then there can be an immediate inspection by a workplace health and safety officer. Is that correct?

**Mr Crittall:** There are a number of aspects for imminent risk. We would think that workers should be told at their inductions that no-one is going to be exposed to doing something that they think is unsafe. That should be told at a site induction before they even commence work on the project. We think the safety representatives have all been trained in identifying imminent risk. Who do they talk to in terms of the structures around safety? Safety committees are doing inspections on a weekly basis. There might be 10 or 15 members of a safety committee—any one of whom could be contacted about imminent risk. The principal contractors have to be involved in identifying imminent risk. Complaints can be raised and resolved within minutes rather than in days. Then at the end of all that, if someone still feels that there is some level of intimidation against the workforce, the inspectors can be called. As we have heard from the previous submissions, they could ring the contractor and say, 'We have had a compliant. There is edge protection missing on level 6. What are you doing about it?' They could do that within minutes. So we think there are a lot of avenues in which imminent risk can be managed in this process.

**CHAIR:** I think Mr Trost would like to answer that, too. Obviously you are in agriculture, which is a different industry.

**Mr Trost:** That is correct. Thank you, Chairman. For the information of the committee—and this is a general comment—for the sugar industry, the union with coverage is the Australian Workers Union. Mr Crittall has made reference to certain unions. With regard to our organisation, we have good dialogue with the AWU representatives with respect to workplace health and safety matters through the Rural Sector Standing Committee. To my knowledge there have been no incidents which have occurred within our industry to date. However, as a general process, we support the content of the bill with regard to the right-of-entry notice changes. To date, we have not been a target industry but, in accordance with the amendment bill process, we have made a submission in support of the proposed changes.

**Mrs CUNNINGHAM:** I would like to follow up with Mr Crittall. I think you have encapsulated some of the concerns of people who are opposed or concerned about the 24-hour notice of entry. You have said that companies will make sure everything is okay. Companies will get the 24-hour notice of intention to enter, and then you said that the companies will make sure everything is okay before the union comes on the site. That is part of the concern that I have. If any company is prepared to operate in an unsafe manner until they get a warning from the union that they are coming on site, it is a concern that (a), their workers do not possibly feel empowered to draw attention to unsafe practices for fear of retribution or dismissal; and (b), that it would take a union notice of entry to actually bring the company to the point where it says, 'Let's make sure everything is okay.' Would you like to clarify that, please?

**Mr Crittall:** I take the question as a fair question, but the reason I was relying on the union notice is to try and prevent what I would consider industrial bastardry as opposed to genuine safety issues. The genuine safety issues are the ones that should be resolved with or without any notice.

They are built into the safety management system of companies and PCBUs and safety representatives and committees now. I do not believe the union notice is necessarily going to empower anybody to do anything differently other than to protect themselves, and I think the companies will be using that as a trigger. But it will not affect the way in which they manage safety on a daily basis.

**Mr GULLEY:** I have two or so questions rolling one after another. It is a question to the panel. When it comes to the work health safety Queensland inspectors, can anyone from the floor describe what your understanding of their level of training is and then compare that to the level of training that the permit holders have?

**Mr Crittall:** Certainly. Of the 200-odd inspectors that were informed of the committee this morning, there are about 42 construction inspectors. My understanding of those gentlemen—there is a couple of female inspectors as well—is that they have enormous industry experience before they would even be able to be interviewed. Most of them would be doing certificate IVs or graduate diplomas in health and safety management, so they would have some tertiary qualifications. Then the internal structures of the department would not allow them the powers that an inspector would carry without at least another 12 months of internal studies—six months is very intense—and then there is another period where they are mentored. There is an understanding that if you are going to stop work on projects, you need to be specialist and skilled.

So in terms of the level of skill, we have a lot of faith in the construction inspectors. Companies will ring the construction inspectors knowing that if they are doing the wrong thing they will still get a breach notice, but they would still rather follow the views of a professionally trained inspector. Our Master Builders policy for all of our members is whatever an inspector requires; you must follow the views of the inspector because we have enormous respect for the inspectors. We have respect for their backgrounds; we have respect for their powers; and we have respect for their training. It is a very important distinction between that and a permit holder, who, in our view, certainly has a list of things to look for; but the union list, which has been published, is a list of how to stop a project. It is not necessarily about imminent risk. It is not necessarily about how we are going to prevent people from being hurt; it is about how we stop the projects to pursue some other avenue. There are some union officials who are highly skilled and highly trained, and I have full respect for them. But the level of training as a rule is in stark contrast between that of a permit holder and that of an inspector.

**CHAIR:** In your view are there enough inspectors?

**Mr Crittall:** Mr Davies, the building industry pays a levy which gives the government about $45 million a year last time we checked, so we like to think we have pride of place and we would like as many inspectors as the government can afford.

**Mr Dearlove:** Could I just reinforce this from an electrical perspective. As you are probably aware, the Electrical Safety Office is an adjunct to work health and safety and a similar situation with the electrical inspectors in the Electrical Safety Office, same sort of situation—

**CHAIR:** Well trained.

**Mr Dearlove:** Definitely.

**Mr GULLEY:** My follow-up question to the panel is: in regards to the work health safety inspectors, do you believe that they are impartial, that they are skilled and that they are timely?

**Mr Crittall:** The answer to the last question was we will take more inspectors if they were available. In terms of their impartiality, their job is to enforce the law. Their job is to read the codes, follow the rules and regulations and be as impartial as they possibly can. It was interesting that in the government's submissions around the 57 complaints, the issue was really there was no real imminent risk. So when we have an inspector come on site they will give us notices to improve things, but they are not being called on for imminent risk. But when they do we would follow it, we would respect it. We think they are highly trained.

**Mr GULLEY:** And they are timely.

**CHAIR:** I have a quick question for the Master Electricians. The committee notes that the Master Electricians are not fully supportive of the proposed amendment and strongly recommend that any variance to the code of practice—this is regarding the right of Workplace Health and Safety representatives to stop work—allow for codes of practice in Queensland to be varied or revoked without requiring national consultation. So you are opposed to that. What we are wondering about is would you expand on the reasons for this statement?

**Mr Dearlove:** We are not opposed to the concept. From our situation when the national codes were put together—and this is further from my original statement—for our industry, some of the requirements in the code of practice were not commensurate with the benefits that could be achieved or were not practical. We made submissions to that but were unsuccessful in getting that recognition of making sure that the requirements were practical for the industry. We recognise there is still a need when developing codes of practice to have a range of input from key stakeholders, and we feel that whilst the government would, in our experience, undertake that process, I think it is important it is embraced in the legislation that any codes of practice are developed with sufficient input from key stakeholders to the particular jurisdiction, because some things are different across different states of Australia.

**Mr Crittall:** Could I please just make a quick comment. That power to amend the codes we see as terribly important for the Queensland construction industry. We have got at least four state based codes around formwork, scaffolding, cranes and tilt-up panels. They took years to develop with the unions and ourselves. They are the finest codes in Australia. Giving the minister in Queensland the power to put a fence around Queensland codes, which the industry has developed and embraced and are superior in any way to the national codes, is an important step in reserving some of the history of the Queensland construction safety codes. It is a very powerful step and if the unions were here this morning, this is the only time they would agree with me today that those codes need to be protected because they were developed conjointly with the union movement.

**Mr PITT:** My question is to Mr Dearlove. Regarding the Master Electricians' submission, it is concerned with clauses 9, 10 and 11. I will just read a little excerpt. It says that—

> Clauses 9, 10 and 11 are clearly linked and we are concerned that it is not appropriate to remove the entire power or ability for a Work Health and Safety (WHS) Representative to call into question the work being undertaken. It is the view of MEA that a WHS Representative must advise the employee of the imminent risk to health and safety. The employee should be required to then provide the WHS Representative with a copy of the appropriate risk assessments and controls in place to manage the risk. If these are not in place, the WHS Representative must advise the PCBU.
>
> In this scenario, the PCBU, WHS Representative and the employee all have obligations under *the Act.*

Could you please explain how the proposed changes could reduce the level of WHS standards in this way?

**Mr Dearlove:** Again a lot of this is around the interpretation of how legislation is applied, and one of the first principles that I think everyone would agree to around safety is if someone identifies a problem, they should inform someone else that there is a problem so that people can fix the problem, if you like. This is where, as Mr Crittall has spoken before, the problem is where safety gets hijacked to become integrated into an industrial issue; however, from our position—and I am sure everyone would support this—we want, as far as possible, any person that identifies a safety problem to pass that on to someone else that is appropriate to be able to fix that and address that problem.

**Mr PITT:** I made this comment in the previous hearing, and it has been raised again, that the department previously had mentioned that they generally will deploy their inspectors as they see it appropriate and as these issues are developing. I guess my point again is that the permit holders play a role and can be in more places than the inspectors, and I think we would all like to see more inspectors. I think that is a decision for the government of the day to continue to explore how that can happen. But notwithstanding the comments today about how people may use it for industrial reasons, those permit holders play an important role in managing workplace health and safety and there are grave concerns that that may be diminished. Do you have any comments or thoughts on that?

**Mr Dearlove:** That was the essence of our comments around there; just to make sure that it is not put into the context that they have no role at all, but to purely get it focused on the safety outcomes that everyone is looking for as opposed to hijacking safety to be used as an industrial outcome.

**Dr FLEGG:** This question might be most relevant to Mr Dearlove or Mr Crittall, given your industry has carried some of the higher risk. A point was made here before about the right-of-entry provisions being some sort of incentive to get safety in order, but it seems to me—having been an employer myself—that there are certain civil liabilities on directors. If someone is injured because they have not had their workplace health and safety in place, in many respects that is the most powerful incentive to make sure they are. Could you comment on the liability of employers and what happens to them in the event somebody is injured because the workplace health and safety has not been up to scratch?

**Mr Crittall:** Dr Flegg, the model Work, Health and Safety Act and the changes that came in in 2012 basically codified what had already been an employer's obligation to provide a duty of care to their employees and others associated with the work and the exposure to risk generated by the work activity. The fines went up to $3 million for companies, and directors were brought in under new obligations to ensure that they would follow and understand and implement safety management systems and actually account for the resourcing so that they could not just say, 'We do not have any money.' That was not deemed a reasonable excuse if they were going to expose workers. Particularly in the construction industry, all of the employers and PCBUs take that obligation extremely seriously. There are massive consequences for breaching health and safety laws. That is not the motivation. The motivation for an employer is a safe and productive workplace. I would much rather be pro-active in encouraging employers to follow their duties than to worry about the fines that might happen after a failure. This whole legislation is designed to get people on the front foot in managing their risks and exposures without having to deal with the consequences of a failure.

**Dr FLEGG:** You do not think employers need notice of union entry to get their act together on safety?

**Mr Crittall:** They do not at all. No, they do not.

**CHAIR:** Thank you. We need to go to Mark.

**Mr STEWART:** Thank you, Chair. I have a very quick question. At no point am I intending to put a cost on safety. However, I refer to the story that you were mentioning before, Mr O'Dwyer, in relation to the oral health building. It seems that after the initial work was done on the temporary toilet on level 7, cautioning it off and improving the cleaning and things like that, there was still a three-day work stoppage, probably more so for inconvenience rather than a safety measure by the sounds. Can you give me an idea in relation to the cost; how many people would have been on-site during those three days?

**Mr O'Dwyer:** I am being informed by Mr Cameron, about 185 employees on that site. If you look at construction wages for those three days, they do a standard 10-hour day sort of thing. In the electrical industry, you are looking at somewhere between $35 and $40 an hour, base wage, plus overtime costs. The CFMEU, BLF employees, carpenters, metal trades workers—I could not comment on what their hourly rate may be, but Mr Cameron may be able to give you more information on that.

**Mr Cameron:** The project in question went to a full hearing at the Fair Work Commission, which I was responsible for. The project in question was a seven-story building. The spill occurred on level 3. It was cleaned up. That was a Thursday. It was cleaned up on the Thursday. The project worked the Friday, worked the Saturday, Monday was an RDO. The union stopped the job the Tuesday and the Wednesday. By the time it got to the commission, which was five days later, after the spill had been cleaned up, the commission ordered the workers back to work. It was a case that reasonable alternative work was available on some 30,000 square metres on the other seven floors. It was an appalling case where 185 workers were bullied or instructed by the union not to return to work as a result of an imminent risk, allegedly, that was found not to be an imminent risk because it was cleaned up five days earlier. That case then proceeded to the Federal Circuit Court, which ordered an injunction in relation to the matter as well. This is only one example of some of the cases we have given in our submission, including a QCH stoppage which was a 10-minute fire drill, after which, of the 700 people who participated in the fire drill, 300 returned to work and the 400 CFMEU workers decided it was not safe to go back to work. These examples continue on a daily basis.

**CHAIR:** Thank you, Mr Cameron. Mrs Cunningham has a question and I think that will be our last one.

**Mrs CUNNINGHAM:** I will try to keep it short. I acknowledge what you have said about the misuse of those entry powers. I acknowledge that that occurs. I also acknowledge that every workplace in Queensland differs and this legislation is a broad brush that is going to apply to every workplace. The united firefighters identified that with their members—and it is patently obvious—when they respond to a fire they do not know what they are responding to. They are concerned that the notice requirements to access external expert assistance will create a potential risk to their members. I do not believe that there is any recognition of their particular and quite discrete workplace. Can you see instances where the 24-hour notice requirement could have negative impacts, as opposed to positive? You have clearly indicated all the positives, but can you see where it would be negative?

**Mr Crittall:** The area that you are talking about that I think may be an issue is when there is a critical incident that has happened on site. That would normally be something like a wall has collapsed, a crane has dropped its load—these do not happen that often, but a trench could collapse, there might be an electrical shock. It could be some critical incident. The provisions that are being proposed here this morning would not allow an entry permit holder to come on to that project after a critical incident. The department's submissions this morning said that in terms of the gravity of the critical incident you would have to have a legal obligation to notify the department by the quickest means or within 24 hours, depending on the gravity. An inspector would normally be involved in those conversations. But I do concede that companies will have to step up their critical incident management systems in reply to this legislation. They already have those plans now, but they would have to revisit them and realise that they do have obligations to manage a critical incident without any union involvement for at least the first 24 hours. That does not mean that workers will not be ringing the inspectors; it does not mean workers will not be ringing their unions. They might be getting advice from the safety committee as to how they manage themselves in response to that incident. But it is something that needs to be considered by industry.

**CHAIR:** Thank you very much, gentlemen. Our time allocated for this hearing has expired. If members require any further information, we will contact you. Thank you for your attendance today. The committee appreciates your assistance and the fact that you have given up your time to come today. We do really appreciate it. The committee will be hearing from a further group of stakeholders commencing at 12.10. You are welcome to observe those proceedings from the public gallery. Thank you very much.

**Proceedings suspended from 12.06 pm to 12.11 pm**

**BACKEN, Mr Jeff, Assistant Secretary (Services/Welfare), Queensland Teachers' Union of Employees**

**BATTAMS, Mr John, President, Queensland Council of Unions**

**COOKE, Mr Anthony, Industrial Officer, United Firefighters Union of Australia, Union of Employees Queensland**

**DEVLIN, Mr Brian, Assistant State Secretary, Australian Manufacturing Workers Union**

**GILBERT, Mr James, Health and Safety, Queensland Nurses Union**

**GRASSICK, Ms Pamela, Occupational Health and Safety Advisor, Queensland Council of Unions**

**INGLIS, Ms Kerry, Senior Industrial Officer, Electrical Trades Union of Employees Queensland**

**KETTER, Mr Chris, Branch Secretary, Shop, Distributive and Allied Employees Association Queensland Branch**

**MARTIN, Mr John, Research and Policy Officer, Queensland Council of Unions**

**MOHLE, Ms Beth, State Secretary, Queensland Nurses Union**

**O'BRIEN, Mr Travis, Senior Industrial Officer, Construction, Forestry, Mining and Energy, Industrial Union of Employees Queensland**

**SCHMIDT, Ms Adele, Research Officer, Independent Education Union, Queensland and Northern Territory Branch**

**WALKER, Mr Graham, Workplace Health and Safety Officer, Shop, Distributive and Allied Employees Association Queensland Branch**

**CHAIR:** Good Morning, ladies and gentlemen. I declare open the public hearing of the Finance and Administration Committee inquiry into the Work Health and Safety and Other Legislation Amendment Bill 2014. I am Steve Davies, the chair of the committee and the member for Capalaba. The other members of the committee are Mr Curtis Pitt, the member for Mulgrave; Mrs Liz Cunningham, the member for Gladstone; Mr Reg Gulley, the member for Murrumba; Mrs Freya Ostapovitch, the member for Stretton; and Mr Mark Stewart, the member for Sunnybank. We have an apology from Dr Bruce Flegg, who was here earlier but had to shoot off for some other commitments.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 13 February 2014. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your assistance. You have previously been provided with a copy of the instructions for witnesses, so I will take those as read. Hansard will be recording the proceedings and you will be provided with a transcript. This hearing will also be broadcast. In order to assist Hansard, could you please state your name and the agency that you are representing when you speak. I also remind witnesses to speak into the microphones. We have only five here today, so there will have to be some microphone bingo.

I remind all those in attendance at the hearing today that the proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind all members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. We are running this hearing as a round-table forum to facilitate discussion. However, only members of the committee can put questions to

witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through me. I also request that mobile phones be turned off or switched to silent mode. I remind you that no calls are to be taken inside the hearing room.

The committee is familiar with the issues that you have raised in your submissions and we thank you for those detailed submissions. The purpose of today's hearing is to further explore aspects of the issues you have raised in your submissions. The committee will allow each of you to make an opening statement, if you wish to avail yourself of that opportunity. However, in view of the short time that we have available, we request that your statements are kept brief. The committee has a number of questions it wishes to put to you, so we would appreciate that. There will be opportunities for you to make additional points throughout the hearing. Probably the easiest way to commence is to go clockwise. We will start with Mr Graham Walker.

**Mr Ketter:** I am the branch secretary of the Shop, Distributive and Allied Employees Association, Queensland branch. Appearing with me today is Mr Walker, our workplace health and safety officer. As set out in our submission, we are opposed to certain aspects of the bill. We have identified those areas of concern. I will not reiterate those.

Before I hand over to Mr Walker to make some further comments, I want to pick up in particular on the issue of concern to us which is the removal of the power for health and safety representatives to direct workers to cease unsafe work. Our investigations lead us to believe that in Victoria where this type of power has been in place for a number of years prior to the harmonised legislation commencing in Queensland, health and safety reps in our industry used that particular power on two occasions. My counterparts in Victoria tell me that on both those occasions it was warranted that that power was exercised.

In Queensland the harmonised legislation commenced on 1 January 2012. As we know, health and safety reps were required to receive additional training before they could exercise that particular power. We are not aware of any examples in our industry where that particular power has been utilised, possibly due to the short period of time that the legislation has been in place and the additional training that is necessary before a health and safety rep can exercise that particular power.

Another factor is that retailers in Queensland are, in our experience, very resistant in general to the concept of having health and safety reps in their workplaces. We routinely experience difficulties in association with the establishment of health and reps in our industry. There are probably not a large number of health and safety reps.

The point of making those comments is that we do not believe that the power has been abused. In industries like ours we believe it is necessary to have health and safety reps. This particular power is very a useful and important one for workers to be able to take some control over the situation which is at hand before them. With those very brief comments I will hand over to Mr Walker to make some further comments.

**Mr Walker:** Apart from what Chris has just spoken about—that is, the removal of the rights of the HSR to direct workers to cease unfair work—the other two main elements that we did not agree with are the removal of the requirement for PCBUs to provide a list of elected HSRs to the regulator and the requirement for 24 hours notice to be given to the PCBU before any person assisting a rep can enter the workplace.

One issue that was not in our submission that I wish to add is the proposal that the minister have the power solely to amend or revoke any code of practice without the normal tripartite consultation. We believe that workers at the coalface and their employers are probably best placed to know what is going to work and not going to work when it comes to these codes of practice. If done at arm's length without that consultation, codes of practice will not be as effective as they might otherwise be.

Lastly, the union is perplexed as to why these changes are being proposed only two years after the introduction of the new act. Given that the process designed to harmonise all the health and safety laws across Australia took some four or five years, from memory, to complete, and during that time multiple stakeholders right across the country lodged, we believe, thousands of submissions, we arrived at model national legislation which obviously includes things that the Queensland government is now proposing to remove. Obviously when those provisions were put into the harmonised legislation two years ago it was consider that they were best practice. That was after substantial consultation. Those provisions were supported by the majority of stakeholders at the time. I suppose the question we have is: what has changed in the last two years to warrant the proposed legislative changes that are now before us?

**CHAIR:** Next we have the QTU.

**Mr Backen:** I am the assistant secretary of the Queensland Teachers Union. In our submission we focus on three issues. I just want to mention one in particular. That is the 24 hour notice issue of proposed entry to a workplace. Over many years our members in state schools, who are primarily teachers and education leaders, have had a clear expectation that on those rarer circumstances in state schools where there are emergent workplace health and safety issues they want the right to be able to talk with and work with a union officer to help resolve the issues. I would like to note too that over many years school principals in state schools, who are also our members, often work with QTU officers to help resolve workplace health and safety issues. Whilst there may be a view that other people external to the school might be able to assist, our anecdotal evidence over many years suggests that certainly QTU officers have played a productive role in what some might refer to as school management resolving such issues.

**CHAIR:** The Independent Education Union is next.

**Ms Schmidt:** The details of our objections to some of the specific provisions are in our submission. I would like to go for a more general introduction. Basically, our real concern with the legislation is that the current legislation, if you look at what has happened, is a product of an ongoing process of evolution that has basically been increasing the emphasis on a collaborative, constructive approach between unions, employers and employees in terms of addressing workplace health and safety issues. Collectively, the proposed amendments appear to represent a step backwards away from that. We would just like to put on record that we have never had any significant issues around right of entry or cease work orders in our industry but we recognise that that is largely because of the nature of the workplace where it is a high duty of care environment. So it does not tend to come up that often. But we do acknowledge that it is a much more significant issue for some of the blue-collar unions. The threats to safety are much more severe than in most cases that happen in schools. Basically, that was our general statement.

**CHAIR:** The Queensland Nurses Union is next.

**Ms Mohle:** The Queensland Nurses Union thanks the Finance and Administration Committee for allowing us to attend this morning. I am the secretary of the QNU. Attending with me today is James Gilbert, our health and safety officer.

We are here today to represent the interests of over 50,000 nurses and midwives who provide health services across this state. They work in a variety of settings—from single person operations to large health institutions and in a full range of classifications from entry level trainees to senior management. As with all of our submissions, our claims are based on evidence. We have cited a number of academic sources that point to the hazards nurses and midwives face every day and we have provided case studies which demonstrate the need for unions to enter the premises to inspect unsafe workplaces. These are not stories designed to entertain. They are true and accurate accounts of hazardous workplace situations that can occur through oversight, negligence or accident.

It is critical that nurses and midwives know that they can call on their union to assist when there is an immediate workplace health and safety risk. Nurses work in a unique occupational environment that can require rotating and night shifts, long shifts, prolonged standing, lifting and exposure to chemicals, infections, diseases, x-ray radiation and other hazards. Because nurses work extended, unpredictable hours with a lack of regular breaks, they are more likely to experience elevated fatigue levels. Night duty rotations are common, particularly in specialist units where nurses must maintain careful and astute observations of vulnerable patients. The continual demands of their work places them at high risk of musculoskeletal disorders and diseases, and they are increasing exposed to workplace violence.

All of these factors can negatively affect nurses' and midwives' health and performance. Thus nurses' safety is intrinsic to patient safety. For these reasons, the QNU strongly opposes the requirement to give 24 hours notice to enter a workplace when we become aware that the situation poses or may pose an imminent risk of threat to the health and safety of our members. It is important that a nurse or midwife can seek immediate assistance in these cases, particularly when the employer may be unresponsive. The case studies we have cited indicate how a prompt investigation on our part revealed workplace hazards leading to illness and injury that may have caused further damage if left unchecked or unrectified without due diligence.

We also oppose the removal of the power of health and safety representatives to direct workers to cease unsafe work. The Attorney-General gives no reason for this change. Yet this important provision not only enables the actions of health and safety representatives it also

prescribes the conditions upon which they may make decisions, their obligations to inform the persons conducting the business or undertaking and the requirement that they have completed the training prescribed in the regulations. These are not frivolous decisions. The representative must be qualified to act under these provisions and they clearly do so based on information and training.

Nurses and midwives work tirelessly to keep the health system safe for us all. At the very least, they deserve a safe workplace so that they can continue to provide the services that Queenslanders have come to expect. The continual erosion of workplace health and safety rights will prevent nurses and midwives from carrying out their important work in a safe and secure environment. In the end, this will adversely affect each and every one of us as we call upon them to care for us in our time of need. We ask the committee to recommend the immediate withdrawal of this bill from the parliament.

**CHAIR:** The United Firefighters Union is next.

**Mr Cooke:** I am the industrial officer from the United Firefighters Union of Queensland. Thanks to the chair and the members of the committee for giving us the opportunity to speak. The firefighters union has a brief but, we think, important statement to make here today about probably an impact of these amendments to the legislation that was not considered in their drafting.

The firefighters union and our almost 3,000 members take safety very seriously. We have to because our members' role description includes working in the most extreme and hazardous situations in Queensland. We are required to go into workplaces right across the state every day and face unseen OH&S hazards. That is the members' jobs. Our members rely on the knowledge of the onsite OH&S people regularly and in particular health and safety representatives—or reps as I will refer to them—when they are available on site.

These reps need to know the hazards and their locations in workplaces that will pose the biggest threat to our members when we enter a workplace in an emergency situation. I am talking, for example, in particular about construction sites, chemical plants, heavy industry. Members frequently go into situations of extreme high risk in emergency situations like fires or explosions.

UFUQ has no doubt that the bill will reduce the ability of OHSRs or reps to appropriately identify and assess situations before they become emergencies that require our members to become involved. The bill will limit the reps' ability to quickly call on and call in expert opinion or assistance when they have identified something that may turn into an emergency situation that then requires our members to be involved. Our members may be required to enter emergency situations with unknown, unidentified and unassessed hazards.

To conclude, the UFUQ see the current OH&S legislation in place in Queensland as a risk management tool. All good risk management tools identify downstream or new hazards caused by the controls that are to be implemented. The controls proposed by this bill will create new hazards and heighten the risk to our members and the union finds this situation unacceptable. We suggest that you leave the rights of health and safety reps as they are and therefore do not increase the likelihood of our members being exposed to high risk situations any more than they already have to.

**CHAIR:** The Queensland Council of Unions is next.

**Mr Battams:** I am the president of the Council of Unions. I have Pamela Grassick and John Martin with me. This is obviously a very serious and important hearing. There is only one question that I think we have to ask ourselves, despite all the rhetoric that has been heard both today and elsewhere. That is, will the changes improve health and safety at work or will health and safety standards decline?

Any observation by any independent person would have to come to the conclusion that these changes will reduce health and safety standards and, as a consequence, there will be more health injuries and illnesses as a result in the workplace. If these changes go through, we intend to monitor those figures and we will be holding responsible those responsible—that is, I guess, the cabinet of Queensland—if these changes do result in more injuries, illnesses and deaths in Queensland.

What we have here is a proposal to handcuff the people at the workplace or outside the workplace who can make a difference—removing the right of health and safety reps in the workplace to direct workers to stop unsafe work practices or working in an unsafe area and, at the same time, removing the right of workers to call in their reps to investigate unsafe work practices or imminent health dangers. It is a double whammy.

Again, any independent observer looking at this in an even handed way would have to come to the conclusion that the removal of those two conditions and replacing them with putting confidence in the employer would mean that health and safety standards will decline. That is our

position and we urge the committee very seriously, as undoubtedly you will, to consider our point of view and to put that very important question at the centre of your considerations: will the changes improve our health and safety standards, or will they decline? Thank you.

**CHAIR:** I now call on the ETU.

**Ms Inglis:** The Electrical Trades Union made a written submission to the inquiry and we appreciate the opportunity to be heard today. The ETU has some serious concerns about the bill. A key focus of the bill as stated was to cut red tape, and accordingly much attention is given to reducing compliance costs and alleviating potential disruption to business. The ETU's concern is that the focus on alleviating costs and disruption to business overlooks the real intention and the real purpose of the act itself and also that the measures that the bill proposes to achieve this have the capacity to further endanger health and safety of employees. In the explanatory notes reference is made to the impact of work health and safety laws on business and unanticipated interruption to work. It must be noted that where there is an interruption to work it is because health and safety issues are being identified and rectified in the workplace, therefore making the workplace itself safer. It should also be borne in mind that, in the circumstances where a person in charge of the business or the PCBU has fully complied with their obligations to provide a safe and healthy work environment, it follows that there should not be any disruption to business.

In our written submission we have gone into a lot more detail, but there are a couple of issues that I just want to touch on for the purpose of this hearing. A very major concern of the ETU's is the removal of the health and safety representatives' power to direct employees to cease work. Health and safety reps have undertaken training to provide them with the knowledge and expertise to carry out their role and, as part of that, to identify situations where for workers to carry out the work would expose them to a serious risk to their health or safety arising from an imminent exposure to a hazard. There are very tight requirements already for a health and safety representative to order work to cease and, generally speaking, it is limited to quite extreme circumstances. In our experience that power is not used lightly. In the circumstances where this would occur—that is, where the risk is serious and imminent—the other options that may be available, for example calling an inspector or registering a complaint with the regulator, are manifestly inadequate in those circumstances, as it is not possible to get a response in the necessary urgent time frame.

A second major concern of ours is the requirement for at least 24-hours notice by a work health and safety permit holder to investigate a suspected breach. Currently, the capacity to enter on less than 24-hours notice is available for a permit holder where there is a situation where there is a suspected contravention. This provision predated the harmonised work health and safety legislation and, once again, it is a provision that exists for circumstances of extreme concern. In the ETU's written submission we gave two examples of where serious situations arose that resulted in a permit holder needing to access a site with less than 24-hours notice. Both of those were situations where there was a potential for fatalities. In the first example given where an employee fell through a concrete slab whilst it was being poured, there was a second pour with a second slab to be completed following that. Had the permit holder not been in a position to attend the site immediately, the second pour could certainly have resulted in fatalities because it was found that the same inadequacies in the process and in the safety arrangements that had been made for the pour were present in the case of the second slab. The second example was a similarly urgent situation which I will not go into because, once again, it is in our written submission.

We also have concerns about the potential for removal of the requirement for the PCBU to provide the work health and safety regulator with a list of health and safety elected representatives. Our understanding is that there is still a requirement to provide and display an up-to-date list, so if that were the case the reduction in work for the PCBU would seem to be minimal by removing it. However, if this is not the case, we say that that would create a reduced imperative for the PCBU to ensure that these records are kept up to date and further that the regulator without such records has no way of tracking the number or whereabouts of health and safety representatives in a workplace and would have no points of contact to disseminate vital work health and safety information through the network of health and safety representatives. For these reasons and for those given in more detail in our written submission, we ask the committee to also recommend immediate withdrawal of the bill.

**CHAIR:** I now call on the CFMEU.

**Mr O'Brien:** I trust that members of the committee have a copy of our written submission. I do not intend to repeat that. Instead what I want to do is take the opportunity to deal with the submissions that have been provided by other parties, and I will start with the Master Builders. Master Builders have provided you with four case studies in their submission. For the assistance of

members of the committee, I have brought along copies of the transcript from two of those four cases which I will leave here for you. I do have a copy for Dr Flegg; I note that he is not able to join us this afternoon. The first of those is the Lend Lease order that was made by the Fair Work Commission pursuant to section 418 of the Fair Work Act. There are a couple of points that need to be made about that particular provision in the Fair Work Act and how that operates in conjunction with the Work Health and Safety Act. What section 418 of the Fair Work Act provides is that where it appears to the commission that there is unprotected industrial action they must make an order. That is to say the commission is not required to make a determinative finding of fact. If there is the appearance of unprotected industrial action, they must make an order. They have no discretion in this regard. So the Master Builders in their submission would have you believe that the making of an order pursuant to that particular provision in the Fair Work Act amounts to a finding of fact, which is clearly not the case.

There are a couple of relevant parts in the transcript which I trust you are being given at the moment that I want to take you to. The first is that the Master Builders in their submission say that the concern of the workforce was that there had been a lack of consultation regarding a spillage of raw sewerage on this particular construction site. In the submissions at paragraphs 705 to 733 you will see that the commissioner was taken through why that is of particular concern on a construction site. It is suffice to say that this is not a matter of personal comfort; this is a matter of health and safety in that construction workers are often carrying large and cumbersome pieces of equipment or materials and slip-and-fall injuries are very common in the industry. If workers slip and fall on an area that has been subject to a spill of raw sewerage without that area being sufficiently treated, then they are subject to risks of hepatitis, HIV and other types of infection that can have serious, long-term health consequences. So this is not a matter of construction workers being squeamish about having to walk through an area that has not been properly disinfected; it is a serious safety concern.

The concern that the workers had on this particular project was that a commitment had been given by the project manager and that commitment was not kept, and you will see that at PN232 to 240 of the transcript. If you also look at the transcript at PN107 to 118 you will see that there were significant deficiencies that were identified under cross-examination of the applicant's own witnesses. Most concerning about this particular case—and you will note that I was in fact the representative who appeared on behalf of the respondent in this matter, and you will see this reflected in the transcript at paragraphs 254 to 270—was that the senior officers for Lend Lease—we are not talking about a small, backyard operator here—demonstrated in the transcript serious deficiencies in their knowledge of the operation of the Work Health and Safety Act. They demonstrated that they had very little understanding of their obligations when it comes to union right of entry, the rights of health and safety representatives and what their obligations are under the act to deal with an incident such as this. Just to make the point again, we are not talking about a small, backyard operator here; we are talking about Lend Lease, and this was a large, government funded job. I think you will find in the transcript there that I put to the particular witness if he thought that that is good enough, and I would submit that the only answer to that is no.

The second case study that the Master Builders rely on again is a matter that was conducted under section 418 of the Fair Work Act, so again I make the point: any findings are not determinative. They are not findings of fact. They are findings of an appearance and nothing more. This particular matter dealt with the Queensland Children's Hospital—

**CHAIR:** Mr O'Brien, we have to keep it brief because we have to ask some questions.

**Mr O'Brien:** Perhaps we can put it to the other members who are appearing before you to see whether they are happy for me to proceed or whether they would like me to conclude.

**CHAIR:** We have not even heard from Mr Devlin yet. I am the chair, so I think we need to hear from everyone and we need to be able to put some questions. I think you have had a fair crack at making a submission. We have your documents, so thank you very much. Mr Devlin.

**Mr Devlin:** We have already put our submission, but for us there are two important points. The first of those is the removal of a permit holder's right of entry without notice. Workplace Health and Safety Queensland has, over a long period of time, conducted a campaign to reduce the number of injuries within the manufacturing industry. It has been shown through heat target mapping that it is one of the most highly targeted areas in which injuries and serious injuries occur. For our members working in manufacturing places to have to go through a process in which you cannot get immediate assistance to get in and get an issue dealt with can often mean the difference between an injury occurring and a potential injury not occurring. A recent example from early last year was a workplace in Mackay where unfortunately through not being able to get into that

workplace in time an apprentice lost three fingers. Those sorts of injuries could well have been dealt with by allowing the entry permit holder, had they not had to go through the process, to be in there and to deal with it.

The second issue that we also have problems with is the removal of the right of the health and safety rep to order unsafe work to cease. We spend a great deal of time encouraging our workplaces to make sure they have trained health and safety reps. To then limit them in the power with regard to stopping unsafe work seems to be counterproductive. For many of our members there is not going to be the time to go through the process of notifying the PCBU or referring it off to an internal committee to have it looked at before an injury will occur. So for us they are the two important things that we really want to see retained. Manufacturing is an important industry for Queensland. It unfortunately is one of those that harms a lot of people, and we would like to see those injuries continue to decline. If this goes through, we seriously believe that those injuries are simply going to increase, and quite markedly increase.

**CHAIR:** Thank you, Mr Devlin. It is now time for questions.

**Mr GULLEY:** I have a question of Kerry Inglis from the ETU, and I want to thank you for your introductory comments. Can you describe the level of training and the skill sets of the WHSQ inspectors and also describe the level of training for the permit holders?

**Ms Inglis:** For the inspectors I would probably have to refer to one of my colleagues who have a bit more speciality in that. In terms of permit holders, I will refer you to Ms Grassick.

**Ms Grassick:** The entry permit holders currently have to do a one-day training course, since the new legislation. Most of them completed prior to that where they had to have a longer course, but it is pretty extensively focused around the provisions and the limitations of their powers, the penalties and the consequences. I think that their training does put them in a very good position to understand not only how to use it but how not to use it.

**Mr GULLEY:** Is that days, months, years of training?

**Ms Grassick:** One day's training.

**Mr GULLEY:** Can you compare that to the actual inspectors; what is your understanding of their level of training?

**Ms Grassick:** I do not have any direct knowledge of their level of training but I imagine it would be significantly more than that, obviously.

**Mr GULLEY:** I have a follow-up question: in your view, are the Workplace Health and Safety Queensland officers impartial in their job, in their implementation of their role?

**Ms Grassick:** Our experience has been that it varies from inspector to inspector and from industry to industry. Perhaps some people here could talk about specific experiences, but it has been, over time, very mixed.

**Mr O'Brien:** I do have some specific examples of that that I can talk about, if you would like, members of the committee?

**CHAIR:** Yes, that is fine. That is what we are here for.

**Mr O'Brien:** We had contact as recently as yesterday with an inspector from Workplace Health and Safety Queensland who advised us that since he made a finding that was adverse to an employer in the construction industry he had, in his words, 'been shackled'. The way that he described that was being moved to a desk in the corner where he was not able to talk to anybody, and has not been sent out on any inspections since that time. So coming back to the question, have we experienced any partiality on the part of the inspectors, the view of the CFMEUQ is very clearly yes, we have.

**Mr Gilbert:** Can I make a comment there, too?

**CHAIR:** Sure.

**Mr Gilbert:** Clearly an inspector has to have significant qualifications to perform their role, but I put it to you a workplace health and safety representative who is a nurse knows her industry just as well as any inspector and in that position should be able to make the right decision around the ceasing of unsafe work, particularly in our industry. In terms of us, I have a graduate diploma with distinction in occupational health and safety, which makes me the expert at the QNU, but all the other officials in the QNU that would perform such roles are all registered nurses or enrolled nurses. They have expertise in our industry.

**Mr PITT:** Following on from the question just asked, the number of Workplace Health and Safety Queensland inspectors obviously cannot possibly cover the entire state. That has been partially acknowledged today. I am keen to hear what your thoughts are. We think that the safety net provided by permit holders obviously provides great value to the safety of workers in Queensland. I am interested to hear your thoughts on that.

**Mr Battams:** Implicit in the changes is that the inspectorate would step into the place of those both in the workplaces as reps and the permit holders to take up that role. Quite clearly, there are not sufficient inspectors to undertake normal duties, let alone emergency circumstances all over Queensland where workers' lives are in danger. That is why I was making the point that, with imminent dangers and immediate action necessary, it is virtually impossible to expect the inspectorate to step into the shoes of the permit holders and the representatives in the workplace. It cannot be done. That is why we believe that injuries and deaths will increase.

**Mr PITT:** I have one other question. I thought I would ask my questions as a block. I wanted to address this to the Queensland Nurses Union, either to yourself, Ms Mohle, or to Mr Gilbert. In the submission you provide evidence that the nature of work that nurses and midwives perform means that they will fill a large percentage of workers compensation claims, not on fatal issues such as back and pain neck pain, damage caused by repetitive work, repetitive strain injuries, awkward work spaces, that sort of thing. Are you concerned that at the very time that the government is denying access to injured workers who do not meet a five per cent threshold, they are also making it harder for WHS reps to prevent injuries?

**Ms Mohle:** Absolutely, that just compounds the situation. But I will hand over to Mr Gilbert, who will be able to provide more expertise.

**Mr Gilbert:** Absolutely. I sit on the Health and Community Services Industry Sector Standing Committee. We were told last year that the inspectorate had a new focus in terms of how they were going to manage their business in terms of inspections and so forth. It was indicated to us that there would not be quite as much auditing in our industry and that would be moved across to industries which would be considered—I would not say of greater importance; I would say industries that have higher rates of fatality and so forth. That does not help our members when they sustain a back injury and do not meet a five per cent threshold and then are told, 'Well, I'm sorry, you do not fulfil the inherent requirements of this job anymore and you are not able to work'. That does not help them at all. They are going to rely on the QNU more and the role of the health and safety rep in maintaining safe workplaces.

Our industry has experienced a surge in occupational violence. I still come across members who do not realise that they have the right to remove themselves from imminent risk of danger, because they have a view that 'I'm a nurse and I have to provide care to people; I have a duty of care to them'. To highlight that point, we have members who come to us. We have training. We have a one-day training course called 'Creating a safe workplace'. It is just about nurses. We do not tell people that, as a result of this, they are health and safety reps. It is to enable them to have an understanding of the contemporary issues around health and safety for nurses. These are people who are reasonably involved in the union. They have come to the training. They are astounded that they have the right to say, 'No, I am not going in that room with that maniac who is threatening to assault me'.

It just shows that this is a retrograde step. If you are going to take away this, nurses need to be told that, 'No, there is no reason that you have to do that. You can remove yourself. You tell the employer and when it is safe you can go back in there and provide care.' If you are going to remove these sections of the act, you are going to place our members in danger.

**CHAIR:** Mr Gilbert, I have a follow-on question from that: we are not saying you cannot train these people, that you cannot educate the nurses themselves to know their rights at work.

**Mr Gilbert:** No. The proposal in the bill is that health and safety reps will no longer be able to cease unsafe work.

**CHAIR:** Nurses themselves can.

**Mr Gilbert:** Yes, and my point was that most of them are not aware of their ability to do that. Most of them think that their duty of care requires them to continue placing themselves in danger. We have been having this battle for approximately 10 years, trying to get people to realise that they have a right to a safe workplace. For instance, I sat in a room two weeks ago with some very senior nurses. There was an instance—not in a mental health area or an emergency area; this was in a general ward in a major public hospital—where members were exposed to constant threats from

young people waiting for surgery. There were threats of violence. They gave examples of people being confronted with knives. This is on a ward; this is not the emergency department. This is in a general ward. They did not realise that they did not have to stay there. The senior nurses had to tell them, and good on them because that is not what we always find.

**Mrs CUNNINGHAM:** I have two questions and I will marry them together, because I know we are short of time. My concern with your answer just now—this is not my question—is that it could be said that either the unions or the bosses have not properly informed their members.

**Mr Gilbert:** In terms of us, we have a journal that goes out constantly and we talk about that thing all the time. That is why we have the training courses. We are aware that there is a problem getting that message out. To be fair to Queensland Health, they have attempted to try to get that message out, but they have not got their message out to all their managers, either.

**Mrs CUNNINGHAM:** Thanks. Perhaps if I could direct my question to John Battams, just because of you are overarching. I have two questions. Others in the hearings today have cited cases where union delegates—there is another name for it—come onto the site and say, 'I am here on 117' and then go in and proceed to cause disruption and there would be valid grounds for some of those concerns. The other extreme that is being introduced here is the 24-hour ban. Can you identify a middle ground? That is my first issue. Secondly, 24-hours notice to entry, even if there is a serious incident: it appears that that 24 hours has to be given. What are the potential issues, concerns or problems that you can foresee with union delegates not even being able to get on site with a significant incident?

**Mr Battams:** I will briefly introduce an answer and then hand over Mr O'Brien, because most of the criticisms where directed at his industry. In terms of what has been argued today and is now out in the press, it is quite clear that we see a situation where one sector from the employer side is making accusations about misuse of certain provisions and using that as a basis to reduce the rights of everybody in Queensland. It is not unknown to this government to do that, to use a sledgehammer to crack the nut. The middle ground is for people who believe the law is not being abided by to report that and for the current provisions to be implemented. I hear that people are too scared to actually report breaches. We are talking about multi-million dollar companies that are not too scared to take the CFMEU and other unions to the federal court and sue them for millions of dollars. You are not telling me that these people who have sat before you here today have not the fortitude to actually report people. Fifty-seven reports around the right-of-entry issue out of 10,000 complaints—less than 0.5 of one per cent is what we are talking about—and yet we have two provisions here that purport to deal with that issue in one sector, affecting every worker in Queensland, which will result, as we have already said, in increased injury and increased death. That is the situation we find ourselves in with these amendments. I will hand over to Mr O'Brien to conclude the argument.

**Mr O'Brien:** Thank you, Mr Battams. Rather than go through them point by point, I might deal with two specific examples that the Master Builders have cited of what they say is the continual harassment on construction sites by unions with unreasonable requests. The first is the failure to install a backup light in the emergency stairwell. I appreciate for people who are not familiar with the construction industry that that does sound like a very minor incident, a very minor issue. Having been in an emergency stairwell on a construction site myself when the power has gone out and there is no emergency lighting, it is pitch black. I would hate to think what would happen if you were in that stairwell with 800 construction workers in an emergency, all trying to get off the site. I guarantee you that there would be deaths caused by the lack of lighting in that stairwell. In the construction industry, that is a major issue. The unreasonable request that the CFMEU had on that occasion was to install a backup battery. The Master Builders would say that that is an unreasonable request. These are the examples they have of the abuse of section 117 of the Work Health and Safety Act. This is the high watermark. This is as good as it gets for them. The unreasonable request is, install a backup battery. That is as good as they can provide.

The second one that I would like to draw your attention to is the issue of dewatering on a site. The reason I want to focus on this one is because I suspect, from what they have said in their submissions, I was the permit holder that conducted this entry visit. I was the CFMEU thug who went there standing over the poor builder, GrowCon on this particular occasion. They say that there was a refusal for people to go and work in areas of the site that were not affected by water. Just to be clear, the areas of the site that were affected by water, we are talking about six to eight inches of water underfoot. There were live electrical power leads running through this water. There were temporary power supply boards that were standing in this water that were not bolted onto the ground, which means if someone pulls the extension lead coming off the temporary supply board it

falls over into this water. I am sure that you all can imagine what would happen if that came to pass. The fact that there were areas of this site that were not literally underwater does not mean they were safe to work in, because there were power leads feeding power to these sites that were underwater. It is not simple enough to say that they were not physically under water, therefore, they are safe to work in. That is not the case here. And the employer was directing people to return to work in those areas, using these power supplies where they were standing in six to eight inches of water.

**Mr Battams:** Mrs Cunningham, the question was, what is the middle ground? The answer to that question is to implement the current provisions of the current act. Do not throw the baby out with the bathwater. Make sure the current provisions are implemented and we will have safe workplaces; implement the changes, we will have unsafe workplaces.

**Mr O'Brien:** If I may, I have one very brief comment—and I am conscious of the time. You will see from looking at the photos that are annotated in the written submission of the CFMEU that it is very, very clear that we are talking about imminent risk to workers. If workers are exposed to those risks for 24 hours longer whilst the notice period is served, there is a higher risk of people being injured.

**CHAIR:** Surely if a worker contacted an inspector—a government inspector, highly trained—they are the best people to deal with that?

**Mr O'Brien:** I would completely disagree. To my knowledge, there are no inspectors currently employed that come from the construction industry. There is specific knowledge required to assess safety on a construction site. To my knowledge, none of those inspectors have that.

There is one further point that I must make about this. If I can take you to page 10 of our written submission, what was of particular concern to me when looking at the photos at the top of page 10—this is the CBD; we are not talking about the boondocks here—is that the scaffolding that you see in those photos is free standing. That means it is not secured. You can see it is some four-stories high. It is unsecured scaffolding. There is debris and waste material leaning up against that scaffolding. If it were to fall, it falls into a main street in the CBD. I know that this government could not care less about the health and safety of construction workers, but if the general public—

**CHAIR:** I am an ex-construction worker. I was a member of the BLF. So that is just bullcrap.

**Mr O'Brien:** I can cite an example of why I say that in a moment. It is not just construction workers; it is members of the general public whose safety is compromised by the bill that is before us.

**CHAIR:** Did you have a question, Freya?

**Mrs OSTAPOVITCH:** I have quite a few.

**CHAIR:** Just one. We are running out of time.

**Mrs OSTAPOVITCH:** I understand that, because someone is hijacking this. I would like to ask everybody: do you really feel that your employers want to see people injured or dead? Does anyone really believe that that is the case? It sounds like you think we are all just irresponsible about people's safety in their workplace.

**Ms Grassick:** We see the worst employers. I was listening to John Crittall talking before about best practice and that it is in the interest of employers to do the right thing and be proactive. There are employers like that. It is not that we want to brand everybody as bad. I had a job for years which was answering questions from workers who had health and safety concerns. I never had one single phone call from someone saying, 'I am just phoning up to say how fantastic my employer is.' We see the bad end. We see the bottom. We see the cowboys. We see people who tell their workers—who are often young and from a non-English-speaking background—they do not have rights. We see people who do not have trained representatives and all of those sorts of things. I do not think that you are getting a perspective from either our end or the employers' end that necessarily lines up. We see the bad ones.

**Mr Battams:** I think we are also saying as part of this process prevention is the key. If you take away these two provisions, you take away two key preventative measures and then rely on punitive measures to actually punish those cowboys who do not do the right thing. We believe it is far more important to prevent injury rather than wait for it to happen.

**CHAIR:** I am going to close with a question. We had the department in and they talked about the work of the inspectors. They are highly qualified. We heard that there are ex-members of the construction industry as part of the inspectorate. As someone who has worked on construction

sites—I worked on the Myer Centre; I worked at World Expo 1988; I come from a construction background and am a ceramic tiler by trade—I have been on building sites and, as I said, I was a member of the BLF back in the day. All I am saying is, in terms of these inspectorates, are you diminishing their ability? Are you saying that as inspectors they are not capable of doing inspections?

**Mr Gilbert:** We are not doing that at all. We are saying there are not enough of them. There are around 250, aren't there? How many businesses are in Queensland? 160,000 is the statistic I have been given. We have also been told that those inspectors will be used mainly in those industries that are higher risk—so your building industry and your manufacturing, your transport and your rural industries. What about all the other industries that still have high rates of injury that might not lead to deaths and dismemberment and amputation but still lead to injuries that render them unable to continue in their profession?

**CHAIR:** I will ask you the same question then. How many permit holders are there amongst the union movement?

**Mr Gilbert:** I do not know. But I can tell you that the QNU in terms of the 24-hour notice has used that provision scantily. We have used it very, very rarely and we have used it for the most serious situations. As my colleagues have said, if there is such abuse of that power then they should use the opportunity provided in the act to take action against those people if they abuse it.

**CHAIR:** I will allow one more question. I will let Curtis ask the question and then I think we have been fair.

**Mr PITT:** Thank you, Chair. The last question I have relates to the opening statement by Mr Walker and is in regard to the code of practice. We heard in the previously hearing from Mr Crittall, from the Master Builders Association. He believed that one thing Master Builders and potentially several of the representatives from the union movement here today would agree on is that the code of practice is an extremely important part of what has been developed over many years in this state. You referred earlier that the minister can make changes without the tripartite arrangement. Given that there seems to be, from one extreme to the other, agreement that the code of practice is an important part, why do you think this is in the bill and why has that provision been put to the minister?

**Mr Walker:** I do not really know. My point about it is that it is the people who work at the coalface who know what the real hazards are, and if you are not going to consult with those people and their representatives, and the employers for that matter, then people at the ministerial level do not have the actual hands-on knowledge in each industry to know what can and what cannot be done. I have an example in the retail industry. I am on the sector standing committee for retail, and I recently was pushing for us to put up some proposal for a new code of practice to deal with the increasing incidence of armed robbery in our industry which in fast food and those sorts of areas is really becoming extreme and putting people at a lot of risk obviously. I was told, 'Don't bother because if these provisions come in there will be no need to consult. It will just be a decision made by the minister.'

**Mr PITT:** I guess that is my point. We heard that there was consensus on some things and polar opposites on others in terms of the ministerial round table. What is driving this change if it seems as though everyone agrees that the code of practice should be a hands-off area?

**Mr Walker:** I do not know to be honest.

**CHAIR:** The time allocated for this public hearing has expired. If members require any further information we will contact you. Thank you for your attendance today. The committee appreciates your assistance and we do appreciate you coming in. We know you are all busy people, so thank you very much. I declare the hearing closed. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001? There being no objection, it is so authorised.

**Committee adjourned at 1.08 pm**