Parliamentary Committees

Work Health & Safety and Other Legislation Amendment Bill 2014

Report No. 39
Finance and Administration Committee
March 2014

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Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

Contents

Abbreviations

AMWU	Australian Manufacturing Workers' Union Queensland and Northern Territory
AWU	Australian Workers' Union
CCIQ	Chamber of Commerce and Industry Queensland
CFMEUQ	Construction, Forestry, Mining and Energy, Industrial Relations Union of Employees, Queensland
COAG	Council of Australian Governments
Cwlth	Commonwealth
DETE	Department of Education Training and Employment
DJAG	Department of Justice and Attorney-General
ETU	Electrical Trades Union of Employees Queensland
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the Legislative Standards Act 1992
HIA	Housing Industry Association Ltd
IEU	Independent Education Union of Australia – Queensland and Northern Territory Branch
IGA	Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety
MBAQ	Master Builders' Association Queensland
MEA	Master Electricians Australia
OFSWQ	the Office of Fair and Safe Work Queensland
OHS	Occupational Health and Safety
OQPC	Office of the Queensland Parliamentary Counsel
PBU	person conducting the business or undertaking
QCU	Queensland Council of Unions
QFF	Queensland Farmers Federation
QIRC	Queensland Industrial Relations Commission
QLS	Queensland Law Society
QNU	Queensland Nurses' Union
QTU	Queensland Teachers Union

Abbreviations cont.

SDAQ	Shop, Distributive and Allied Employees Association – Queensland Branch
SCWR	Select Council on Workplace Relations
SLC	former Scrutiny of Legislation Committee
SWA	Safe Work Australia
UFUQ	United Firefighters Union of Australia Union of Employees Queensland
WHS	Work Health and Safety
WHSQ	Work Health and Safety Queensland
WHSR	Work Health and Safety representative
WRMC	Workplace Relations Ministers' Council

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
the Bill	*Work Health and Safety and Other Legislation Amendment Bill 2014*
the Committee	Finance and Administration Committee
the department	Department of Justice and Attorney-General

Chair's Foreword

This report presents a summary of the Committee's examination of *Work Health and Safety and Other Legislation Amendment Bill 2014.*

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The Bill amends both the *Electrical Safety Act 2002* and the *Work Health and Safety Act 2011.* The Committee has recommended that the Bill be passed. The Committee has made 14 additional recommendations.

The Committee considers that when it comes to workplace health and safety, the safety of all workers is of paramount importance. The Committee heard evidence that workplace health and safety issues are being used as an industrial relations weapon. The use of these laws in this way devalues workplace health and safety and in fact can be counterproductive to achieving genuine safety in the workplace.

The Committee was conscious that workplaces in Queensland cover a wide range of industries, occupations and demographics. The Committee was focused on trying to achieve a balance between the protection of workers and the rights of business to operate in a manner that is not constrained by excessive regulation.

The Committee considers that government WHS inspectors are impartial and are the best qualified to assist in resolving urgent WHS issues. The Committee's recommendations are aimed at strengthening the powers and availability of inspectors to ensure timely and accurate decisions are made which take into account all of the issues affecting the safety of workers.

The Committee enjoyed robust debate in arriving at its recommendations. This is the strength of the committee system in Queensland. Members of the Committee examined and debated ideas in order to arrive at the best possible outcomes and achieve consensus wherever it could.

On behalf of the Committee, I would like to thank those that took the time to provide submissions, who met with the Committee and provided additional information during the course of this inquiry.

I also wish to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee for both the collegial attitude and willingness to think critically through the issues. I would also like to thank the secretariat for their continued hard work and support.

Steve Davies MP
Chair

March 2014

Recommendations

Standing Order 132 states that a portfolio committee report on a bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for explanatory notes.

The Committee has made the following recommendations:

Recommendation 1 **3**

The Committee recommends that the *Work Health and Safety and Other Legislation Amendment Bill 2014* be passed.

Recommendation 2 **3**

The Committee recommends that the impacts of the proposed amendments be monitored for their effectiveness and a review completed not more than two years after commencement.

Recommendation 3 **21**

The Committee recommends that the legislation be amended to include provision for the regulator, or inspector by reason of delegation, to be authorised to provide consent for a WHSR to have assistance provided within the 24 hour notice period.

Recommendation 4 **23**

The Committee recommends that compliance with section 74 be monitored and the revision of the appropriateness of penalty units be included in the review of the proposed amendments.

Recommendation 5 **32**

The Committee recommends that section 85 not be omitted but amended so that WHSR may direct a worker to cease work only after receiving authorisation from the regulator.

Recommendation 6 **32**

The Committee recommends that larger, higher risk workplaces be required to fund additional government inspectors who would be responsible for and located at these larger, higher risk workplaces.

Recommendation 7 **33**

The Committee recommends that the regulator set performance indicators and monitor response times for all complaints and these performance indicators and monitoring should be included as a subject in the review of the proposed amendments.

Recommendation 8 **33**

The Committee recommends that the regulator ensure that inspectors receive industry specific training where required.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 18 May 2012.[1] The Committee's primary areas of responsibility are:

- Premier and Cabinet; and
- Treasury and Trade.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the Bill be passed;

b) may recommend amendments to the Bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the Bill by any of the following methods:

a) calling for and receiving submissions about a bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Attorney-General and Minister for Justice, the Hon Jarrod Bleijie MP, introduced the *Work Health and Safety and Other Legislation Amendment Bill 2014* to the Legislative Assembly on 13 February 2014. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Tuesday 25 March 2014.

[1] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing.

The Committee also considered expert advice on the Bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 14 February 2014. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Friday 28 February 2014. The Committee received 22 submissions, including one late submission. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

1.5 Public briefing

The Committee held a public briefing on the Bill with officers from the Department of Justice and Attorney-General on Wednesday 5 March 2014. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

1.6 Public hearing

The Committee held a public hearing on the Bill with representatives from organisations who provided submissions on Wednesday 5 March 2014. A list of representatives at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

1.7 Policy objectives of the *Work Health and Safety and Other Legislation Amendment Bill 2014*

The objective of the Bill, as outlined in the explanatory notes, is to implement the findings from the Queensland Government's review of national model Work Health and Safety (WHS) laws which commenced in Queensland on 1 January 2012.

The Bill will amend the *Electrical Safety Act 2002* and the *Work Health and Safety Act 2011* (WHS Act). The explanatory notes state that the Bill will amend the legislation to:

- require at least 24 hours notice by WHS entry permit holders before they can enter a workplace to inquire into a suspected contravention to align with the other entry notification periods in the WHS Act and the *Fair Work Act 2009*;
- increase penalties for non-compliance with WHS entry permit conditions and introduce penalties for failure to comply with the entry notification requirements;
- require at least 24 hours notice before any person assisting a health and safety representative can have access to the workplace;

- remove the power of health and safety representatives to direct workers to cease unsafe work;
- remove the requirement under the WHS Act for a person conducting a business or undertaking to provide a list of health and safety representatives to the WHS regulator;
- allow for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation as required by the WHS Act, and
- increase the maximum penalty that can be prescribed for offences in the *Electrical Safety Regulation 2002* to 300 penalty units.

Pursuant to Standing Order 132(1)(a), the Committee recommends that the Bill be passed.

Recommendation 1

The Committee recommends that the *Work Health and Safety and Other Legislation Amendment Bill 2014* be passed.

Recommendation 2

The Committee recommends that the impacts of the proposed amendments be monitored for their effectiveness and a review completed not more than two years after commencement.

2 Examination of the *Work Health and Safety and Other Legislation Amendment Bill 2014* – Preliminary

2.1 Background

The WHS Act commenced on 1 January 2012. The objects of the Act, as defined in section 3, are to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant; and

(b) providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and

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

(d) promoting the provision of advice, information, education and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions by persons exercising powers and performing functions under the Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in Queensland.[2]

When the then Minister for Education and Industrial Relations, Hon CR Dick MP, introduced the legislation in 2011, he stated:

> *Model legislation will ensure that all types of workers are protected from workplace health and safety risks because the duties of care will extend beyond the employer-employee relationships that currently exist in most occupational health and safety laws. Rather than adhering to separate workplace health and safety regulations, multi-state businesses will be able to develop and implement an effective single prevention strategy across Australia.*
>
> *The model Work Health and Safety Act compares favourably with Queensland's Workplace Health and Safety Act 1995 in terms of overall approach. It places obligations on persons conducting a 'business or undertaking', which is consistent with the Workplace Health and Safety Act 1995. It also has equivalent obligations on specific upstream duty holders such as designers, manufacturers, importers, suppliers and installers/erectors of plant. Key differences from the Workplace Health and Safety Act 1995 include a broader definition of 'worker', which includes labour hire, contractors and subcontractors, the imposition of an onus of proof on the regulator to prove an offence and tougher penalties for breaches against the act.*

[2] *Work Health and Safety Act 2011*, section 3

> *The increased maximum penalties reflect a combination of factors, including recommendations from the national review to strengthen the deterrent effect of the penalties and to extend the ability of the courts to impose more meaningful penalties where appropriate, as well as emphasising to the community the seriousness of the offences under this legislation.*[3]

The MBAQ explained to the Committee that the model Work Health and Safety Act and the changes that were implemented in 2012 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. They advised that:

> *…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 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.*[4]

2.2 Preliminary

The WHS laws have been the subject of a review undertaken by the Department of Justice and Attorney-General (DJAG) over the last 18 months. The review considered the impact of the laws on business, including unanticipated or inequitable compliance costs.

Outcomes from the review included:

- construction industry concerns about perceived misuse of right of entry powers;
- inconsistency with entry notification requirements in other legislation and the subsequent complexity and disruption this creates for business;
- business representative concerns about cumulative compliance costs associated with red tape and reducing this burden where it could be achieved without reducing safety standards; and
- the range of national model codes of practice that could be adopted in Queensland.

The Chamber of Commerce and Industry Queensland (CCIQ), in their submission, highlighted their support for a workplace health and safety framework that recognised that government, employers and employees all have a collective responsibility to ensure that Queensland workplaces are healthy and safe.[5]

[3] Queensland Legislative Assembly, Hon CR Dick MP, Minister for Education and Industrial Relations, Second Reading Speech, *Parliamentary Debates (Hansard)*, 10 May 2011: 1282-3
[4] Mr Crittall, Public Hearing Transcript 5 March 2014: 5
[5] Submission 2: 1

2.3 Stakeholder consultation

The explanatory notes state that the Minister held roundtables on 29 August 2012 and 11 July 2013 to review the operation of the WHS laws and these were attended by representatives of Ai Group, Agforce, Civil Contractors Federation (CCF), Australian Workers Union (AWU) , CCIQ, Growcom, Housing Industry Association (HIA), Local Government Association of Queensland, Master Builders Queensland, National Retailers Association, Queensland Council of Unions (QCU), the Construction Forestry Mining Energy Union of Queensland (CFMEUQ), Queensland Farmers Federation (QFF), Queensland Law Society (QLS), Queensland Trucking Association, Sugar Milling Council, Timber Queensland, Major Contractors' Association and Canegrowers Queensland. Specific working groups with business and union representation were also convened to consider particular aspects of the WHS laws, such as the asbestos regulations.

The department advised that, in terms of how those forums were run, a discussion paper was circulated before the meeting. The Attorney-General and Minister for Justice chaired that meeting and elucidated on those issues. They advised that delegates got to raise their concerns or to voice their views on the particular issues raised.[6]

The explanatory notes also state that a range of views were expressed by all stakeholders, which the Government has taken into account in formulating the Bill. The department advised the Committee that stakeholders were generally supportive of the model laws but raised a number of issues, in particular in relation to the construction industry.[7] When asked whether there was 'consensus' or 'acrimony', the department advised that:

> *…generally people were satisfied with the operation of the laws. The WHS permit right of entry was an issue that was consistently raised in both forums. When we surveyed small business they were generally satisfied with the laws as well. In the actual forums the worker representatives from the QCU and, I think, the CFMEU and the Australian Workers Union were not supportive of any proposal to alter the WHS right of entry permit system.*[8]

The Queensland Law Society (QLS) noted in their submission that they have long advocated that good legislation is the product of good consultation with stakeholders. They advised that they were not provided with draft legislation before the Bill was introduced and given the time frames available for making submissions and the commitments of their members it has therefore not been possible for them to conduct an exhaustive review of the Bill.[9]

The Australian Industry Group (Ai Group) also indicated its concern over the constrained timeframe provided for input to consideration of the Bill.[10]

2.3.1 Committee comments

The Committee received a number of submissions which generally supported the provisions of the Bill without providing reasons for this support. The Committee invited all submitters to its public hearing, however, most submitters who supported the Bill either elected not to participate or were unable to attend given the short reporting time frames.

[6] Mr Bick, Public Briefing Transcript 5 March 2014: 8
[7] Mr Goldsbrough, Public Briefing Transcript 5 March 2014: 2
[8] Mr Goldsbrough, Public Briefing Transcript 5 March 2014: 8
[9] Submission 15: 1
[10] Submission 18: 1

While those organisations opposed to the proposed changes presented their views clearly, the Committee expresses its disappointment that it was unable to explore further with submitters their reasons for supporting the Bill.

2.4 Estimated Cost of Government Implementation

The explanatory notes state that the amendments involve no cost to government but are expected to achieve benefits for business, particularly in the construction industry, by minimising disruption at workplaces when WHS entry permit holders misuse their powers of entry under the Act.

The department explained that it is the responsibility of the person conducting the business or undertaking (PCBU) at the workplace to ensure the health and safety of workers and that workers are not conducting work in a way that puts their health and safety at risk. If the PCBU directs a worker to continue to work after a safety issue has been raised with them, the PCBU may be in breach of their duties under the Act.[11]

The department confirmed that once advised of a WHS issue that poses a serious risk to health and safety of workers, the PCBU has a duty to act to ensure the health and safety of their workers. It is a category 2 offence if a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness and penalties up to $1.5 million for a corporation and $300,000 for an individual person apply.[12]

2.5 Consistency with legislation of other jurisdictions

The explanatory notes state that under the *Intergovernmental Agreement for Reform in Occupational Health and Safety,* any party that proposes to amend its legislation so as to materially affect the operation of model WHS legislation is required to submit the proposed amendments to the Select Council on Workplace Relations (SCWR) for consideration. A number of issues raised by Queensland stakeholders have also been identified in other jurisdictions. The proposed amendments have been submitted to the Select Council to consider for inclusion in the model WHS laws and referred to Safe Work Australia for further consideration.

The department advised that the SCWR is yet to make a decision on inclusion of the amendments in the model WHS laws.[13] The department advised that the matter is currently being considered by Workplace Relations Ministers and the next meeting is scheduled for April 2014.[14] Safe Work Australia is to report back to the SCWR.[15]

2.6 Commencement

The Bill provides that the Act will commence on a date to be fixed by proclamation.

[11] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 13
[12] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 16
[13] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 6
[14] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 21
[15] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 22

3 Examination of the *Work Health and Safety and Other Legislation Amendment Bill 2014* – Amendments to *Electrical Safety Act 2002* – Clauses 3 – 4

The Bill amends Part 2 of the *Electrical Safety Act 2002*.

The explanatory notes identify that:

> *…this is a technical amendment to provide that the maximum penalty for offences in the Electrical Safety Regulation 2002 can be no more than 300 penalty units, replacing the current maximum of 40 penalty units. This will ensure the Electrical Safety Act 2002 is consistent with the maximum penalty for regulations made under the Work Health and Safety Act 2011 and that nationally consistent penalties can apply to offences in the Electrical Safety Regulation 2002.*

It should be noted that the *Electrical Safety Regulation 2002* replaced by the *Electrical Safety Regulation 2013*, effective from 1 January 2014.

3.1 Clause 4 – Amendment of section 210 (Regulation-making power)

Clause 4 proposes to amend section 210(3) of the Electrical Safety Act 2002 so that a regulation may fix a penalty of not more than 300 penalty units for breaches of the regulation. The previous penalty amount of 40 penalty units is omitted and replaced by 300 penalty units.

The department advised the Committee that the proposed amendment will ensure the Electrical Safety Act is consistent with the maximum penalty for regulations made under the WHS Act and that nationally consistent penalties apply to offences in the Electrical Safety Regulation. They also advised that the amendments in the Bill are aimed at improving safety outcomes while reducing regulatory burden and costs on industry and are supported by business.[16]

The explanatory notes identify that the increase in the maximum penalty that may be imposed for an offence against the *Electrical Safety Regulation 2013* was recognised by the Office of the Queensland Parliamentary Counsel (OQPC) as an FLP issue. The OQPC noted that the maximum penalty that may be imposed for an offence under the Electrical Safety Regulation 2013 has increased from 40 to 300 penalty units, and that under the previous Scrutiny of Legislation Committee (SLC) there was a policy that the maximum penalty for offences in a regulation should generally be limited to 20 penalty units.

The government response to this in the explanatory notes state:

> *This amendment corrects a drafting oversight when amendments were made to the Electrical Safety Act 2002 (ES Act) to harmonise key aspects of the ES Act with the WHS Act. These amendments commenced on 1 January 2014.*
>
> *This ensures that the ES Act is consistent with the maximum penalty limits for regulations made under the WHS Act and that nationally consistent penalties apply to offences in the ES Regulation.*

Master Electricians Australia (MEA) supported the technical amendments to the maximum penalty amendments to Electrical Safety legislation that would align the WHS Act. They advised that these amendments would maintain the consistency of harmonisation without the risks associated with the reintroduction of state by state differences which may be to a lower standard.[17]

[16] Mr Goldsbrough, Public Briefing Transcript 5 March 2014: 3
[17] Submission 14: 2

Canegrowers noted that the technical amendment to the Electrical Safety Act to ensure consistency with the maximum penalty provisions under the WHS Act has been brought about by an oversight in drafting of previous versions of the Electrical Safety Act and Regulation. They advised that whist they appreciate the need for consistency within the provisions of the legislation, they requested that consideration be given to better utilisation of existing penalty provisions rather than increasing the quantum of the maximum penalty.[18]

The department advised that:

> *…in Queensland we have a Work Health and Safety Act and a separate Electrical Safety Act. Under the model legislation for other jurisdictions they have electrical safety under the same act. Unfortunately, at the time when we amended the Electrical Safety Act to align it with the new Work Health and Safety Act in Queensland the penalty levels under the Electrical Safety Act were not made consistent with that Act. So it is essentially fixing up a drafting error. Increasing those penalties will now allow us to align some electrical safety penalties with those nationally agreed penalty levels.*[19]

3.2 Committee comments

The Committee is satisfied that the proposed amendment will produce consistency with the Work Health and Safety Act provisions and that the issue has been sufficiently canvassed in the Bill and explanatory notes to ensure that there is general awareness of the penalties that can be imposed for breaches of the Act.

Refer also to section 5.1.2 of this report with respect to identified fundamental legislative principle (FLP) issues.

[18] Submission 16: 1
[19] Mr Bick, Public Briefing Transcript 5 March 2014: 7

4 Examination of the *Work Health and Safety and Other Legislation Amendment Bill 2014* – Amendments to *Work Health and Safety Act 2011* – Clauses 5 – 19

The Bill proposes to amend sections 68, 71, 74, 82, 83, 86, 119, 122, 123, 274 and schedule 2A of the *Work Health and Safety Act 2011;* insert a new Division 4 in Part 16 of the Act and a new section 143A; and omit section 85.

The Minister noted when introducing the Bill that industry had commented on the complexity and confusion created by the inconsistency between right of entry provisions under the Work Health and Safety Act and the Fair Work Act and that the Bill responds to those concerns[20]. Appendix D contains a table providing a comparison of the proposed amendments, existing provisions within the *Work Health and Safety Act 2011* and the *Fair Work Act 2009* (Cwlth).

The proposed amendments to the WHS Act relate directly to Work Health and Safety entry permit holders (WHS entry permit holders), Work Health and Safety representatives (WHSR) and a person conducting a business or undertaking (PCBU). Appendix E contains a list of duties for each of these people provided by DJAG.

It should be noted that the explanatory notes use the abbreviation 'HSR' to depict a health and safety representative. However, for the purposes of this report the term health and safety representatives are covered by the abbreviation 'WHSR'.

The Act specifies that a worker who carries out work for a business or undertaking may ask the PCBU to facilitate the conduct of an election for one or more WHSR to represent workers who carry out work for the business or undertaking.[21] A worker is eligible to be elected as a WHSR only if he or she is a member of that work group and has not been disqualified under section 65 of the Act.[22]

In supporting the Bill, the CCIQ noted that the results of their member survey indicated that WHS legislation is the second major area of regulatory burden for businesses in Queensland. They advised that 70 percent of respondents stated that WHS regulations have a high or moderate impact on their business operations.[23]

The Ai Group advised in their submission that whilst they do not oppose any of the individual changes contemplated in the Bill, they are concerned that the changes represent a move away from harmonised legislation at the Federal level. They advised that this is a significant concern for Ai Group and its members particularly those companies that operate across State borders.[24]

The Queensland Council of Unions (QCU) indicated that the proposed changes to the Act would breach national harmonisation and reduce standards in Queensland to below that in other states. They advised that national harmonisation was a lengthy process in which all parties to the negotiations were consulted and reached agreement with compromises on both sides. They advised that regulators, employers and unions saw that national harmonisation was necessary to reduce the red tape that resulted from having to follow different provisions in different jurisdictions.[25]

[20] Queensland Legislative Assembly, Hon JP Bleijie MP, Attorney-General and Minister for Justice, Introduction, *Parliamentary Debates (Hansard)*, 13 February 2014: 235
[21] *Work Health and Safety Act 2011*, section 50
[22] *Work Health and Safety Act 2011*, section 60
[23] Submission 2: 1
[24] Submission 16: 1
[25] Submission 17: 2

The QCU considers that the proposed changes would not only result in a lower standard of protection for Queensland workers and more administrative and training costs for business, but would also create an additional burden on the regulator since there is a large cost saving involved in maintaining consistency between guides, interpretive notes, campaign materials and training course materials.[26]

The United Firefighters' Union of Australia Union of Employees, Queensland (UFUQ) articulated their concern that the proposed amendments will reduce the ability of WHSRs to appropriately identify and assess situations before they become emergencies that require their members to become involved. They consider that the proposed amendments will limit the WHSRs' 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 UFUQ members to be involved. They are concerned that their members may be required to enter emergency situations with unknown, unidentified and unassessed hazards.[27]

The UFUQ stated that they see the current legislation as a risk management tool and all good risk management tools identify downstream or new hazards caused by the controls that are to be implemented. They consider that the amendments proposed by the Bill will create new hazards that heighten the risk to their members.[28]

The QCU suggested to the Committee that the question that needs to be asked is whether the proposed changes will improve health and safety at work or will standards decline. They consider that the answer to this question is that the changes will reduce health and safety standards and as a consequence there will be more health and safety injuries and illnesses.[29]

The department responded to these concerns by stating that there are currently variations in union right of entry provisions across states and territories. They advised that:

- Victoria has taken the decision not to adopt the model WHS laws.
- Western Australia has indicated that when they implement the model WHS laws they will not be adopting the union right of entry provisions as it is provided for under their industrial relations legislation.
- South Australia has adopted the provisions for WHS entry permit holders in the model laws but with some amendments. If it is reasonably practicable, WHS entry permit holders are required to contact the South Australian regulator by phone, before entering work sites into suspected safety contraventions.[30]

The department also advised that they do not consider that any of the proposed amendments represent material variations from the model WHS laws. They consider that the amendments are unlikely to have any significant impact on businesses operating across state borders.[31]

[26] Submission 17: 2
[27] Mr Cooke, Public Hearing Transcript 5 March 2014: 13
[28] Mr Cooke, Public Hearing Transcript 5 March 2014: 13
[29] Mr Battams, Public Hearing Transcript 5 March 2014: 13
[30] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 6
[31] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 6

Of particular concern to a number of submitters was the focus on construction industry issues identified in the explanatory notes as the compelling reason for the amendments. The QCU considered that the proposed changes reflect the opinions of a small number of lobby groups and do not begin to approach the scope and complexity of the two year consultation around national harmonisation.[32] The Shop, Distributive and Allied Employees Association Queensland Branch (SDAQ) also expressed concern that the proposed changes are targeted at a niche market of the Queensland workforce, such as the construction industry, and greater consideration must be given to the future implications which will affect all Queensland workplaces.[33]

The Electrical Trades Union (ETU) opined that the key focus of Bill was to cut red tape and much attention has been given to alleviating costs and 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 purpose of the Act itself and the amendments have the capacity to endanger health and safety of employees. They noted that where there has been an interruption to work, it was because health and safety issues had been identified. They also noted that where a PCBU has fully complied with their obligations to provide a safe and healthy work place, it follows that there should not be any disruption to business.[34]

The Independent Education Union Queensland and Northern Territory Branch (IEU) noted in their submission that a primary aim of the current WHS Act was to encourage unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and to assist businesses and workers to achieve a healthier safer working environment. They consider that this aim will not be met if rights to be on site when a risk is suspected are restricted.[35]

They emphasised that the current legislation is a product of an ongoing process of evolution with an increasing emphasis on a collaborative, construction approach between unions, employers and employees in terms of addressing workplace health and safety issues. They are concerned that the proposed amendments represent a step backwards away from that.[36]

The Queensland Nurses Union (QNU) also voiced the concern that:

> *…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 and 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.*[37]

The Queensland Teachers Union (QTU) advised the Committee that the harmonisation of WHS laws were aimed at reducing regulatory burdens, contributing to the aim of a seamless national economy while still providing high safety standards for employees. They advised that since the commencement of the Act, there has been a downward trend in WorkCover claims, WHS incident notifications, improvement notices, prohibition notices and infringement notices. They consider that these reductions support the general view that the current Act is contributing to an improvement in safety outcomes for employees and workplaces. They do not support the proposed amendments primarily because they do not consider that valid evidence has been produced, from across the Queensland workplace landscape, to justify the changes.[38]

[32] Submission 17: 2
[33] Submission 19: 2
[34] Ms Inglis, Public Hearing Transcript 5 March 2014: 14
[35] Submission 6: 2
[36] Ms Schmidt, Public Hearing Transcript 5 March 2014: 12
[37] Ms Mohle, Public Hearing Transcript 5 March 2014: 13
[38] Submission 12: 2-3

4.1 Powers of the regulator and inspectors

Section 152 of the Act set out the functions of the regulator as follows:

- to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
- to monitor and enforce compliance with this Act;
- to provide advice and information on work health and safety to duty holders under this Act and to the community;
- to collect, analyse and publish statistics relating to work health and safety;
- to foster a cooperative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
- to promote and support education and training on matters relating to work health and safety;
- to engage in, promote and coordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;
- to conduct and defend proceedings under this Act before a court or tribunal;
- any other function conferred on the regulator under the Act.

The regulator has the power to do all things necessary and convenient with respect to the performance of its functions. The regulator is also empowered to delegate to an inspector, however, inspectors are subject to the regulator's directions. The functions and powers of inspectors are set out in section 160 of the Act. Section 160 is as follows:

> **160 Functions and powers of inspectors**
> An inspector has the following functions and powers under this Act—
> (a) to provide information and advice about compliance with this Act;
> (b) to assist in the resolution of—
> (i) work health and safety issues at workplaces; and
> (ii) issues related to access to a workplace by an assistant to a health and safety representative; and
> (iii) issues related to the exercise or purported exercise of a right of entry under part 7;
> (c) to review disputed provisional improvement notices;
> (d) to require compliance with this Act through the issuing of notices;
> (e) to investigate contraventions of this Act and assist in the prosecution of offences.

Whilst the sections relating to the regulator and inspectors are not proposed to be amended in the Bill, the Committee considers that the proposed amendments will impact on the regulator and inspectors.

The department advised the Committee that the Office of Fair and Safe Work Queensland (OFSWQ) has a total of 259 inspectors made up of 210 WHS inspectors and 49 electrical safety inspectors. These inspectors work across five regions.[39]

[39] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 11

Workplace Health and Safety Queensland (WHSQ) is responsible for improving workplace health and safety in Queensland and helping reduce the risk of workers being killed or injured on the job. WHSQ enforces workplace health and safety laws, investigates workplace fatalities, serious injuries, prosecutes breaches of legislation, and educates employees and employers on their legal obligations. WHSQ also provides policy advice on workers' compensation matters.[40]

The Committee sought clarification regarding the structure of the inspectorate. The department advised that Work Health and Safety Queensland (WHSQ) has 17 offices located within five regions across Queensland. Of the WHSQ inspectorate resources 42 per cent are located in Northern, Central and Southwest Queensland regions with the remaining 58 percent located in Brisbane South/Gold Coast and Brisbane North/Sunshine Coast. Table 1 below depicts the number of inspectors by region. They advised that inspectors located in South East Queensland are grouped into Industrial and Construction teams, whilst inspectors in other parts of the state are grouped into multi-disciplined teams according to geographical location. WHSQ also uses mobile and regionally based teams to provide greater flexibility in the delivery of state-wide construction industry sector outcomes.[41]

Table 1: Number of WHSQ Inspectors by Region

Inspector Numbers	Brisbane South/Gold Coast	Brisbane North/Sunshine Coast	Central Qld	North Qld	South West Qld	Total
Construction Inspectors (FTE)	14	18	7	5	3	47
Industrial Inspectors (FTE)	19	20	9	10	11	69
Other Inspector positions	34	14	18	15	13	94
Total WHS Inspectors	67	52	34	30	27	210
					Electrical Safety Inspectors	49
					Total Inspectorate	259

Source: Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 5

The department also advised that WHSQ benchmarks the provision of inspectorate resources against other jurisdictions. A ratio of active field inspectors per 10,000 employees provides a means of comparing capacity across jurisdictions in Australia. Table 2 identifies the number of inspectors in comparison to other jurisdictions in Australia.

[40] Department of Justice and Attorney-General, *About us, Office of Fair and Safe Work Queensland*, http://www.justice.qld.gov.au/corporate/about-us/fair-and-safe-work-queensland [24 March 2013]
[41] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 4-5

Table 2: WHS Inspectorate numbers across jurisdictions

WHS jurisdictional inspectorate capacity, 2011-12 Jurisdiction	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Number of active field inspectors	315	240	216	103	93	31	12	23
Active Field inspectors per 10,000 employees	1.0	0.9	1.1	1.0	1.3	1.5	1.1	1.7

Source: Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 6

With respect to the construction industry, the Committee was advised that there are currently 47 field based WHSQ construction inspectors and two vacant construction inspector positions located throughout Queensland. In addition there are a number of non-inspector positions which provide support to the construction inspectors such as structural and mechanical engineers, hygienists and ergonomists as well as specialist groups such as the Hazardous Industries Chemical Branch and electrical safety inspectors who provide specialist electrical advice. They also advised that non-construction inspectors may also attend construction sites.[42]

In addition to the WHSQ inspectors there are 46 mines safety inspectors, including mines inspection officers but excluding investigation officers. These inspectors are part of the Department of Natural Resources and Mines. Mines inspectors have a similar role to WHS inspectors. They ensure compliance with legislated safety and health standards in mines and quarries, and advise and engage on safety and health matters. However, they have specialist skills in the high risk mining sector.[43]

The QNU advised the Committee that they have been told that the inspectorate will not be auditing their industry as much and the focus will be moved across to industries which are higher risk. They are concerned that this focus will not assist their members and they are going to have to rely more on the union and WHSRs in maintaining safe workplaces.[44]

The department advised that over the past three financial years, there have been 102,045 workplace visits by WHSQ staff (12,961 reactive visits and 89,084 proactive visits).[45]

The department also advised that over the past three years, a total of 28,915 notices have been issued by inspectors.[46] Table 3 provides a break up of notices issued by industry group.

[42] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 4
[43] Correspondence from Department of Justice and Attorney-General, to FAC dated 20 March 2013: 1
[44] Mr Gilbert, Public Hearing Transcript 5 March 2014: 17
[45] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 11
[46] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 11

Table 3: A break up of notices issued by industry group over the past 3 years

Industry Group	2010/11	2011/12	2012/13	Total
Agriculture, Forestry and Fishing	279	289	362	930
Construction	3,955	3,995	3,063	11,013
Health Care and Social Assistance	96	104	109	309
Manufacturing	1,536	1,963	1,227	4,726
Transport, Postal and Warehousing	274	302	271	847
All Other industry Groups	3,869	3,929	3,292	11,090
Total	**10,009**	**10,582**	**8,324**	**28,915**

Source: Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 12

Table 4 depicts WHSQ inspectorate activity for the three periods 2011/12, 2012/13 and the first quarter 2013/14.

Table 4: WHSQ inspectorate activity, 2011-12 to 2013-14 YTD

Type of activity[a]	2011-12	Rate per '000 employing businesses*[b]	2012-13	Rate per '000 employing businesses*[b]	2013-14 YTD	Rate per '000 employing businesses*[b]
Total number of workplace visits	31,088	191	30,219	184	6,847	N/A
Total number of distinct workplaces visited	14,458	89	14,723	90	3,964	N/A
Assessments conducted	22,075	136	23,343	142	5,340	N/A
Advisories conducted	4,865	30	3,047	19	623	N/A
Investigations conducted	1,017	6	606	4	47	N/A
Notes:						
Sources [a] Source data supplied by BSSU October 2013 (and DG Report Card for previous periods) [b] Source ABS 8165.0 - Counts of Australian Businesses, June 2007 - June 2011 * Number of businesses employing staff in Qld ABS estimate June 2011						

Source: Department of Justice and Attorney-General, *Queensland Workplace Health and Safety Board – Key Statistical Indicators, Quarterly update 1/2013-14*, November 2013: 14 http://www.deir.qld.gov.au/workplace/resources/pdfs/report-qwhsb-statindicator-201314-1.pdf [17 March 2014]

Table 5 compares inspectorate activity across jurisdictions for the 2011/12 year. This is the latest available comparative data.

Table 5: WHSQ jurisdictional inspectorate activity, 2011-12

Jurisdiction	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Number of workplace visits: proactive	6,577	21,945	26,091	5,228	9,201	4,442	946	433
Number of workshops/ presentations/seminars/forums : proactive	1,065	u/a	3,179	285	345	172	102	218
Number of workplace visits: reactive	13,652	18,567	2,455	4,446	9,510	3,230	2,889	1,574
Other reactive interventions	26,244	u/a	10,710	17,307	11,869	2,276	u/a	0
Notes:								
Source								
Comparative Performance Monitoring Report – 15th Edition								

Source: Department of Justice and Attorney-General, *Queensland Workplace Health & Safety Board – Key Statistical Indicators, Quarterly update 1/2013-14*, November 2013: 15 http://www.deir.qld.gov.au/workplace/resources/pdfs/report-qwhsb-statindicator-201314-1.pdf [17 March 2014]

The department advised that the amount of training an inspector receives depends on their occupation. For example most of the inspectorate's hygienists have two university degrees. People with broad industry experience are recruited and then they receive extensive in-house training.[47] Following this training they are partnered with an inspector and then mentored for a further six months. At the end of this 12 month process an inspector then get their warrant as an inspector. This warrant allows them to exercise the powers under the Act.[48]

The MBAQ confirmed that they considered that inspectors are impartial, highly trained and have significant industry experience. They understand that if inspectors have the power to stop work on projects then they need to be a specialist and be skilled. They advised that their industry has a lot of faith in the construction inspectors. They further advised that they considered that there is usually a stark contrast between the training and skill levels of inspectors and WHS entry permit holders.[49] The MEA confirmed that they consider that the electrical safety inspectors are also well trained.[50]

The Committee sought advice from witnesses at the public hearing as to whether they consider inspectors to be impartial. The QCU responded that their experience has been that it varies from inspector to inspector.[51] The CFMEUQ confirmed that they have experienced some partiality on the part of inspectors.[52]

4.2 Provisions that require at least 24 hours notice before any person assisting a health and safety representative can have access to the workplace

Clauses 6 and 7 relate to the provisions which will require a person assisting a WHSR to provide at least 24 hours notice before accessing the workplace.

[47] Mr Goldsborough, Public Briefing Transcript 5 March 2014: 10
[48] Mr Bick, Public Briefing Transcript 5 March 2014: 8
[49] Mr Crittall, Public Hearing Transcript 5 March 2014: 6
[50] Mr Dearlove, Public Hearing Transcript 5 March 2014: 6
[51] Ms Grassick, Public Hearing Transcript 5 March 2014: 16
[52] Mr O'Brien, Public Hearing Transcript 5 March 2014: 16

4.2.1 Clause 6 – Amendment of section 68 (Powers and functions of health and safety representatives)

Section 68 of the Act specifies the powers and functions of a WHSR.

Existing section 68 is as follows:

68 Powers and functions of health and safety representatives

(1) The powers and functions of a health and safety representative for a work group are—

(a) to represent the workers in the work group in matters relating to work health and safety; and

(b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative in compliance with this Act in relation to workers in the work group; and

(c) to investigate complaints from members of the work group relating to work health and safety; and

(d) to inquire into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking.

(2) In exercising a power or performing a function, the health and safety representative may—

(a) inspect the workplace or any part of the workplace at which a worker in the work group works—

(i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and

(ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; and

(b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works; and

(c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and—

(i) an inspector; or

(ii) the person conducting the business or undertaking at that workplace or the person's representative; and(d) with the consent of 1 or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and—

(i) an inspector; or

(ii) the person conducting the business or undertaking at that workplace or the person's representative; and

(e) request the establishment of a health and safety committee; and

(f) receive information concerning the work health and safety of workers in the work group; and

(g) whenever necessary, request the assistance of any person.

Note—

A health and safety representative also has a power under division 6 to direct work to cease in certain circumstances and under division 7 to issue provisional improvement notices.

(3) Despite subsection (2)(f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the identification of the worker.

(4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

Clause 6 amends the note in section 68(2) to remove the reference to a WHSR having the power to direct work to cease in certain circumstances. Under the proposed amendment, the note will read as:

Note—

A health and safety representative also has a power under division 7 to issue provisional improvement notices.

It should be noted that, under section 69, WHSRs may exercise powers and perform functions only in relation to matters that affect, or may affect, workers in their work group, except in certain circumstances.[53]

Clause 6 also inserts new sections 68(3A), 68(3B) and 68(3C). The proposed amendments are as follows:

> Section 68—
> *insert*—
> (3A) Subsection (3B) applies if—
> (a) a health and safety representative requests the assistance of a person (the *assistant*) under subsection (2)(g); and
> (b) the assistant requires access to the workplace to assist the health and safety representative.
> (3B) The health and safety representative must give notice of the assistant's proposed entry to—
> (a) the person conducting the business or undertaking at the workplace; and
> (b) the person with management or control of the workplace.
> (3C) A notice given under subsection (3B) must—
> (a) comply with a regulation made for this subsection; and
> (b) be given to the persons mentioned in subsection (3B)(a) and (b)—
> (i) during the usual working hours at the workplace; and
> (ii) at least 24 hours, but not more than 14 days, before the assistant's entry.

The explanatory notes identify that proposed subsections (3A) to (3C) provide that where a WHSR request the assistance of a person, and the assistant requires access to the workplace to provide the assistance, the WHSR must give the PCBU and the person with management and control of the workplace, notice of the proposed entry by the assistant. The proposed provisions provide that the notice must give at least 24 hours, but not more than 14 days, before the assistant's proposed entry to the workplace. The notice must also comply with any regulation for this subsection and be given during normal working hours at that workplace.

The department confirmed that the proposed amendment aligns the notification requirements for entry onto a workplace by a person assisting a WHSR with union right of entry notification requirements and reduces potential for abuse of this provision as another means of un-notified entry by union officials to the workplace.[54] The department also confirmed that the proposed amendment also affords the PCBU natural justice and the opportunity to consider whether there are grounds to refuse the access, as allowed for under existing provisions.[55]

The IEU advised the Committee that WHSRs are elected, from the employee body, with the specific aim that there is someone who is officially responsible for raising health and safety concerns with management. They consider that the inclusion of workers in necessary WHS consultation depends upon those WHSRs having unfettered access to appropriate support and advice. They advised that if access is not granted to a site then they cannot provide an accurate assessment of the magnitude and extent of the risk. They advised that as a consequence an employer may face greater liability in the event of harm to a worker that could have been avoided.[56]

[53] *Work Health and Safety Act 2011*, section 69
[54] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 3
[55] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 4
[56] Submission 6: 3

The ETU advised that there are circumstances in which a WHSR will require assistance to ensure that the health and safety of workers are adequately protected. They consider that if there is an immediate or imminent risk to workers safety and they need assistance or specific expertise from a suitably qualified person, it is unreasonable that the issue should be left for 24 hours when such a delay could result in risk to a worker.[57]

The SDAQ expressed concern that this provision, in conjunction with removal of the WHSRs right to direct workers to cease unsafe work, in effect serves to extend the time in which a worker will be at risk of incurring a possible injury.[58]

The department stressed that with the changes to the Act in 2011, there is now an obligation on workers to take care of their own health and safety and the health and safety of others. If a situation arises workers around can also anonymously call the regulator.[59]

The UFUQ advised the Committee that their members respond to workplace emergencies with unknown hazards and their ability to assess risk to health and safety is not possible until the workplace has been entered. WHSRs have a crucial role in identifying hazards and assessing their risks and then implementing controls. They outlined their concern that the removal of access to external assistance by WHSRs for 24 hours will create a potential for exposure for their members to health and safety hazards that otherwise may have been avoided.[60] The UFUQ consider that this issue has not been considered in the drafting of the amendments.[61]

The department responded that in the circumstance where emergency workers attend a workplace and there is an urgent need to obtain assistance from an expert with specialist knowledge, they can:

> *…receive advice and assistance by telephone which in many cases will provide a quicker response to assistance than waiting for someone to attend the workplace and assistance can be sought from WHSQ inspectors with specialist expertise on matters such as asbestos, hazardous substances and major hazard facilities.*[62]

They also advised that consultation between WHSRs, workers and PCBUs may identify that the assistance of an expert is required at the workplace and when a PCBU authorises the access there is no requirement to provide 24 hours notice. They advised that a PCBU owes the primary duty of care to the health and safety of workers and others at the workplace and must take all reasonably practicable actions in order to ensure their health and safety.[63]

The department also advised that Queensland Fire and Emergency Services' incident management system has protocols in place for a Safety Advisor to hold the delegated responsibility by Incident Control at an emergency to provide advice and guidance on all safety issues that may arise during an emergency/incident. Safety Advisors are authorised to seek specialist advice pertaining to the emergency at any time, including from Queensland Fire and Emergency Service Scientific Unit, Hazmat and Police.[64] The department further advised that this protocol authorises fire officers to seek specialist advice and information from both internal and external sources to assist them when identifying hazards, assessing risks and determining incident objectives for all emergencies/incidents as required.[65]

[57] Submission 13: 5
[58] Submission 19: 3
[59] Mr Goldsborough Public Briefing Transcript 5 March 2014: 8
[60] Submission 11: 3
[61] Mr Cooke, Public Hearing Transcript 5 March 2014: 13
[62] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 4
[63] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 4
[64] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 12
[65] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 13

4.2.2 Clause 7 – Amendment of section 71 (Exceptions from obligations under section 70(1))

Section 70 outlines the general obligations on PCBUs to WHSRs. These obligations include the requirement to consult and confer, allow access to information, provision of resources, facilities and assistance and entitled payments.[66] Section 70 also outlines the penalties, 100 penalty units, for failures by the PCBU under the section.[67] Section 71 of the Act outlines the exceptions to section 70(1).

Clause 7 proposes to insert a new subsection (5A) that provides that a PCBU may refuse to grant access to the workplace to a person assisting a WHSR if the WHSR has not given the required notice or has not given the information about the person assisting a WHSR required under regulation.

4.2.3 Committee comments

The Committee is not satisfied that the proposed amendments adequately address the concerns identified by the UFUQ. The Committee considers that there could potentially be times when outside assistance will be required at short notice.

The Committee understands that where a PCBU gives consent to the assistant being present, the notice period will not apply. The Committee considers that inspectors should also be empowered to provide this consent if deemed necessary. This consent needs to be able to be provided in a quick and efficient manner, including by telephone.

Recommendation 3

The Committee recommends that the legislation be amended to include provision for the regulator, or inspector by reason of delegation, to be authorised to provide consent for a WHSR to have assistance provided within the 24 hour notice period.

4.3 Provisions that remove the requirement under the WHS Act for a person conducting a business or undertaking to provide a list of health and safety representatives to the WHS regulator

Clause 8 amends the Act to omit the requirement that PCBUs provide a list of WHSRs to the regulator. The proposed amendment does not remove the requirement that the PCBU maintain and display the up-to-date list of WHS at the workplace.

4.3.1 Clause 8 – Amendment of section 74 (List of health and safety representatives)

Section 74 requires that a PCBU must ensure that:

- a list of each WHSR and deputy WHSR for each work group is prepared and kept up to date; and
- a copy of the up-to-date list is displayed at the principle place of business and at any other workplace that is appropriate taking into account the relevant work group.

This list must be displayed in a way that is readily accessible to the workers in the relevant work group. A maximum penalty of 20 penalty units applies.

[66] *Work Health and Safety Act 2011*, sections 70(1) and 70(3)
[67] *Work Health and Safety Act 2011*, sections 70(1) and 70(2)

The Act currently requires, under section 74(2) that a copy of the up-to-date list is provided to the regulator. A maximum penalty of 20 penalty units applies.

Clause 8 removes subsection 74(2) so that a PCBU will no longer be required to provide the regulator with an up-to-date list of each WHSR and deputy WHS representative. The requirement to display the up-to-date list will continue to apply.

CCIQ supported the proposed amendment on the basis that this will assist in reducing the compliance costs associated with meeting business requirements and obligations under the WHS Act.[68]

The QCU expressed surprise that the regulator no longer wants a list of WHSRs given the amount of time and effort that the department spend trying to disseminate information about work health and safety to Queenslanders. They advised that the department depends upon unions, employer bodies and professional networks to distribute material so they do not need to rely on passive information distribution methods such as workers logging into the website or volunteering for mailing lists. They advised that WHSRs are perfectly placed to distribute information within workplaces and that workers are more likely to pay attention if material comes from a source that they trust. They also noted that WHSRs are usually aware of literacy problems that workers may have and received training about the need for information to be communicated and distributed verbally rather than in written form.[69]

The Queensland Nurses Union (QNU) noted their concern that if a PCBU is no longer required to provide an up-to-date list of WHSRs to the regulator, then it becomes more difficult for the regulator to monitor workplace incidents. They consider that the regulator should be aware of the names of those individuals who are trained to act in each workplace in accordance with WHS legislation to ensure ongoing compliance.[70]

The IEU advised that the list of WHSRs provided to the regulator is currently a resource available to DJAG. As a professional network of individuals who have been through appropriate formal training, this group is able to disseminate information from government departments with a high degree of efficiency, ensuring that information reaches all employees.[71]

The ETU also expressed concern that if PCBUs do not have an obligation to provide up-to-date information to the regulator, there is a risk that ensuring these records on site are current may become less of a priority for PCBUs to the detriment of workers. They also considered that there is an additional disadvantage to the regulator, in that if they do not receive these records, they will have no way of tracking the number of WHSRs that exist in workplaces, nor will they have current records to effectively disseminate important work health and safety information through a network of WHSRs.[72]

The ETU acknowledged that there is still a requirement to provide and display an up-to-date list of WHSRs. However, they consider that the omission of the requirement to provide that list to the regulator would be of minimal benefit in terms of a reduction in work for the PCBU.[73]

The SDAQ agreed that by removing the requirement to provide the list of WHSRs to the regulator, the government is in effect removing their own ability to monitor where or not WHS legislation is being upheld.[74]

[68] Submission 2: 2
[69] Submission 17: 5
[70] Submission 3: 10
[71] Submission 6: 5
[72] Submission 13: 3
[73] Ms Inglis, Public Hearing Transcript 5 March 2014: 14
[74] Submission 19: 3

The department advised that the frequency of changes of WHSRs at a workplace through normal workforce changes, mean the process of ensuring that the regulator has an up-to-date list could become an onerous burden on the PCBU and does not provide a clear safety benefit. In addition, the notification of the names of the representatives to WHSQ is not required as inspectors are required to make contact with representatives when they visit the workplace and the regulation only specifies a list of WHSRs and does not necessarily include contact details.[75]

4.3.2 Committee comments

The Committee accepts that the regulator does not require a copy of the current list of WHSRs in order to adequately undertake its work. The Committee considers that the proposed amendment will reduce red tape for both the PCBUs and the regulator itself.

However, the Committee considers that there is a legitimate concern that some PCBUs may take advantage of not having to provide this information to the regulator to become more inefficient in maintaining this information.

The Committee considers that this is an area where the regulator needs to be vigilant in ensuring that the information available at the workplace is both accurate and up-to-date when it undertakes its regular inspections. The maximum penalty units included in the Act for breaches of this provision is 20 penalty units. The Committee considers that department should ensure that penalties are imposed where necessary and contemplate increasing the penalties should this prove to be ineffective.

Recommendation 4

The Committee recommends that compliance with section 74 be monitored and the revision of the appropriateness of penalty units be included in the review of the proposed amendments.

4.4 Provisions that remove the power of health and safety representatives to direct workers to cease unsafe work

Under section 84 of the Act workers have the right to cease unsafe work. Section 84 Act states that:

84 Right of worker to cease unsafe work

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Section 85 sets out the rights and responsibilities for WHSRs where they wish to give a direction to cease unsafe work.

Section 86, 87, 88 and 89 set out the worker's rights and responsibilities if they enforce the right under section 84.

Clauses 9, 10, 11, 12 and 19 relate to omitting the right of the WHSR to direct a worker to cease unsafe work. These clauses do not amend a worker's right to cease unsafe work under section 84.

[75] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 7

4.4.1 Clause 9 – Amendment of section 82 (Referral of issue to regulator for resolution by inspector)

Sections 80, 81 and 82 set out the process for resolution of health and safety issues. The relevant provisions are as follows:

80 Parties to an issue

(1) In this division, *parties*, in relation to an issue, means the following—

(a) the person conducting the business or undertaking or the person's representative;

(b) if the issue involves more than 1 business or undertaking, the person conducting each business or undertaking or the person's representative;

(c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;

(d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.

(2) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this division—

(a) is not a health and safety representative; and

(b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

81 Resolution of health and safety issues

(1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.

(2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed under a regulation.

(3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

82 Referral of issue to regulator for resolution by inspector

(1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.

(2) A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

(3) A request to the regulator under this section does not prevent—

(a) a worker from exercising the right under division 6 to cease work; or

(b) a health and safety representative from issuing a provisional improvement notice or a direction under division 6 to cease work.

(4) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.

The department advised that the current issue resolution process is as follows:

- Under section 81 of the WHS Act if a work health and safety issue arises and the matter is not resolved after discussion between the parties to the issue, then the agreed issue resolution process must be followed. If there is no agreed issue resolution procedure the default procedure must be used. Sections 22 and 23 of the WHS Regulation 2011 set out the requirements for an agreed issue resolution procedure and the default issue resolution procedure.
- The issue resolution process is directed at resolving safety issues, which are not resolved in the first instance between the WHSR and the PCBU. It is not directed at safety issues posing a serious and immediate risk. Where a WHSR believes there is a serious and immediate risk, and the PCBU does not agree, the worker has the option of ceasing work and can raise the matter with WHSQ and request an inspector to attend the workplace.

- Under regulation 23(5) (default procedure) a party may, in resolving the issue, be assisted or represented by a person nominated by the party. Under this sub-section a WHSR could seek the assistance of a union official to assist with resolution of the issue.
- Under regulation 23(3), as soon as parties (i.e. the WHSR or the PCBU), are told of the issue they must communicate or meet to attempt to resolve the issue. If it is not resolved, either party may seek the assistance of, or nominate a person to represent them.
- Where a WHSR nominates a person to represent them in resolving the issue, it does mean they have automatic access to the workplace. For example, the initial steps to resolve the issue could involve a telephone discussion and, if the parties decide they need to meet, a meeting could be scheduled for an appropriate time. Given the issue is not a serious and immediate risk the PCBU may schedule the meeting for an appropriate date while they collate information on the risks posed by the issue.
- Under section 23 (6) and (7) of the WHS Regulation 2011 the issue and details of how it will be resolved must be documented if requested by any party and all parties must be satisfied that any written agreement accurately reflects the resolution of the issue.
- As stated above, the issue resolution regulations provide a process for parties to work through to resolve issues that are not able to be resolved through the initial consultation. They are not geared towards allowing 'representatives' immediate access to the workplace.[76]

Clause 9 makes a consequential amendment to omit subsection 82(3)(b) as a result of omitting section 85 so that a WHSR can no longer direct a worker in their work group to cease work. Refer section 4.4.3 of this report.

4.4.2 Clause 10 – Amendment of section 83 (Definition of *cease work under this division*)

Section 83 contains the definition of '*cease work under this division*'. Clause 10 amends the definition to remove the reference to cease work on direction of a WHSR.

Proposed new section 83 will be as follows:

> **83 Definition of *cease work under this division***
> In this division, cease work under this division means to cease, or refuse to carry out work under section 84.

Section 84 allows that a worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

[76] Correspondence Department of Justice and Attorney-General, to FAC dated 21 March 2013: 1

4.4.3 Clause 11 – Omission of section 85 (Health and safety representative may direct that unsafe work cease)

Section 85 sets out the circumstances in which a WHSR may direct that unsafe work cease. Existing section 85 is as follows:

> **85 Health and safety representative may direct that unsafe work cease**
>
> (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.
>
> (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after—
>
> (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and
>
> (b) attempting to resolve the matter as an issue under division 5.
>
> (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under division 5 if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
>
> (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).
>
> (5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.
>
> (6) A health and safety representative can not give a direction under this section unless the representative has—
>
> (a) completed initial training prescribed under a regulation mentioned in section 72(1)(b); or
>
> (b) previously completed that training when acting as a health and safety representative for another work group;
>
> (c) completed training equivalent to that training under a corresponding WHS law.

Clause 11 omits section 85 in total which results in a WHSR no longer being able to direct a worker in their work group to cease work.

The explanatory notes identify that the removal of the power of WHSRs to direct workers to cease unsafe work was recognised by the OQPC as an FLP issue. The OQPC noted that removing the power of WHSRs to direct workers to cease unsafe work removes an existing protection for individual workers. They noted that while individual workers will retain a statutory right to cease unsafe work, this might not sufficiently protect some workers, for example, those from non-English speaking backgrounds.

The government response to this in the explanatory notes state:

> *There is a range of mechanisms in the Act designed to ensure the safety concerns of individual workers are identified and addressed. There is a duty on persons conducting a business or undertaking to consult with workers on health and safety matters and a mandatory issue resolution process. Additionally, workers may raise issues with the health and safety representative for their work group and seek their participation in any interview regarding health and safety concerns with the person conducting the business or undertaking. In any case, safety concerns can be raised directly with the WHS regulator or an inspector anonymously at any time.*

The department advised that the proposed amendment removes the power for WHSRs to direct workers to cease unsafe work as this is a duplication because individual workers have the statutory right to cease work on safety grounds under section 84.[77]

[77] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 3

The QNU submission states that section 85 is a comprehensive provision that not only enables the actions of the WHS representative, it also prescribes the conditions upon which they may make decisions, their obligations to inform the PCBU and the requirement that they have completed training prescribed in the regulations. They consider that to completely withdraw this right undermines the basis of the Act itself because it can only operate effectively when the parties it covers adhere to standards and due process.[78]

At the public hearing, the QNU reiterated their concern that section 85 not only enables the actions of WHSRs, it also prescribes the conditions upon which they can make decisions, their obligations to inform the PCBU and the requirement that they have completed the training prescribed in the regulations. They consider that these are:

> *…not frivolous decisions and the WHSR must be qualified to act under the provisions and they clearly do so based on information and training.*[79]

MEA highlighted their concern that it is not appropriate to remove the entire power or ability for a WHSR to call into question the work being undertaken. Their view is that a WHSR must advise the employee of the imminent risk to health and safety and the employee should be required to provide the WHSR with a copy of the appropriate risk assessments and controls in place to manage the risk. If these are not in place, the WHSR must advise the PCBU.[80] MEA proposed amendments to this effect.[81]

The QCU advised the Committee that currently section 85 allows a WHSR to direct a worker in their work group to cease work if the WHSR has a reasonable concern that doing the work would expose the worker to a serious risk emanating from an immediate or imminent exposure to a hazard. If it is reasonable to do so, the WHSR must first consult with the PCBU and attempt to resolve the matter. The QCU stated that it is important to note that this right to direct a worker to cease work is not an industrial action as it only relates to the task or activity creating the serious, imminent risk. They advised that under sections 86(b) and 87, the worker must continue working and can be directed by the PCBU to do alternative work.[82]

The QCU believes that the mechanisms such as general consultation, using issue resolution procedures or contacting the regulator are not designed as primary immediate response to dangerous situations.[83]

The QCU also advised that anecdotal evidence suggests that WHSRs use this provision to enforce the employer's own safety rules, the Act or general safe working principles. They consider this provision to be important because WHSRs are also workers and are therefore not as remote as supervisors and managers.[84]

[78] Submission 3: 10
[79] Ms Mohle, Public Hearing Transcript 5 March 2014: 12-13
[80] Submission 14; 2
[81] Submission 14: 3
[82] Submission 17: 4
[83] Submission 17: 4
[84] Submission 17: 4

The IEU supported the view that the power to issue cease work orders is an essential mechanism for the protection of workers. They stated that in the absence of explicit information about arising risks and direct instructions to cease work, many employees would continue working, unaware of the risk they are facing. They advised that trained WHSRs often have a better working knowledge of WHS issues and are better able to identify and assess risk.[85] The CFMEUQ agreed that having trained WHSRs with this power ensures that those who have not had this training are made aware of hazards and also that cessations of work do not occur unnecessarily.[86]

The ETU also agreed that WHSRs have undertaken training to provide them with knowledge and expertise to carry out their role and part of that is learning how to identify situations where workers might be exposed to serious risks to their health and safety. They advised that there are very tight requirements already in place where a WHSR is able to order work to cease and in their experience this power is not used lightly. They consider that the other options that may be available, such as calling an inspector or registering a complaint with the regulator, are manifestly inadequate in extreme circumstances, as it is not possible to get a response in the necessary urgent time frame.[87]

The AMWU also highlighted their concern that the removal of this power will severely impact on the ability of WHSRs to represent workers in their work group. They advised that this removal could lead to a situation, particularly within the manufacturing sector, where having observed a dangerous or hazardous situation, the WHSR will not be allowed to take action to prevent immediate harm or injury. They confirmed that the WHSR will now be limited, after observing a potentially dangerous situation, to simply advise the worker of the danger and advise the PCBU via the normal channels. They are concerned that by the time a response occurs, the injury may well have occurred.[88]

The AMWU advised the Committee that they spend a great deal of time encouraging their workplaces to make sure they have trained WHSRs. They are concerned that the limiting of WHSRs powers with regard to stopping unsafe work seems to be counterproductive.[89] They advised that:

> *…for many of our members there is not going to be 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.*[90]

The AMWU is also concerned that workers in their industry are the most vulnerable and the right to cease unsafe work will not be sufficient to protect them. They noted that such workers are often fearful of losing their jobs so will not question anything or will not take proactive action such as individually ceasing work.[91] The Plumbers Union agreed that the individual workers may have other competing issues that prevent them from ceasing work, including fear of retribution from their employer, fear of losing their job, workers being from a non-English speaking background and young inexperienced workers.[92]

The AWU submission also noted their concern that the proposed amendment will seriously reduce the protection of thousands of workers. They consider that the proposed amendment will remove the last line of defence that a worker has in their workplace to prevent injury or disease. They highlighted their concern that the logical outcome of the proposed amendment is that workers will unknowingly continue performing unsafe work notwithstanding that a trained WHSR knows that it is unsafe.[93]

[85] Submission 6: 4-5
[86] Submission 9: 3
[87] Ms Inglis, Public Hearing Transcript 5 March 2014: 14
[88] Submission 7: 3-4
[89] Mr Devlin, Public Hearing Transcript 5 March 2014: 16
[90] Mr Devlin, Public Hearing Transcript 5 March 2014: 16
[91] Submission 7: 4
[92] Submission 8: 6
[93] Submission 21: 2

The QCU confirmed that the provision gives particular protection to those who feel unable to approach the employer themselves. These workers include young workers, who make up a fifth of all work-related injuries, and are much more likely to be unsure of their rights and responsibilities. They noted that young workers depend heavily on other workers to tell them if something is unsafe and on the WHSR to speak up for them.[94]

The SDAQ considers that the removal of this power will expose workers to a heightened risk of injury because the onus of discovering and monitoring safe work practices will be shifted from a qualified worker, who regularly oversees and monitors safe work practices to management. They consider that if the employer must first be notified of the risk before a WHSR can act, a worker risks being injured in the intervening period.[95] The SDAQ consider that the effect of this amendment will alter the situation from a proactive system to a reactive one. They are concerned that this will result in '*waiting for injuries to occur before something is done*'.[96]

The SDAQ also advised that WHSRs often act as the voice for all workers in the workplace. They submitted that this voice is an imperative part of creating safe workplaces as the majority of today's workers, in their industry, do not hold secondary or tertiary qualifications and are increasingly from non-English speaking backgrounds. They confirmed that workers such as these are unlikely to be aware of their workplace rights and are also unlikely to raise and report safety issues to their superiors. They consider that WHSRs ensure that vulnerable workers are informed and protected.[97]

The SDAQ confirmed that they are not aware of any examples in their industry where this power has been used. They speculated that the reasons for this could include the short period of time the power has been available and the additional training that is necessary before a WHSR can exercise the power. They also advised that another factor could be that, in their experience, retailers in general are resistant to the concept of having WHSRs in their workplaces. They do not believe that the power has been abused but consider it to be useful for workers to have some control over the situation should it arise.[98]

The QTU advised that, although this power has not been exercised by QTU members, they believe this power should remain for what might be rare circumstances in state schools where it may be needed as a last resort strategy to ensure the safety of teachers and students.[99]

The ETU noted that the established parameters for when a WHSR can invoke the right to direct workers to cease unsafe work are so stringent that the capacity to do so is limited only to extreme circumstances. They advised that while there is the capacity to raise safety concerns with the PCBU, regulator or inspector directly, this is of no benefit when the risk is so serious and immediate or imminent that to proceed through a consultation/reporting process in the first instance would be 'too little too late'.[100]

The ETU also confirmed that this is a power that is not used very often and only in the case of serious risk of imminent or immediate exposure to a hazard, due to the established consultation guidelines that already exist within the Act being appropriately followed. They also noted that where there are allegations of misuse, the Act contains suitable provisions to remove a WHSR and disqualify them from further performance of these duties.[101]

[94] Submission 17: 4
[95] Submission 19: 1
[96] Submission 19: 2
[97] Submission 19: 2
[98] Mr Ketter, Public Hearing Transcript 5 March 2014: 11
[99] Submission 12: 3-4
[100] Submission 13: 3
[101] Submission 13: 3

The Plumbers Union also advised that under the existing legislation if concerns exist that WHSRs misuse their power to direct unsafe work to stop, mechanisms currently exist for WHSRs to be disqualified for misuse of their powers.[102] The CFMEUQ agreed that WHSRs can be disqualified from the role if they exercise a power or perform a function for an improper purpose. They advised that they are unaware of any WHSR being disqualified for such a reason.[103]

The department noted the concerns expressed by the key employee organisations and responded that the proposed amendment does not preclude workers from seeking advice from the WHSR to justify a decision to cease work. They advised that while a WHSR will not be able to direct a worker or workers to cease unsafe work, they are able to provide advice to workers where they believe there is a serious risk to their health and safety from an imminent or immediate exposure to a hazard.[104]

The department also advised that the *Work Health and Safety Regulation 2011* requires that adequate information and training is provided to workers on the work they are to carry out, the risks associated with the work and the control measures in place to mitigate the risk. The information and training should include instruction on workers' duties and rights, including the right to cease unsafe work and must be delivered in a way that is readily understood by any person to whom it is provided.[105]

This would include:

- consideration of whether it needs to be provided in different languages for workers from a non-English speaking background;
- the age;
- education level; and
- experience level of workers.[106]

The department advised that the Act provides protections for workers, including WHSRs, from discriminatory, coercive or misleading conduct. If a worker ceases work as a result of a reasonable concern that there is a serious risk to their health and safety they cannot be dismissed, have their contract terminated or have their position detrimentally altered or be treated less favourably. It is also unlawful to engage in, threaten or organise to take any of these actions or encourage another person to do so.[107]

The IEU also expressed its concern that the apparent diminution of employer responsibility justifies a more subjective approach to the appraisal of risk and encourages less stringent approaches to management of hazards. They also argued that raising safety concerns with the regulator is insufficient to counter this. They consider that lodging an appeal with the regulator is a slow and ineffective way to respond to immediate safety threats. They also advised that calling on the regulator requires investment of additional government time, money and resources and risks increasing rather than reducing red tape.[108] The CFMEUQ agreed that the effect of the amendments will be to place increased responsibility on the inspectorate to ensure exposure to hazards is reduced or eliminated.[109]

[102] Submission 8: 6
[103] Submission 9: 3
[104] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 5
[105] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 5
[106] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 5
[107] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 6
[108] Submission 6: 4
[109] Submission 9: 16

The Plumbers Union agreed that they receive regular complaints from their members that it is very difficult to get anyone from the regulator to come on site. They advised that whilst they welcome the involvement of the inspectors, the reality is they do not have the resources to attend to all safety incidents.[110]

The QNU also agreed that there are insufficient inspectors. They advised the Committee that there are approximately 160,000 businesses in Queensland. They have been advised that those inspectors are mainly used in those industries that are higher risk such as building, manufacturing, transport and rural industries. They are concerned about all the other industries that still have high rates of injury that might not lead to deaths and dismemberment, but can still lead to injuries that render them unable to continue in their profession.[111]

The ETU advised the Committee that the WHS regulator has inspectors that are independent of the workplace and possess specific skills and expertise to identify safety contraventions. However, they consider that the department is vastly under resourced and as a result is forced to function in a reactive rather than proactive manner. The ETU considers that WHS permit holders assist inspectors by increasing the number of people inquiring into suspected contraventions and ideally eliminating risks to workers before an incident occurs.[112]

The department responded to the concern that the proposed amendments may lead to an over reliance on the regulator and that resource constraints may limit the regulator's ability to respond. They advised that Queensland's performance on work health and safety outcomes has seen a significant improvement over the past five years.[113] They noted that issue resolution procedures within the legislation clearly set out that the parties should endeavour to resolve an issue in the workplace and then call an inspector where they cannot.[114]

When asked if they consider whether there are enough inspectors, MBAQ advised that the building industry pays a substantial levy and they would like to see as many inspectors as the government can afford and they would take more inspectors if they were available.[115]

The Committee sought advice from the department regarding the concerns expressed by both employer and employee groups over the resourcing available for inspectors. The department advised that the amendments will have no direct impact on inspectorate resourcing requirements for WHSQ or the Electrical Safety Office. They advised that whether or not a WHS entry permit holder is at a workplace has no bearing on the regulators decision to have an inspector attend a workplace to respond to an incident or complaint. That decision is made taking into account WHSQ's operational procedures for triaging of incident notifications and requests for a regulator response to WHS issues.[116]

4.4.4 Clause 12 – Amendment of section 86 (Worker to notify if ceases work)

Clause 12 makes a consequential amendment to subsection 86 as a result of omitting section 85 so that a WHSR can no longer direct a worker in their work group to cease work. Refer section 4.4.3.

[110] Submission 8: 4
[111] Mr Gilbert, Public Hearing Transcript 5 March 2014: 20
[112] Submission 13: 5
[113] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 9
[114] Mr Goldsborough, Public Briefing Transcript 5 March 2014: 8
[115] Mr Crittall, Public Hearing Transcript 5 March 2014: 6
[116] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 5

4.4.5 Clause 19 – Amendment of Schedule 2A (Reviewable decisions)

Clause 19 makes consequential amendments to the reviewable decisions in Schedule 2A as a result of omitting section 85 so that a WHSR can no longer direct a worker in their work group to cease work.

4.4.6 Committee comments

The Committee is concerned that the omission of section 85 of the Act will impact in a practical way on vulnerable workers. The Committee accepts that workers already enjoy the right to cease work in circumstances where the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk. However, the Committee is not convinced that all workers are aware of this right.

All parties agreed that government safety inspectors are highly trained, experienced and impartial. Therefore, the Committee also considers that the inspectors are in the best position to be able to make decisions regarding whether a situation is hazardous.

However, the Committee is concerned that when dealing with imminent danger, inspectors cannot be in workplaces immediately given the diverse demographic spread of workplaces in Queensland. The Committee considers that the legislation should allow for scope for inspectors to authorise a WHSR to issue an immediate cease work direction.

The Committee notes that the majority of submissions, based on industry and advocacy groups, identified that there is a need for more inspectors. The Committee considers that there is a need for additional inspectors in order to deliver the best outcomes. The Committee considers that larger, higher risk businesses, should be required to fund additional government inspectors who would be responsible for these individual workplaces. These additional inspectors would be located and would work predominantly at these individual workplaces but could be called upon by other workplaces should the need arise. This is particularly important in remote and regional areas. The Committee considers that given such enterprises would already employ workplace health and safety officers, there should be little additional cost to industry. It should be noted that the definition of 'larger, high risk businesses' should align with the number of workers at the workplace rather than the size of the business.

In addition to these extra inspectors, the Committee considers there is a need for the regulator to set performance indicators and monitor response times for all complaints. The Committee also considers that the regulator ensure that inspectors receive industry specific training where required.

Recommendation 5

The Committee recommends that section 85 not be omitted but amended so that WHSR may direct a worker to cease work only after receiving authorisation from the regulator.

Recommendation 6

The Committee recommends that larger, higher risk workplaces be required to fund additional government inspectors who would be responsible for and located at these larger, higher risk workplaces.

Recommendation 7

The Committee recommends that the regulator set performance indicators and monitor response times for all complaints and these performance indicators and monitoring should be included as a subject in the review of the proposed amendments.

Recommendation 8

The Committee recommends that the regulator ensure that inspectors receive industry specific training where required.

4.5 Provisions that require at least 24 hours notice by WHS entry permit holders before they can enter a workplace to inquire into a suspected contravention to align with the other entry notification periods in the WHS Act and the *Fair Work Act 2009*

Under the WHS Act, a union may apply to the industrial registrar for the issue of a WHS entry permit to a person who is an official of the union. An official of a union means a person who holds an office in, or is an employee of, the union.[117] The application must specify the person who is to hold the WHS entry permit and include a statutory declaration by that person declaring that the person is an official of the union and has satisfactorily completed the prescribed training; and holds or will hold, an entry permit under the Fair Work Act or an industrial officer authority.[118]

The department confirmed that a WHS entry permit holder is a union official who has completed an approved training course and holds a valid permit under the Fair Work Act of the *Industrial Relations Act 1999*. An entry permit allows the WHS entry permit holder to enter a workplace during normal business hours to investigate suspected contraventions of the WHS Act, at the workplace, affecting a worker or workers that they are entitled to represent. While at the workplace, they may inspect any work or thing that directly relates to the matter, talk to any worker who is entitled to be represented by the union and warn anyone they believe is exposed to a serious health or safety risk. WHS entry permit holders may consult with the PCBU about the matter, and request to look at, and make copies of, relevant records and documents.[119] The department advised that the required training course for a WHS entry permit holder is three days and which covers all the consultation arrangements under the legislation and the role of an inspector.[120]

The department advised that there are currently 253 WHS permit holders in Queensland. They noted that under section 151 of the Act, the industrial registrar is required to keep available for public access an up-to-date register of WHS entry permit holders and this list is available on the Queensland Industrial Relations Commission (QIRC) web site.[121]

The QCU advised the Committee that WHS entry permit holders, since the implementation of the new legislation in 2011, have to do a one day training course. This course is extensively focused around the provisions of the Act and the limitations of their powers, the penalties and the consequences.[122]

[117] *Work Health and Safety Act 2011*, section 116
[118] *Work Health and Safety Act 2011*, section 131
[119] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 2
[120] Mr Bick, Public Briefing Transcript 5 March 2014: 10
[121] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 13 March 2013: 3
[122] Ms Grassick, Public Hearing Transcript 5 March 2014: 16

4.5.1 Clause 13 – Replacement of section 119 (Notice of entry)

Section 119 of the Act specifies the notice requirements when a WHS entry permit holder seeks to enter a work place.

Existing section 119 is as follows:

> **119 Notice of entry**
>
> (1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this division, give notice of the entry and the suspected contravention, as provided under a regulation, to—
>
> (a) the relevant person conducting a business or undertaking; and
>
> (b) the person with management or control of the workplace.
>
> (2) Subsection (1) does not apply if to give the notice would—
>
> (a) defeat the purpose of the entry to the workplace; or
>
> (b) unreasonably delay the WHS entry permit holder in an urgent case.
>
> (3) Subsection (1) does not apply to an entry to a workplace under this division to inspect or make copies of documents mentioned in section 120.

Clause 13 replaces section 119 to provide that before entering a workplace to inquire into suspected contraventions a WHS permit holder must give both the relevant PCBU and the person with management and control of the workplace at least 24 hours but not more than 14 days notice of the entry. The notice must comply with any regulation made for this section.

Proposed replacement 119 will be as follows:

> **119 Notice of entry**
>
> (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry and the suspected contravention to—
>
> (a) the relevant person conducting a business or undertaking; and
>
> (b) the person with management or control of the workplace.
>
> (2) The notice must comply with a regulation made for this section.
>
> (3) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

The explanatory notes cite as one of the reasons for the proposed amendments, the concerns raised by the construction industry about the misuse use of right of entry powers by union officials. The explanatory notes outline that these concerns are confirmed by the number of complaints received by the regulator for right of entry disputes. The explanatory notes state:

> *Between 2011-2012 and 2012-13, WHS inspectors responded to 57 right of entry disputes at construction workplaces. Most disputes related to entry without prior notice to inquire into a suspected contravention of the WHS Act. Inspectors reported that notices were issued on occasions, but that overall none of the issues identified were considered to be an immediate or imminent risk to workers or others at the workplace.*

The explanatory notes also identify that the amendments will align with the other entry notification periods in the WHS Act and the *Fair Work Act 2009* (Cwlth).

The QLS submission noted that the provisions relating to the notice requirements for right of entry are consistent with the provisions and the Fair Work Act and that this consistency may assist parties to be clear on their respective rights and obligations.[123]

[123] Submission 15 1

Clubs Queensland, in their submission, noted their members' concern is the difficulty of having to contend with different rules in relation to right of entry of unions under the Fair Work legislation and the WHS Act. They advised that 60 per cent of licensed clubs are essentially small businesses, which have great difficulty ensuring compliance with complex legislative requirements. They were supportive of a clearer alignment of right of entry provisions with those in the Fair Work legislation.[124]

The Plumbers Union took issue with the stated reason of alignment with the Fair Work Act. They advised that currently under the Fair Work Act a permit holder can enter a workplace provided at least 24 hours notice is provided, for the following reasons:

- to investigate a suspected breach of the Fair Work Act or any other industrial instrument or
- to hold discussions with workers.[125]

They advised that in the above scenarios, a 24 hour delay is not going to place workers' safety at potential risk. They consider that:

> *…it is completely ridiculous to compare the two rights of entries.*[126]

The CFMEUQ agreed that there should not be any confusion between industrial matters addressed by the Fair Work Act and safety matters addressed by the WHS Act. They advised that matters addressed by the Fair Work Act right of entry provisions could not be classified as urgent, as opposed to safety conventions which should be dealt with as a matter of urgency.[127]

The explanatory notes identify that the requirement for WHS entry permit holders to give notice of proposed entry to workplace to investigate suspected contraventions was recognised by the OQPC as an FLP issue on the basis that the notice period may diminish an existing protection for workers by removing the 'surprise' element. The government response in the explanatory notes states:

> *There are mechanisms in the Act designed to ensure the safety concerns of workers are identified and addressed. There is a duty on persons conducting a business or undertaking to consult with workers on health and safety matters and a mandatory requirement to follow an issue resolution process. Additionally, health and safety concerns can be raised with health and safety representatives, who have particular powers and functions under the Act. The requirement for 24 hours notice of entry allows time for safety concerns to be addressed through these mechanisms prior to entry by a WHS permit holder. Under the now repealed Workplace Health and Safety Act 1995 (WHS Act 1995), there were provisions allowing immediate entry by a WHS permit holder to investigate suspected contraventions, however the WHS Act 1995 did not include a duty for a person conducting a business or undertaking to consult with workers on health and safety matters or mandate an issue resolution process to be followed. In any case, safety concerns can be raised directly with the WHS regulator anonymously at any time.*

The OQPC also noted that the maximum penalty for WHS entry permit holders who contravene a condition of their entry permit increases from 100 to 200 penalty units and the new offences for non-compliance with notice requirements under sections 119, 120 and 122 will have a maximum penalty of 200 penalty units.

[124] Submission 5: 1
[125] Submission 8: 5
[126] Submission 8: 5
[127] Submission 9: 16

The government response to this in the explanatory notes states:

> *The misuse of union right of entry powers has highlighted the need for more robust enforcement tools to allow the regulator to adequately deal with breaches and to have a deterrent effect against non-compliance. The introduction of new offences and the increase in maximum penalty for an existing offence reflect the seriousness of these offences and the impact abuse of these powers has on a businesses operation. Importantly, the penalties contained in the Bill set maximum limits only and the courts will retain their discretion to impose lesser penalties, depending on the circumstances and mitigating factors.*

CCIQ noted in their submission that union right of entry, under the guise of pursuing WHS outcomes, have been used to drive an existing industrial relations agenda. They considered that abuse of right of entry powers by union officials ultimately undermines the importance of safety in the workplace.[128] They advised that they believe that the mindset of utilising right of entry powers as an industrial tool ultimately undermines the safety of Queensland workplaces, the knock-on effects of which include a culture of union representatives unable to effectively ensure best practice safety outcomes for the workplaces they enter.[129]

CCIQ also stated that there are increasing instances of unions entering workplaces without providing details on the reason for doing so. They advised that when union officials arrive unannounced, they divert management time away from their everyday activities, ultimately undermining the goal of achieving worker safety. They consider that this is an inefficient practice that destabilises the capacity of employers to identify and address legitimate WHS issues in their workplace through the cost of dealing with the visit or stoppage. CCIQ considers that the 24 hour notice period prior to entry will help reduce this impact.[130]

MEA supported the findings of the review of national model WHS laws. They advised that the review identified the growing impact of union officials using their right of entry powers to interrupt and cease work on sites despite appropriate action being taken by PCBUs.[131]

The MBAQ considered that the proposed amendment is a significant step towards addressing the problem of union officials abusing WHS right of entry. They advised that union entry to construction sites, under section 117, has had a profound impact on the productivity of their industry. They consider that this provision has been used as an industrial weapon. They advised the Committee that the industry needs improved compliance from WHS permit holders because union officials routinely breach current provisions and disrupt work in breach of their permit obligations.[132] The MBAQ submission includes a number of examples where they consider minor issues have been used to justify the stoppage of all works on site.

The QCU also noted that the right of entry was discussed, considered and ultimately recommended or agreed by the Review Panel of the National Review into Model Occupational Health and Safety Law, Safe Work Australia Members and the Workplace Relations Ministers Council.[133] They advised that employer groups, unions, WHS experts and regulators agreed that inspectors provide one avenue for dealing with risks, however, the limited resources of the inspectorate meant that union right of entry without delay was an important alternative issue resolution avenue.[134]

[128] Submission 2: 2
[129] Submission 2: 3
[130] Submission 2: 4
[131] Submission 14: 1
[132] Submission 20: 2
[133] Submission 17: 2
[134] Submission 17: 3

The Plumbers Union Qld identified in their submission that the WHS Act currently provides various mechanisms for parties to address any concerns they might have in regard to WHS right of entry. They suggested that instead of making legislation amendments that have the potential to put workers lives at risk, the government should be encouraging parties to make use of the mechanisms that already exist.[135]

They advised that the WHS Act provides both the regulator and the QIRC with powers to deal with right of entry complaints. These mechanisms include:

- Section 141 which provides that any party to the right of entry dispute may request the assistance of the regulator and whilst the regulator will not make a determination they will assist all parties involved
- Section 142 which provides the QIRC with the powers to deal with a right of entry dispute including mediation, conciliation or arbitration
- Section 138 which allows for the QIRC to revoke the right of entry permit[136]

The MBAQ advised the Committee that WHSQ have failed to take any prosecutions under section 138 despite knowing a problem existed. They submitted that this behaviour needs to be investigated by the regulator and if a WHS permit holder has pressured a worker or group of workers into ceasing work where that cessation is not in response to a reasonable concern of that individual worker being exposed to a serious risk, the WHS permit holder should be prosecuted for contravening the permit conditions.[137] The MBAQ stated that the regulator should ensure inspectors are available to provide advice and visit sites upon request and investigate permit breaches by union officials.[138]

The department advised WHSQ has not raised any disputes to the QIRC regarding WHS entry permit holders. This is consistent with the WHSQ operational policy position that states:

> *It is Workplace Health and Safety Queensland's policy that the regulator would not generally make an application to the QIRC to resolve an entry dispute because the regulator believes that such application to deal with an entry is best made by any of the parties to the dispute.*
>
> *The operational policy further states that the inspector's objective in this situation is to assist the parties resolve the dispute. Inspector entry to the workplace, to address any WHS entry permit holder alleged safety issues (putting aside the right of entry issues), should be considered if, on the basis of information presented during the dispute, the inspector believes safety issues remain unaddressed if they were not to enter*.[139]

The AWU also agreed that if an employer believes that there has been a contravention by a permit holder they have the ability under section 138 to have the permit holder's permit revoked by the QIRC. They advised that they are not aware that any employer has taken up this option.[140]

The MBAQ advised the Committee that the reason why employers will not oppose and make representations to have WHS entry permit holders have their permits revoked is that they are completely intimidated by the process. They stated that 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 make a complaint for fear of retribution.*[141]

[135] Submission 8: 2
[136] Submission 8: 2
[137] Submission 20: 4
[138] Submission 20: 5
[139] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 8-9
[140] Submission 21: 1

The MBAQ highlighted its concern that union officials go onto work sites under the guise of section 117 without any pretence about what the suspected contravention is and they are presented with a list at the end of the inspection. MBAQ conceded that there is often genuine safety issues included on these lists and they are normally then attended to. They advised that it is the process by which an issue is raised and resolved that has caused so much consternation in the sector.[142]

The QCU commented that:

> *…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.*
>
> *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 too scared to actually report the 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.*[143]

The QCU advised that the solution is to implement the current provisions of the Act rather than implement changes which will make unsafe workplaces.[144]

The MEA explained that what they want is that any person who identifies a safety problem to pass that issue onto the appropriate person to address and fix the problem. They consider that everyone would be in agreement that the WHS entry permit holders have a role to play, but that role should be focused on the safety outcomes as opposed to hijacking safety to be used or integrated into an industrial outcome.[145]

The HIA, in their submission, stated that while they are supportive of the need to ensure workplace health and safety, the current misuse of right of entry provisions in the commercial building industry have led to significant inefficiencies and cost burdens for businesses, which do not support the objectives or the intent of the Act. They noted that the residential construction industry is relatively 'unscathed' by union interference, but they are concerned that experiences encountered by commercial counterparts may shift to the residential sector.[146]

Canegrowers also stated that they supported the Bill with regard to right-of-entry notice changes. They advised that they have good dialogue with union representatives in respect of work health and safety matters through the Rural Sector Standing Committee and they have not been subject to the issues identified by the MBAQ.[147]

The HIA pointed out that the proposed amendments do not change the right of the government's safety inspectors to access workplaces without notice to address urgent safety issues. They consider that this will ensure that there should be no reduction in the safety of workers as a result of the proposed changes.[148]

[141] Mr Crittall, Public Hearing Transcript 5 March 2014: 3
[142] Mr Crittall, Public Hearing Transcript 5 March 2014: 3
[143] Mr Battams, Public Hearing Transcript 5 March 2014: 18
[144] Mr Battams, Public Hearing Transcript 5 March 2014: 19
[145] Mr Dearlove, Public Hearing Transcript 5 March 2014: 7
[146] Submission 4: 1
[147] Mr Trost, Public Hearing Transcript 5 March 2014: 5
[148] Submission 4: 1

The Plumbers Union agreed that the process of identifying and rectifying safety issues can continue with or without WHS permit holders present, however, they are concerned that without their independent presence, the pressure to meet deadlines or profit margins may from time to time override safety issues.[149]

The QCU stated that the proposed amendment ignores the overwhelmingly constructive use of this provision by unions and the positive outcomes that have been achieved.[150]

Many of the submissions from unions identified that they have not used or had used infrequently, the right of immediate entry, nor had they been accused of non-compliance in any right of entry matter.

The QTU advised the Committee that they have clear and undisputable evidence, over many years, that the involvement of a QTU officer with a WHS issue in a school or workplace, within 24 hours of the notification of the incident, has assisted not only the health and well being of QTU members and also has assisted the Department of Education, Training and Employment (DETE) in resolving incidents.[151]

They confirmed that their members, who are primarily teachers and education leaders, have a clear expectation that on the rarer circumstances where there are emergent workplace health and safety issues they have the right to be able to talk with and work with a union officer to help resolve the issues. They also noted that QTU officers often work with school principals, who are also their members, to help resolve issues. They explained that:

> *…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.*[152]

The QNU strongly opposed the provisions relating to the requirement of providing at least 24 hours notice by WHS entry permit holders and any person assisting a WHS representative. They advised that, although they have been judicious in acting under this provision, they have relied on the ability to enter a workplace because an incident or risk has required immediate action on their part and that of the employer.[153]

The QNU submission includes a number of case studies where the provisions have been used in the past and why immediate access was required. They consider that in some instances the provision notice may allow an employer to temporarily rectify a situation to give the appearance that no hazard exists and that total reliance on the regulator does not always mean issues are investigated.[154]

The QNU also advised the Committee that they consider it is important that a nurse or midwife can seek immediate assistance from the union in situations which pose or may pose an imminent risk to the health and safety, particularly when the employer may be unresponsive.[155]

The IEU considered that advance notice of entry is not currently required in the case of suspected breaches of health and safety because these are issues of fundamental importance. They suggested that the modification of the existing legislation will impede action in cases of urgent safety risk and allows unscrupulous employers additional time to cover up workplace issues.[156]

[149] Submission 8: 4
[150] Submission 17: 3
[151] Submission 12: 4
[152] Mr Backen, Public Hearing Transcript 5 March 2014: 12
[153] Submission 3: 7
[154] Submission 3: 8
[155] Ms Mohle, Public Hearing Transcript 5 March 2014: 12
[156] Submission 6: 2

The IEU wished to put on the 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.*[157]

The QCU advised that:

> *We see the worst employers. I was listening to …*the MBAQ…*talking before about best practice and that it is in the interest of employers to do the right thing and be proactive. There are some employers like that. It is not that we want to brand everybody as bad.*
>
> *…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 non-English speaking backgrounds – they do not have rights. We see people who do not have trained representatives and all of those sorts of things*.[158]

The QCU consider that prevention is the key and the proposed amendments take away two of the key preventative measures and then rely on punitive measures to actually punish the 'cowboys' who do not do the right thing. They consider that it is far more important to prevent injury rather than wait for it to happen.[159]

The CFMEUQ also confirmed that the Act currently only provides for a WHS permit holder to enter without notice where there is a reasonable suspicion that a contravention of the WHS Act has occurred or is occurring and relevant workers are affected. They advise that there is currently no unfettered right of a WHS permit holder to enter a workplace without prior notice.[160]

The MBAQ advised the Committee that they consider that the proposed amendment requiring 24 hours notice will change the dynamic, allowing the companies to get their safety committee together, organise their safety representatives, conduct an inspection themselves and possibly engage an inspector from the department to give advice. They noted that inspectors are empowered to issue provisional improvement notices to rectify issues.[161]

The Committee sought comment from the MBAQ on companies using the 24 hour notice period to ensure safety concerns are rectified during that period rather than operating in a safe manner all of the time. The MBAQ advised that genuine safety issues should be resolved with or without any notice.[162]

They advised that the genuine issues 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.*[163]

[157] Ms Schmidt, Public Hearing Transcript 5 March 2014: 12
[158] Ms Grassick, Public Hearing Transcript 5 March 2014: 19
[159] Mr Battams, Public Hearing Transcript 5 March 2014: 19
[160] Submission 9: 4
[161] Mr Crittall, Public Hearing Transcript 5 March 2014: 4
[162] Mr Crittall, Public Hearing Transcript 5 March 2014: 5-6
[163] Mr Crittall, Public Hearing Transcript 5 March 2014: 5-6

The MEA suggested to the Committee that the additional 24 hour notice period would allow time for inspectors to be called to resolve any dispute early.[164]

The QCU articulated their concern that implicit in the changes is that the inspectorate would step into the place of those both in the workplaces as WHSRs and the WHS entry permit holders. They emphasised their concern that there are not sufficient inspectors to undertake normal duties, let alone emergency circumstances all over Queensland. They consider that with imminent dangers and immediate action necessary, it is virtually impossible to expect the inspectorate to step into the shoes of both WHSRs and the WHS entry permit holders.[165]

The Committee asked the department about what safeguards are in place to protect workers from unethical employers who may seek to take advantage of the proposed notice period to remove or destroy evidence. The department advised that under the legislation, there is a provision where there is an incident for the site to be preserved. There is some ability to move to save life or to prevent further danger from happening. There is a duty on the employer or business to preserve the site until it is released by the inspectorate.[166]

The department advised the Committee that the Act provides for a number of immediate remedies to address serious risks to health and safety. In the first instance, where reasonably practicable, it is always recommended that the person raise their concerns with their supervisor or line manager who is best placed to make an immediate decision on these matters. However, where that is not reasonable or where concerns are not adequately addressed there are other immediate remedies available including:

- *exercising their statutory right for a worker to cease work if they have a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to hazard – this provides legal protection for workers who cease work on safety grounds;*
- *discussing the matter with a health and safety representative onsite who can address the matter on their behalf or on behalf of the workforce – this is part of a representatives legislative functions which include investigating complaints from members of their work group and inquiring into anything that appears to be a risk to the health and safety of workers;*
- *issuing of a provisional improvement notice by a health and safety representative to the person conducting a business or undertaking which requires them to rectify the health and safety risk;*
- *commencing the mandatory issues resolution process (through a line manager or through the health and safety representative) which can be commenced over any matter for health and safety that arises at the workplace (which if is unresolved requires the Regulator to appoint an inspector to assist the workplace in resolving the matter); or*
- *contacting Workplace Health and Safety Queensland – this can be by calling the WHS Infoline on 1300 369 915 or online at www.worksafe.qld.gov.au (can be made anonymously).*[167]

[164] Mr O'Dwyer, Public Hearing Transcript 5 March 2014: 4
[165] Mr Battams, Public Hearing Transcript 5 March 2014: 17
[166] Mr Bick, Public Briefing Transcript 5 March 2014: 7
[167] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 2

The department highlighted that a WHS entry permit holder is not an inspector and can only provide advice on health and safety matters to workers and others at the workplace. In contrast, inspectors appointed under the WHS Act may enter a workplace at any time with or without the consent of the person with management and control of the workplace. Inspectors have significant powers under the Act including the power to stop work activities, require answers to questions, require the production of documents and the ability to seize items for use as evidence of an offence.[168]

The MBAQ advised that there is an important distinction between WHS entry permit holders and inspectors. They expressed their opinion that WHS entry permit holders have a list that is not necessarily about imminent risk or how to prevent people from being hurt but about how they stop the project to pursue some other objective.[169]

The CFMEUQ considered that the 57 right of entry disputes where an inspector has been called cited in the explanatory notes does not reflect the whole picture.[170] The QCU advised the Committee that even if the 57 complaints were around right of entry without notice, this only amounts to about one complaint per fortnight, compared with 9,919 total complaints and 140,099 accepted compensation claims in the same period.[171] The department advised that many of the right of entry disputes do not necessarily get raised with WHSQ and they only have a record of those disputes where an inspector has been called on.[172]

The department provided data relating to complaints to WHSQ over the past 5 years (Table 6).

Table 6: Complaints to WHSQ over the past 5 years

Number of complaints	2008-09	2009-10	2011-11	2011-12	2012-13
Number	3,844	4,627	4,523	4,559	5,360

Source: Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 1

The department advised that WHSQ responded to a broad range of complaints. They advised that they have an advisory and assessment area that works as a triaging process so they are able to get inspectors out to the areas with the greatest need.[173]

DJAG confirmed that in 2010, WHSQ re-engineered its business to centralise its incident notifications function. This was implemented to ensure a consistent response to incidents and complaints by the department across Queensland and that those incidents and complaints that needed to be dealt with through inspector contact were referred to the inspectorate. All other notifications are dealt with centrally (usually administratively) so as not to create unnecessary burden to the inspectorate. The Assessment and Advisory Centre is responsible for triaging of incident notifications and requests for regulator response to WHS and Electrical Safety issues. They advised that triaging of events is an essential method of addressing demand for inspector resources and ensures they are targeted toward the areas of greatest need. An on-call service ensures inspectors are able to respond to incidents, where appropriate, out of normal business hours across Queensland.[174]

[168] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 2-3
[169] Mr Crittall, Public Hearing Transcript 5 March 2014: 6
[170] Submission 9: 4
[171] Submission 17: 3
[172] Mr Goldsbrough, Public Briefing Transcript 5 March 2014: 4
[173] Mr Goldsbrough, Public Briefing Transcript 5 March 2014: 4
[174] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 3

The IEU indicated that some work places have no elected WHSRs in their work place and as such contact their union when issues arise.[175] The QTU also confirmed that in some schools the WHSR is not a teacher and a QTU officer may be required on a school site to assist a school principal in resolving the incident.[176]

CCIQ have also suggested that a notice of entry should include the particulars of the breach in question. They consider that this would promote accountability and ownership when exercising right of entry powers in addition to reducing the time and cost associated with compliance inspections by isolating specific concerns in the initial stages of the suspected breach.[177] This issue is not covered in the Bill, however, as the notice of entry provision also include compliance with any regulations, this could be included under a regulation to be made.

The Bar Association of Queensland urged that the effect of this amendment be closely monitored over the period immediately following its commencement to ensure that safety in Queensland is not unexpectedly compromised by the amendment of the Act.[178]

The Committee considered the role of WHS entry permit holders and the role they play in work health and safety. The department advised that representatives of workers play an important role under the Act. They are referenced in the objects of the Act to provide advice to their members in terms of health and safety matters. The department also confirmed that employer organisations also play a significant role in providing training. However, the department considers that if there is an imminent risk or hazard, then it is appropriate for a WHSQ inspector to be the one going to the workplace and dealing with the obligation holders, whether they be a PCBU or a worker.[179]

The QNU explained to the Committee that their union plays a major role in education of its members about their rights and responsibilities. However, they have found that it is a battle to get the health and safety message across to their members. They advised that they have training and training courses but find that many workers are unaware that they have the right to remove themselves from imminent risk of danger and they continue to place themselves in danger. Many nurses have the attitude that 'I'm a nurse and I have to provide care to people'.[180] They confirmed that they are aware that there is a problem with getting the message out and they advised that Queensland Health has also attempted to try to get the message out.[181]

The MBAQ suggested to the Committee that workers should be advised at their inductions that no one is going to be exposed to doing something that they think is unsafe. They also considered that there a lot of avenues available to workers in which imminent risk can be managed quickly.[182]

Of concern to a number of submitters was the issue of what happens when a significant incident occurs. The Plumbers Union Qld advised the Committee that they have found that in the event of a serious incident occurring, many PCBUs had contacted their organisation to request their assistance and expertise.[183]

[175] Submission 6: 3
[176] Submission 12: 4
[177] Submission 2: 4
[178] Submission 22: 1
[179] Mr Goldsborough, Public Briefing Transcript 5 March 2014: 8
[180] Mr Gilbert, Public Hearing Transcript 5 March 2014: 17
[181] Mr Gilbert, Public Hearing Transcript 5 March 2014: 18
[182] Mr Crittall, Public Hearing Transcript 5 March 2014: 5
[183] Submission 8: 4

The MBAQ advised the Committee that the industry has a documented critical incident plan which outlines the processes that are to be followed in the case of an incident including:

- immediately contacting emergency services
- contacting WHSQ and working with industry specific inspectors through the investigation process
- clearing workers from any affected areas to ensure their safety or evacuating the site if required
- prompt lodgement of an incident report with WHSQ
- a thorough investigation of the incident by internal health and safety staff with key actions and recommendations outlined and reviewed
- providing support through employee assistance programs to workers[184]

The MBAQ stated that:

> *…building unions completely oppose the proposed laws on the basis that they will not be allowed to attend sites after a critical incident. The policy steps outlined above clearly demonstrate the ways in which the PCBU will respond to an incident without the need for any third party interference. In some circumstances the PCBU also has an obligation to notify WHSQ.*[185]

The MBAQ did concede, however, that companies will have to step up their critical incident management systems in response to this legislation. They stated that:

> *…they already have those plans now, but they would have to revisit them and realise they do have obligations to manage a critical incident without 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. The 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.*[186]

The ETU provided an example where a major incident occurred where two workers fell through a concrete slab whilst it was being poured. Upon notification of the incident, WHS permit holders attended under the right of entry powers to investigate. They found that the likely cause of the accident was inadequate support for the form work. They also found that a second concrete slab was due to be poured that day and the cause of the first incident was being repeated for the second. They considered that their early intervention prevented the risk of a further incident.[187]

The department confirmed that inspectors routinely attend all incidents involving fatalities and serious incidents such as a scaffolding collapse on a construction site.[188]

[184] Submission 20: 6
[185] Submission 20: 6
[186] Mr Crittall, Public Hearing Transcript 5 March 2014: 9
[187] Submission 13: 4
[188] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 12 March 2013: 5

4.5.2 Clause 14 – Amendment of section 122 (Notice of entry)

Current Part 7 Division 3 allows a WHS entry permit holder to enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, one or more relevant workers who wish to participate in the discussions. Current section 122, within this Division, requires that WHS entry permit holders give at least 24 hours notice of the proposed entry to the relevant PCBU.

Existing section 122 is as follows:

> **122 Notice of entry**
>
> (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking.
>
> (2) The notice must comply with a regulation made for this section.
>
> (3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

Clause 14 amends section 122 to require a WHS entry permit holder to give notice to both the relevant PCBU and the person with management and control of the workplace before entering the workplace to consult and advise workers.

Proposed replacement 119 will be as follows:

> **122 Notice of entry**
>
> (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry to—
>
> (a) the relevant person conducting a business or undertaking; and
>
> (b) the person with management or control of the workplace.
>
> (2) The notice must comply with a regulation made for this section.
>
> (3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

The Plumbers Union advised the Committee that the 'surprise' element ensures that WHS permit holders are able to view workers going about their daily business in the workplace's usual state. They advised that the purpose is not to 'catch employers out', rather to see how business is operated on a daily basis, not after the site has been cleaned up for an upcoming safety inspection. They consider that the ability to enter a site at any time ensures that safety is at a high standard at all times.[189]

The Plumbers Union also advised that unions tend to take a wide approach about who may be impacted by a safety matter whilst PCBUs are likely to have a more narrow view. They advised that for the provision to work effectively, it relies on workers feeling completely safe in expressing their views and raising concerns.[190]

4.5.3 Clause 15 – Amendment of section 123 (Contravening WHS entry permit)

Clause 15 amends section 123 to increase the maximum penalty for a contravention of a condition imposed on the WHS entry permit from 100 penalty units to 200 penalty units.

[189] Submission 8: 4
[190] Submission 8: 5

The IEU noted that their principle objection to the proposed amendment is based on the fact that increasing the penalty for failure to comply with entry notification requirements is motivated by a desire to punish unions, particularly as there is no proposal for an equivalent increase in penalties faced by employers who endanger their employees.[191]

4.5.4 Committee comments

Whilst acknowledging the argument that some unscrupulous employers may take advantage of the notice provisions, the Committee considers that in many of the examples cited in the submissions, an additional 24 hour notice period would not have affected the outcome of the investigations by WHS permit holders. There were, however, some legitimate reasons and examples cited and where productive outcomes occurred because of the intervention of permit holders within the 24 hour notice period. The Committee considers that workplace health and safety laws should always be about safety and protection of workers and should never be used as an industrial relation's weapon.

The Committee considers that both employers and the regulator should be utilising the existing prosecution provisions where they consider that the WHS laws have been misused for this purpose.

The Committee accepts that some unions within the commercial construction industry have been using the WHS legislation as a bargaining tool in their industrial relations negotiations. The Committee believes that this is not an acceptable use of the WHS legislation and risks jeopardising the health and safety of workers who have legitimate issues. However, the significant question for the Committee was whether the proposed amendments are an acceptable response to this.

The Committee agrees that WHS entry permit holders do not have the same rights and responsibilities as inspectors and should not view themselves as such. The Committee also considers that unions and WHS entry permit holders have a legitimate and worthwhile role to play in ensuring that work health and safety practices are adhered to by both workers and employers. This is particularly true in the area of education and training. The Committee wishes to encourage unions to continue their strong education and advocacy role.

The Committee remains concerned that workers do not understand their rights at work and considers that the regulator needs to take more decisive action with its education role. To this end the Committee has made a number of recommendations aimed at improving the workplace health and safety knowledge available to workers.

The Committee also remains concerned that many workplaces are currently not adequately placed to cope with major incidents and are heavily reliant on union involvement should this type of situation arise. The Committee considers that inspectors should have the power to authorise WHS entry permit holders to access the workplace in the event of a major incident.

Recommendation 9

The Committee recommends that the regulator undertake an extensive marketing campaign to inform workers of the contact details and new arrangements of government inspectors.

[191] Submission 6: 3

Recommendation 10

The Committee recommends that the regulator investigate the development of a workplace health and safety mobile application to increase access for workers, particularly vulnerable workers.

Recommendation 11

The Committee recommends that the regulator include changes to work place inductions to inform workers of their right to cease work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the workers' health or safety, emanating from an immediate or imminent exposure to a hazard.

Recommendation 12

The Committee recommends that the regulator ensure that any details of workers who report issues to the regulator remain strictly confidential.

Recommendation 13

The Committee recommends that the regulator maintain records where the regulator considers there has been a misuse of provisions by any party and this information is included as a subject in the review of the proposed amendments.

Recommendation 14

The Committee recommends that legislation be amended to include provision for the regulator, or inspector by reason of delegation, to be authorised to provide consent for a WHS entry permit holder to have access to a workplace within the 24 hour notice period.

4.6 Provisions that increase penalties for non-compliance with WHS entry permit conditions and introduce penalties for failure to comply with the entry notification requirements

The current legislation does not contain penalty provisions for failure to comply with entry notification requirements.

4.6.1 Clause 16 – Insertion of new section 143A

Clause 16 inserts a new section 143A to prohibit a WHS permit holder from entering a workplace unless they have given the notice required under section 119 or section 120 or section 122. The clause includes a provision application of 200 penalty units.

Proposed section 143A will be as follows:

> **143A WHS permit holder must not fail to give required notice of entry**
>
> A WHS permit holder must not—
>
> (a) enter a workplace under section 117 unless the permit holder has given notice under section 119; or
>
> (b) enter a workplace under section 120(2) unless the permit holder has given notice under section 120(3); or
>
> (c) enter a workplace under section 121 unless the permit holder has given notice under section 122.
>
> WHS penalty provision.
>
> Maximum penalty—200 penalty units.

4.6.2 Committee comments

The Committee is satisfied with the proposed penalty provisions. The Committee notes that penalties will only apply where these provisions are breached. The Committee considers that the relevant penalty provisions should be included in any training available to WHS entry permit holders.

4.7 Provisions that allow for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation as required by the WHS Act

4.7.1 Background to National Harmonisation

At the Workplace Relations Ministers' Council (WRMC) meeting on 1 February 2008, Ministers agreed the use of model legislation was the most effective way to achieve harmonisation of work health and safety laws.

In July 2008, the Council of Australian Governments (COAG) signed the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA). The IGA sets out the principles and processes for cooperation between the Commonwealth, states and territories to implement model legislation. It was complemented by consistent approaches to achieve compliance and enforcement by the end of 2011.

This was the first time all jurisdictions had made a formal commitment to harmonise work health and safety laws in Australia within a set timeframe. This commitment included the development and implementation of a complete and fully integrated package. The package consisted of a model Act, supported by model Regulations, model Codes of Practice and a National Compliance and Enforcement Policy.

The IGA recommended a National Review into Model Occupational Health and Safety Laws be conducted to make recommendations on the optimal structure and content of a model Occupational Health and Safety (OHS) Act that was capable of being adopted in all jurisdictions.

The national OHS review was carried out by a panel of three independent experts. In making its recommendations, the panel took into account the changing nature of employment arrangements and consulted extensively with more than 260 individuals. This consultation process incorporated representatives from over 100 organisations across Australia, including regulators, union and employer organisations, industry representatives, legal professionals, academics and health and safety professionals. The panel also received 243 written submissions from various organisations and individuals.

From this process, the national OHS review panel made 232 recommendations, which were put forward to WRMC for consideration. In May 2009, WRMC made decisions on these recommendations, setting the policy parameters for developing a model Act.

Safe Work Australia released a draft Model Work Health and Safety Act, for public comment in September 2009. A total of 480 submissions were received from individuals, unions, businesses, industry associations, governments, academics and community organisations. The WRMC endorsed the model WHS Act in December 2009, allowing Safe Work Australia to make further technical and drafting amendments to ensure its workability. The model WHS Act was finalised in June 2011.

The Model Work Health and Safety Act forms the basis of the WHS Acts being enacted across Australia to harmonise work health and safety law. For the Act to be legally binding it needs to be enacted or passed by Parliament in each jurisdiction. The Table 7 identifies the shows each jurisdiction's progress in implementing the harmonised laws.

Under IGA, the process for developing the model Work Health and Safety Regulations requires Safe Work Australia to consider areas that are the subject of existing regulations. Unless matters are already regulated in a majority of the jurisdictions, they are not included in the model WHS Regulations.[192]

[192] Safe Work Australia, *Model work health and safety laws,* http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/model-whs-laws [7 March 2014]

Table 7: Progress in implementing the harmonised laws by jurisdiction

Jurisdiction	Legislation	Introduction to Parliament	Date Passed	Date Implementation
Commonwealth	Work Health and Safety Act 2011	6 July 2011	24 November 2011	1 January 2012
Commonwealth	Work Health and Safety Regulations 2011	Made 7 December 2011	Registered 14 December 2011	1 January 2012
Australian Capital Territory	Work Health and Safety Act 2011	23 June 2011	20 September 2011	1 January 2012
Australian Capital Territory	Work Health and Safety Regulations 2011		19 December 2011	1 January 2012
New South Wales	Work Health and Safety Act 2011	5 May 2011	27 May 2011	1 January 2012. Laws relating to officers' due diligence duties took effect in June 2011
New South Wales	Work Health and Safety Regulations 2011		16 December 2011	1 January 2012
Northern Territory	Work Health and Safety (National Uniform Legislation) Act 2011	27 October 2011	1 December 2011	1 January 2012
Northern Territory	Work Health and Safety (National Uniform Legislation) Regulations		30 December 2011	1 January 2012
Queensland	Work Health and Safety Act 2011	10 May 2011	26 May 2011	1 January 2012
Queensland	Work Health and Safety Regulations 2011	Approved on 24 November 2011	29 November 2011	1 January 2012
South Australia	Work Health and Safety Act 2012	19 May 2011	1 November 2012	1 January 2013
South Australia	Work Health and Safety Regulations 2012		31 December 2012	1 January 2013
Tasmania	Work Health and Safety Act 2012	18 October 2011	13 March 2012	1 January 2013
Tasmania	Work Health and Safety Regulations 2012		3 December 2012	1 January 2013
Victoria	Not yet introduced			The Victorian Government announced it would delay harmonisation. For further information visit WorkSafe Victoria
Western Australia	Not yet introduced			WorkSafe WA engaged Marsden Jacob Associates to conduct a regulatory impact analysis on the model WHS Regulations. For further information vist WorkSafe WA

Source: Safe Work Australia, *Jurisdictional progress on the model work health and safety laws,* http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/jurisdictional-progress-whs-laws [14 March 2014]

4.7.2 Clause 17 – Amendment of section 274 (Approved codes of practice)

Existing section 274 sets out the requirements with respect to approved codes of practice. Existing section 274 is as follows:

> **274 Approved codes of practice**
>
> (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
>
> (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if the code of practice, variation or revocation was developed by a process that involved consultation between—
>
> (a) the Governments of the Commonwealth and each State and Territory; and
>
> (b) unions; and
>
> (c) employer organisations.
>
> (3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—
>
> (a) with or without modification; or
>
> (b) as in force at a particular time or from time to time.
>
> (4) An approval of a code of practice, or an instrument varying or revoking an approved code of practice, has no effect unless the Minister gives notice of its making.
>
> (4A) A notice under subsection (4) is subordinate legislation.
>
> (4B) A code of practice, or an instrument varying or revoking a code of practice, commences on the later of the following—
>
> (a) the day the notice under subsection (4) commences; or
>
> (b) the day the code or instrument provides that it commences.
>
> (5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in a newspaper circulating generally throughout the State.
>
> (6) The regulator must ensure that a copy of—
>
> (a) each code of practice that is currently approved; and
>
> (b) each document applied, adopted or incorporated, to any extent, by an approved code of practice; is available for inspection by members of the public without charge at the office of the regulator during normal business hours.

Clause 17 omits subsection 274(2). This will allow the Minister to vary and revoke approved codes of practice without the requirement for a process of consultation with the governments of the Commonwealth and each State and territory and unions and employer organisations.

The explanatory notes state that the review of the legislation considered a range of national model codes of practice that could be adopted in Queensland. While there is general support for harmonised model WHS laws and codes, stakeholders considered there is a need for some scope to vary the model codes where they can be made more relevant for circumstances in Queensland. The Act does not currently permit this flexibility.

The MBAQ advised the Committee that the power to amend the codes is important for the Queensland construction industry. They advised that they have at least four state based codes around formwork, scaffolding, cranes and tilt-up panels that took years to develop with consultation between unions and the employer groups. They consider them to be the finest codes in Australia and giving the Minister in Queensland the power to put a fence around Queensland codes is an important step in preserving these safety codes.[193]

[193] Mr Crittall, Public Hearing Transcript 5 March 2014: 7

The explanatory notes also identify that the removal of the requirement for the Minister to consult with the Commonwealth and State and Territory governments and unions and employer organisations before varying or revoking a code of practice was recognised by the OQPC as an FLP issue. OQPC noted that this removal may reduce the opportunities for workers and employers to participate in decisions on codes of practice. The government response to this in the explanatory notes states that:

> *Under the Intergovernmental Agreement for Reform in Occupational Health and Safety (IGA), model codes of practice are developed by Safe Work Australia (SWA), a tripartite body comprising representatives of the Commonwealth, State and Territory governments and worker and employer representatives, and it is a requirement under the IGA that SWA consult with interested persons in the development of codes. In Queensland, local tripartite consultation on codes of practice is undertaken with the Work Health and Safety Board and Industry Sector Standing Committees, comprising both employer and worker representatives).*

The QNU agreed with the view expressed by the OQPC. They advised that although in Queensland consultation on codes of practice takes place with the WHS Board and Industry Sector Standing Committees, the Bill omits section 274(2) giving the Minister a unilateral right to vary or revoke codes of practice without recourse to stakeholders. They consider that the Minister is abrogating any legislative responsibility to consult at any level.[194]

Clubs Queensland was generally supportive of the removal of the requirement for the Minister to consult with the Commonwealth, State and Territory governments, unions and employer organisations, before varying or revoking a code of practice. They advised that they recognise local tripartite consultation on codes of practice is undertaken with the WHS Board and Industry Sector Standing Committees. They advised that Clubs Queensland is a participant in the relevant Industry Sector Standing Committee and has an opportunity to contribute views into any such initiatives through that channel.[195]

The QFF were also supportive of the amendment which allows for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation. They consider that the harmonised model of health and safety laws have advantages, but supports the intent of the amendment as it provides some scope to vary the model codes where they can be made more relevant, reduce red tape and deliver safer workplaces. They also consider that relying on a national consensus model can lead to perverse outcomes in some circumstances.[196]

MEA, whilst generally supportive of the proposed amendment in clause 17, strongly recommended that any variance to a code of practice be subject to a process of consultation and that any amended code of practice not deliver a safety result that is lower than a nationally recognised code of practice and that changes are practical and cost effective.[197]

[194] Submission 3: 11
[195] Submission 5: 2
[196] Submission 10: 2
[197] Submission 14: 4

The MEA advised the Committee that:

> *…when the national codes were put together…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 industry. We recognise there is 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.*[198]

The Plumbers Union advised that in principal they do not disagree that there is a need to allow some scope to vary model codes to be more relevant for specific circumstances and the requirement to consult with some parties may be onerous and unnecessary. However, they submitted that to simply remove section 274(2) goes beyond what is contemplated in the explanatory notes.[199]

The AMWU advised the Committee that the harmonisation of WHS laws and codes was a long involved process which was designed to assist business by putting in place, one Model Act and Codes of practice that would be implemented across all jurisdictions. Part of the drive for this harmonisation process was to reduce the compliance costs for business. The AMWU believes that the removal of the requirement to consult the other states and stakeholders will over time lead to the implementation of codes which are different in Queensland and this will have a negative effect on business by having to comply with different codes across Australia.[200]

The SDAQ advised the Committee that they do not agree with the proposal that allows the Minister to have the power solely to amend or revoke any code of practice without the normal tripartite consultation. They consider that workers at the coalface and their employers are best placed to know what is and is not going to work when it comes to codes of practice. They stated that if done at arm's length without consultation, codes of practice will not be as effective as they might otherwise be.[201]

The SDAQ also voiced their concern that these changes are being proposed only two years after introduction of the new Act. They advised that the process was designed to harmonise all the health and safety laws across Australia and took four to five years to complete and involved consultation with multiple stakeholders across the country to arrive at the model national legislation. They asked the question: what has changed in the last two years to warrant the proposed legislative changes now?[202]

The CFMEUQ agreed that the WHS Act is the result of a significant effort by many parties to implement harmonised work, health and safety laws throughout Australia. They advised that the benefits of this include simplification and reduced compliance costs for employers who operate across multiple jurisdictions and workers who work in multiple jurisdictions are aware of their rights and obligations regardless of where they are working. They consider the proposed amendments would undermine the effort and resources expended in creating the harmonised legislation to the detriment of employers and workers.[203]

[198] Mr Dearlove, Public Hearing Transcript 5 March 2014: 7
[199] Submission 8: 6
[200] Submission 7: 4
[201] Mr Walker, Public Hearing Transcript 5 March 2014: 11
[202] Mr Walker, Public Hearing Transcript 5 March 2014: 11
[203] Submission 9: 1

The QCU agreed that Queensland defaulting from the nationally harmonised legislative framework risked increasing regulatory red tape as cross-jurisdictional employers would have increased burdens because they would need to comply with separate legislation and provide different training courses in different jurisdictions.[204]

The ETU also noted that any variation to the current WHS legislation undermines the guiding principle of a harmonised system, which is to ensure that all workers in Australia have access to the same standards and protections of health and safety at work.[205] They advised the Committee that the proposed amendment completely undermines the principles of national work health and safety harmonisation and there are negative implications for both workers and PCBUs who work across multiple state jurisdictions if codes of practice can be varied and revoked without national consultation.[206]

The Bar Association of Queensland advised the Committee that:

> *There is obvious benefit to the current requirement for consultation prior to the Minister's variation or revocation of a code of practice. There is also much commercial benefit in having consistency in codes across different jurisdictions. This benefit should be relinquished only when there is clear compensatory benefit from the changes. Accordingly, we do not support this aspect of the Bill. Ministerial consultation with government, unions and employer organisations provides a solid basis for good decision making in relation to codes of practice. We support the current position remaining as it is.*[207]

The department advised that under the IGA, model codes of practice are developed by Safe Work Australia, a tripartite body comprising representatives of the Commonwealth, State and Territory governments and worker and employer representatives and it is a requirement under the IGA that SWA consult with interested persons in the development of codes. In Queensland, local tripartite consultation on codes of practice is undertaken with the Work Health and Safety Board and Industry Sector Standing Committees, comprising both employer and worker representatives.[208]

The department noted that any future codes of practice will continue to be developed through the national process and WHSQ will undertake consultation with local stakeholders. They confirmed that WHSQ has a long standing record of consulting with stakeholder on codes of practice, including under the repealed WHS laws, which did not set any legislative requirement for consultation. Codes of practice have evidentiary status on what is reasonably practicable to control risks. Consultation on codes is seen as necessary to ensure the information in the code is current, has practical application to the industry and sets the appropriate health and safety benchmarks.[209]

4.7.3 Committee comments

Many of the submissions questioned that the proposed amendment will put Queensland out of step with the rest of Australia and that this will increase red tape and lead to poorer outcomes. The department advised the Committee that consultation will continue with stakeholders. However, the proposed amendment omits the entire section and therefore any requirement to consult.

The Committee requests that the Minister provide a response aimed at addressing these concerns.

[204] Submission 17: 6
[205] Submission 13: 2
[206] Submission 13: 5
[207] Submission 22: 1
[208] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 8-9
[209] Correspondence from Director-General, Department of Justice and Attorney-General, to FAC dated 7 March 2013: 9

Recommendation 15

The Committee recommends that the Minister comment on the concerns of stakeholders that the proposed amendment puts Queensland out of step with the rest of Australia.

4.8 Transitional arrangements

4.8.1 Clause 18 – Insertion of new Part 16, Division 3

Clause 18 inserts a new Division 4 in Part 16 with transitional provisions for existing directions to cease unsafe work and entry to a workplace to inquire into suspected contraventions under section 119 without notice that occurred before commencement of the *Work Health and Safety and Other Legislation Amendment Act 2014*.

Proposed Part 16, Division 3 will be as follows:

Division 3 Transitional provisions for Work Health and Safety and Other Legislation Amendment Act 2014

307 Definitions

In this division—

amendment Act means the *Work Health and Safety and Other Legislation Amendment Act 2014.*

commencement means the commencement of this section.

former, in relation to a provision of this Act, means the provision as in force before the commencement.

308 Existing directions to cease unsafe work

(1) This section applies if, before the commencement, a health and safety representative directed a worker to cease work under former section 85.

(2) Former section 85 continues to apply in relation to the direction as if the section had not been repealed by the amendment Act.

309 Entry to workplace under former s 119

(1) This section applies if—

(a) before the commencement, a WHS entry permit holder entered a workplace under part 7, division 2; and

(b) at the commencement, the WHS permit holder has not given notice of the entry and the suspected contravention under former section 119.

(2) Former section 119 continues to apply in relation to the entry as if the amendment Act had not been enacted.

5 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

The explanatory notes state that, in general, the Bill balances individual rights against the rights and liberties of persons, particularly workers, directly affected by safety standards in the workplace. The OQPC identified five separate FLP issues and the explanatory notes draw attention to these issues and notes the government's response to the issues. These issues have been noted in the relevant sections of this report.

5.1. Immunity from proceedings – Section 4(2)(a) *Legislative Standards Act 1992* – Does the bill have sufficient regard to the rights and liberties of individuals?

5.1.1 Increases to maximum penalties

Clause 4 amends section 210(3) of the *Electrical Safety Act 2002* to provide that a regulation made under section 210 may prescribe offences for breaching the regulation and may fix a maximum penalty of 300 penalty units ($33,000) for such a breach. This is a significant increase over the current maximum penalty that can be prescribed under a regulation made under section 210 which is 40 penalty units ($4,400).

The explanatory notes for the Bill acknowledge this increase, stating (at p.2):

> *The Bill also makes a technical amendment to the Electrical Safety Act 2002 to provide that the maximum penalty for offences in the Electrical Safety Regulation 2002*[210] *can be no more than 300 penalty units, replacing the current maximum of 40 penalty units. This will ensure the Electrical Safety Act 2002 is consistent with the maximum penalty for regulations made under the Work Health and Safety Act 2011 and that nationally consistent penalties can apply to offences in the Electrical Safety Regulation 2002.*

And at page 4:

> *OQPC notes the maximum penalty that may be imposed for an offence under the Electrical Safety Regulation 2013 has increased from 40 to 300 penalty units, and that under the previous Scrutiny of Legislation Committee there was a policy that the maximum penalty for offences in a regulation should generally be limited to 20 penalty units.*
>
> *Response: This amendment corrects a drafting oversight when amendments were made to the Electrical Safety Act 2002 (ES Act) to harmonise key aspects of the ES Act with the WHS Act. These amendments commenced on 1 January 2014. This ensures that the ES Act is consistent with the maximum penalty limits for regulations made under the WHS Act and that nationally consistent penalties apply to offences in the ES Regulation.*

[210] It should be noted that the *Electrical Safety Regulation 2002* has been superseded by the *Electrical Safety Regulation 2013* which commenced operation on 1 January 2014

In *Alert Digest* No. 4 of 1996, the SLC adopted a formal policy (Policy No. 2 of 1996) on the issue of the delegation of legislative power to create offences and prescribe penalties, being that legislative power to create offences and prescribe penalties may be delegated in limited circumstances provided specified safeguards were observed, one of which was that maximum penalties should be limited, generally, to 20 penalty units.

The SLC recognised the merit of delegating some legislative power to assist the effectiveness of Acts and acknowledged that there may be some circumstances when such offences may not be obvious at the time the Bill is drafted. However, the SLC was of the view that sub-clauses should be defined by providing a description of the kind of offences that might be created. They highlighted that offences and penalties created in delegated legislation should not affect the rights and liberties of individuals or impose obligations on them.[211]

The SLC noted that members of the executive frequently adopt the view that anything questionable, in terms of FLPs, and done by way of subordinate legislation is redeemed by the fact that such subordinate legislation is disallowable. The SLC did not support this view for the following reasons:

- objectionable material contained in subordinate legislation can be in force as part of the law for weeks or even months before disallowance can be moved in respect thereof; and
- all action taken under such objectionable provision/s remain valid even if the relevant provision is disallowed.[212]

The SLC resolved to adopt the following formal policy:

> *…that legislative power to create offences and prescribe penalties may be delegated in limited circumstances provided the following safeguards are observed:*
>
> - *rights and liberties of individuals should not be affected, and the obligations imposed on persons by such delegated legislation should be limited; and*
> - *the maximum penalties should be limited, generally to 20 penalty units; and*
> - *where possible, the types of regulation to be made under such provisions, which are foreseeable at the time of drafting the Bill, should be specified in the Bill; or*
> - *where the types of regulation to be made are not reasonably foreseeable at the time of drafting the Bill, a sunset clause (for a period not exceeding two years) should be set in respect of the relevant provision to allow time to identify the necessary penalties and offences.*
>
> *If further offences and penalties are required that do not fall within the types of regulation outlined in the Bill, they can be added by amendment to the principal Act. The principal means of creating offences should always be through Acts of Parliament rather than delegated legislation.*[213]

The SLC also noted that where provisions in regulations are made pursuant to delegated legislative power to create offences and prescribe penalties without having regard to these safeguards, they would consider moving for the disallowance of the relevant provisions.[214]

[211] Queensland Parliament, Former Scrutiny of Legislation Committee, A*lert Digest No. 4 of 1996*, July 1996: 5
[212] Queensland Parliament, Former Scrutiny of Legislation Committee, A*lert Digest No. 4 of 1996*, July 1996: 6
[213] Queensland Parliament, Former Scrutiny of Legislation Committee, A*lert Digest No. 4 of 1996*, July 1996: 6-7
[214] Queensland Parliament, Former Scrutiny of Legislation Committee, A*lert Digest No. 4 of 1996*, July 1996: 7

Clause 15 amends section 123 of the *Work Health and Safety Act 2011* to double the maximum penalty for contravening WHS entry permit conditions from 100 penalty units ($11,000) to 200 penalty units ($22,000). The explanatory notes (p.4) justify this increase as follows:

> *The misuse of union right of entry powers has highlighted the need for more robust enforcement tools to allow the regulator to adequately deal with breaches and to have a deterrent effect against non-compliance. The introduction of new offences and the increase in maximum penalty for an existing offence reflect the seriousness of these offences and the impact abuse of these powers has on a business' operation. Importantly, the penalties contained in the Bill set maximum limits only and the courts will retain their discretion to impose lesser penalties, depending on the circumstances and mitigating factors.*

The Bill's proposes to double the current maximum penalty for a breach of section 123.

The Committee sought the department's response to why it is considered appropriate to extend the penalties in view of SLC policy.

The department advised that:

> *Under section 276 of the Work Health and Safety Act 2011, the regulation making power specifies (under sub-section 3[c]) that the regulation may prescribe a penalty for any contravention of the regulations not exceeding 300 penalty units.*
>
> *The proposed change to the Electrical Safety Act 2002 amends the head of power for prescribing penalties in the electrical safety regulation from a current maximum of 40 penalty units to 300 penalty units, to ensure consistency with the WHS Act.*
>
> *On 1 January 2014 the new Electrical Safety Regulation 2013 commenced. The new Electrical Safety Regulation aligns with Queensland's work health and safety laws and also implements certain provisions of the nationally agreed model work health and safety laws dealing with incident notification, preservation of incident sites, live electrical work and requirements for working near power lines.*
>
> *The nationally agreed maximum penalties for breaches of these provisions were not able to be implemented due to current penalty limit of 40 penalty units in the Electrical Safety Act. As a result, current Queensland penalties for these important safety requirements are lower than in other Australian jurisdictions.*
>
> *The amendment to section 210(3) of the Electrical Safety Act 2002 is aimed at enabling the current imbalance to be addressed and subsequently bring Queensland's maximum penalties under the Electrical Safety Regulation into line with other Australian jurisdictions operating under the harmonised laws.*
>
> *The penalties specified are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.*
>
> *The quantum also reflects the seriousness of the offences under this legislation, as there is a risk to personal safety and potential loss of life arising from any breaches.*[215]

[215] Correspondence from A/Director-General, Department of Justice and Attorney-General, to FAC, dated 12 March 2013: 22

5.1.2 Committee comments

The Committee considers that the formal SLC policy should continue to apply. However, in this instance the Committee is satisfied that Parliament has been adequately informed of the proposed penalty provisions to be imposed.

5.1.3 New offences and penalty provisions

Clause 16 inserts a new section 143A into the *Work Health and Safety Act 2011* which will impose a maximum penalty of 200 penalty units ($22,000) for failure of a WHS permit holder to give notice under section 119, 120(3) or 122 before they enter a workplace under the power in sections 117, 120(2) or 121 respectively.

Currently there is a duty to give prior notice under sections 119, 120(3) or 122, however there is no offence or penalty attaching to a failure to give due notice.

5.1.4 Removal of employee protections

Clause 11 omits section 85 from the *Work Health and Safety Act 2011* which had permitted a health and safety representative to direct a worker or workers in their work group to cease work due to unsafe working conditions. Removal of section 85 removes a statutory protection for workers. Whilst individual workers will retain the section 84 right to cease work due to unsafe conditions, it is doubtful the extent to which unskilled, migrant, non-English speaking or other comparatively disadvantaged workers would feel confident that they could cease unsafe work on their own behalf without suffering reprisals from their employer. It is also possible many workers would be unaware of their statutory right to unilaterally cease unsafe work. The Explanatory Notes canvass this issue, stating (p.3):

> *There is a range of mechanisms in the Act designed to ensure the safety concerns of individual workers are identified and addressed. There is a duty on persons conducting a business or undertaking to consult with workers on health and safety matters and a mandatory issue resolution process. Additionally, workers may raise issues with the health and safety representative for their work group and seek their participation in any interview regarding health and safety concerns with the person conducting the business or undertaking. In any case, safety concerns can be raised directly with the WHS regulator or an inspector anonymously at any time.*

Removing the capacity for a comparatively empowered advocate well versed in WHS issues and employee rights to direct the cessation of unsafe working practices, and requiring instead (in many cases) comparatively disempowered employees (eg. unskilled factory workers) to take that step themselves, when many would be fearful of losing their jobs if they complain about conditions, has the potential to adversely impact employees in exercising their rights.

Clause 13 replaces the current section 119 of the *Work Health and Safety Act 2011*. The current section 119 allows a WHS entry permit holder to give notice of his/her entry to the premises under section 117[216] (and notice of the suspected contravention of the Act) *as soon as is reasonably practicable after entering the workplace under this division* (emphasis added). The current requirement to give notice also does not apply if to give the notice would defeat the purpose of the entry to the workplace or unreasonably delay the WHS entry permit holder in an urgent case (s.119(2)).

[216] Section 117 – entry to a workplace by a WHS entry permit holder for the purpose of inquiring into a suspected contravention of the Act that relates to, or affects, a relevant worker. The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

Under the new section 119 as proposed by the Bill, the WHS entry permit holder must give notice of the proposed entry and suspected contravention *before* entering the workplace. The notice will need to be given during usual working hours at that workplace, and at least 24 hours before the entry (s.119(3)).

This prior warning increases the risk that valuable evidence of a suspected WHS contravention could be concealed, destroyed, or disposed of, to avoid or subvert WHS investigations. Should an employee or employees wish to take action in respect of personal harm suffered due to infringing WHS practices (eg. from continued exposure to harmful substances) their ability to exercise their legal rights could be substantially compromised if valuable evidence of the infringing WHS conditions is able to be removed to avoid detection because the offending employer is given advance notice of a proposed WHS entry and inspection.

In respect of the proposed changes to section 119, the Explanatory Notes state (at p.3):

> *There are mechanisms in the Act designed to ensure the safety concerns of workers are identified and addressed. There is a duty on persons conducting a business or undertaking to consult with workers on health and safety matters and a mandatory requirement to follow an issue resolution process. Additionally, health and safety concerns can be raised with health and safety representatives, who have particular powers and functions under the Act. The requirement for 24 hours' notice of entry allows time for safety concerns to be addressed through these mechanisms prior to entry by a WHS permit holder. Under the now repealed Workplace Health and Safety Act 1995 (WHS Act 1995), there were provisions allowing immediate entry by a WHS permit holder to investigate suspected contraventions, however the WHS Act 1995 did not include a duty for a person conducting a business or undertaking to consult with workers on health and safety matters or mandate an issue resolution process to be followed. In any case, safety concerns can be raised directly with the WHS regulator anonymously at any time.*

The Committee sought the department's advice regarding why it is considered appropriate to remove the capacity for a comparatively empowered advocate well versed in WHS issues and employee rights to direct the cessation of unsafe working practices and requiring instead comparatively disempowered employees to undertake this action. The department advised:

> *The Bill amends the legislation to remove the right of a health and safety representative to direct workers in their work group to cease work if they have a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health and safety emanating from an immediate or imminent exposure to a hazard.*
>
> *The proposed amendment does not diminish the general powers of health and safety representatives to investigate health and safety complaints from members in the work group and to raise these issues through the mandatory issues resolution process established in every workplace.*
>
> *In addition, a health and safety representative has the power to issue a provisional improvement notice if they have a reasonable belief that a person is contravening the Act*
>
> *Extensive powers are available to a health and safety representative so that health and safety risks are resolved with the employer before they escalate into an imminent or immediate risk of serious harm which means that the right to direct workers to cease work should be redundant*

> *Individual workers are best placed to make a decision to cease work if they believe there is an immediate and serious risk to their safety. They have a statutory right to cease work in this situation and, in the event of a genuine emergency must take action since they are often not in a situation to contact their representative for advice. The WHS Act provides protection for a worker who makes the decision to cease work on safety grounds.*
>
> *Under this arrangement the general powers of the health and safety representative remain intact and the right to cease work remains with the person most likely to need it in an emergency*.[217]

The Committee also sought comment from the department regarding the risk that prior notice may enable the loss of evidence. The department advised that:

> *Under section 38 of the WHS Act a person conducting a business or undertaking must notify Workplace Health and Safety Queensland as soon as they become aware of a death, or a serious injury or illness that results in:*
>
> - *immediate hospital treatment as an in-patient*
> - *immediate medical treatment for injuries (e.g. amputation, scalping, a spinal injury, loss of a bodily function or a serious laceration, burn, head or eye injury), or*
> - *medical treatment within 48 hours of exposure to a substance.*
>
> *Under section 39 of the WHS Act the person with management or control of a workplace at which a notifiable incident has occurred must ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise.*
>
> *This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.*
>
> *Under section 175 of the WHS Act inspectors have the power to seize evidence of an offence against the Act. WHS entry permit holders do not have any power under the WHS Act to seize evidence or to ensure the site of an incident is preserved. In addition the regulator is the only party that can prosecute a duty holder for an offence under the WHS Act.*[218]

5.1.5 Committee comments

The Committee is satisfied that the proposed measures, as recommended by the Committee, including the additional inspectorate resources, will limit the impact of this risk.

5.2 Institution of Parliament – Section 4(4)(b) *Legislative Standards Act 1992* – Does the bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?

5.2.1 Appropriate delegation of legislation

In general a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[219]

[217] Correspondence from A/Director-General, Department of Justice and Attorney-General, to FAC, dated 12 March 2013: 23
[218] Correspondence from A/Director-General, Department of Justice and Attorney-General, to FAC, dated 12 March 2013: 23-24
[219] *Legislative Standards Act 1992*, section 4(4)(b)

The OQPC Notebook states:

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*[220]
>
> *The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.*[221]

The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter; and
- Whether the provisions were mandatory rules or merely to be had regard to.[222]

The SLC considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less concern raised.[223]

Clause 17 of the Bill omits section 274(2) of the *Work Health and Safety Act 2011* which currently provides that the Minister may only approve, vary or revoke a code of practice under section 274(1) if the code of practice, variation or revocation was developed by a process that involved consultation between the Governments of the Commonwealth and each State and Territory, unions, and employer organisations.

Removing this consultation requirement effectively means that the Minister may approve a code of practice, or vary or revoke an approved code of practice, at will. As acknowledged in the explanatory notes at page 4, this '*may reduce the opportunities for workers and employers to participate in decisions on codes of practice'*.

The explanatory notes state that:

> *Under the Intergovernmental Agreement for Reform in Occupational Health and Safety (IGA), model codes of practice are developed by Safe Work Australia (SWA), a tripartite body comprising representatives of the Commonwealth, State and Territory governments and worker and employer representatives, and it is a requirement under the IGA that SWA consult with interested persons in the development of codes. In Queensland, local tripartite consultation on codes of practice is undertaken with the Work Health and Safety Board and Industry Sector Standing Committees, comprising both employer and worker representatives).*

[220] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook:* 154
[221] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook:* 155
[222] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 155.
[223] Queensland Parliament, Former Scrutiny of Legislation Committee, *Alert Digest* 2004/3, pages 5-6, paras 30-40; *Alert Digest* 2000/9, pages 24-25, paras 47-56

It should also be noted that a further safeguard is contained in section 274(4) which states that an approval of a code of practice, or an instrument varying or revoking an approved code of practice, has no effect unless the Minister gives notice of its making. Pursuant to section 274(4A), a notice under subsection (4) is subordinate legislation, which makes it subject to the tabling and disallowance provisions set out under sections 49-50 of the *Statutory Instruments Act 1992*.

The Committee sought an explanation from the department about why it is considered appropriate to remove the requirement that the Minister may only approve, vary or revoke a code of practice if the code of practice has been developed by a consultation process. The department advised that:

> *Under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, model codes of practice are developed by Safe Work Australia, a tripartite body comprising representatives of the Commonwealth, State and Territory governments and worker and employer representatives, and it is a requirement under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety that Safe Work Australia consult with interested persons in the development of codes.*
>
> *Schedule 2 of the WHS Act establishes the local tripartite consultation arrangements. This includes establishment of the tripartite Work Health and Safety Board and Industry Sector Standing Committees (ISSCs). The functions of the WHS Board include reviewing the appropriateness of provisions of this Act, a regulation, or code of practice and ensuring industry has been adequately consulted on proposed codes of practice. The primary function of the six industry sector standing committees is to give advice and make recommendations to the work health and safety board about work health and safety in the industry sector for which the committee is established.*
>
> *Under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety any proposed amendments to codes of practice that materially affect the operation of the model WHS legislation must be submitted to the Select Council on Workplace Relations for decision. While the requirement for consultation under section 274 from the WHS Act will be removed the local consultation requirements under Schedule 2 of the WHS Act will remain.*
>
> *The requirement to consult with employee and employer organisations is covered under Schedule 2 of the WHS Act.*[224]

5.2.2 Committee comments

Refer section 4.7.3 of this report.

[224] Correspondence from A/Director-General, Department of Justice and Attorney-General, to FAC, dated 12 March 2013: 24

5.3 Proposed New or Amended Offence Provisions

The following table details the proposed new or amended offence provisions created by the Bill:

Clause	Offence	Proposed maximum penalty 1 penalty unit = $110
4	*Amending section 210 of the Electrical Safety Act 2002* Provides that a regulation made under section 210 may prescribe offences for breaching the regulation and may fix a maximum penalty of 300 penalty units ($33,000) for such a breach.	300 PU ($33,000)
15	*Amending section 123 of the Work Health and Safety Act 2011* Contravention of a WHS entry permit condition.	200 PU ($22,000)
16	*Inserting section 143A into the Work Health and Safety Act 2011* (a) Entry of a workplace under section 117 without giving prior notice under section 119	200 PU ($22,000)
16	*Inserting section 143A into the Work Health and Safety Act 2011* (b) Entry of a workplace under section 120(2) without giving prior notice under section 120(3)	200 PU ($22,000)
16	*Inserting section 143A into the Work Health and Safety Act 2011* (c) Entry of a workplace under section 121 without giving prior notice under section 122	200 PU ($22,000)

5.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the Bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

All FLP issues were identified in the Explanatory Notes.

A referencing error occurs in three places on page 2 of the Explanatory Notes where they reference the *Electrical Safety Regulation 2002* which has now been replaced by the *Electrical Safety Regulation 2013*, operative from 1 January 2014.

The Committee considers that this error most likely resulted from the Explanatory Notes for this Bill being drafted prior to 1 January 2014 and not re-checked for accuracy prior to their introduction with the Bill on 13 February 2014.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Master Plumbers' Association of Queensland – Union of Employers
2	Chamber of Commerce and Industry Queensland (CCIQ)
3	Queensland Nurses' Union (QNU)
4	Housing Industry Association Ltd (HIA)
5	Clubs Queensland
6	Independent Education Union of Australia – Queensland and Northern Territory Branch (IEU)
7	Australian Manufacturing Workers' Union Queensland and Northern Territory (AMWU)
8	Plumbers Union Queensland
9	Construction, Forestry, Mining and Energy, Industrial Relations Union of Employees, Queensland (CFMEUQ)
10	Queensland Farmers Federation (QFF)
11	United Firefighters Union of Australia Union of Employees Queensland (UFUQ)
12	Queensland Teachers Union (QTU)
13	Electrical Trades Union of Employees Queensland (ETU)
14	Master Electricians Australia (MEA)
15	Queensland Law Society (QLS)
16	Queensland Cane Growers Organisation Ltd (Canegrowers)
17	Queensland Council of Unions (QCU)
18	Australian Industry Group (Ai Group)
19	Shop, Distributive and Allied Employees Association – Queensland Branch (SDAQ)
20	Master Builders' Association Queensland (MBAQ)
21	Australian Workers' Union (AWU
22	Bar Association of Queensland

Appendix B – Officers appearing on behalf of the department at public departmental briefing – Wednesday 5 March 2014

Witnesses
Mr Paul Goldsborough, Senior Director, Workers' Compensation and Policy Services, Department of Justice and Attorney-General
Mr Bradley Bick, Director, Workplace and Electrical Safety Policy, Department of Justice and Attorney-General

Appendix C – Witnesses appearing at public hearing – Wednesday 5 March 2014

Session – 11:15am to 12:05pm

Witnesses
Mr John Crittall, Director Construction and Policy, Master Builders' Association
Mr Dean Cameron, Principal Advisor and In-House Legal, Master Builders' Association
Mr Jason O'Dwyer, General Manager, Workforce Policy, Master Electricians Australia
Mr Mark Dearlove, General Manager, Services Development, Master Electricians Australia
Mr Gregory Trost, Manager Industrial Relations and Grower Services, Queensland Cane Growers Organisation Ltd

Session – 12:10pm to 1:00pm

Witnesses
Ms Beth Mohle, State Secretary, Queensland Nurses' Union
Mr James Gilbert, Health and Safety, Queensland Nurses' Union
Ms Adele Schmidt, Research Officer, Independent Education Union – Queensland and Northern Territory Branch
Mr Brian Devlin, Assistant State Secretary, Australian Manufacturing Workers' Union
Mr Travis O'Brien, Senior Industrial Officer, Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland
Mr Anthony Cooke, Industrial Officer, United Firefighters Union of Australia Union of Employees Queensland
Mr Jeff Backen, Assistant Secretary (Services/Welfare), Queensland Teachers' Union of Employees
Ms Kerry Inglis, Senior Industrial Officer, Electrical Trades Union of Employees Queensland
Mr John Battams, President, Queensland Council of Unions
Mr John Martin, Research and Policy Officer, Queensland Council of Unions
Ms Pamela Grassick, OH&S Advisor, Queensland Council of Unions
Mr Chris Ketter, Branch Secretary, Shop, Distributive and Allied Employees Association Queensland Branch
Mr Graham Walker, WHS Officer, Shop, Distributive and Allied Employees Association Queensland Branch

Appendix D – Comparison of the proposed amendments, existing provisions within the *Work Health and Safety Act 2011* and the *Fair Work Act 2009* (Cwlth)

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
Requirement of at least 24 hours by WHS entry permit holder before they can enter a workplace to inquire into a suspected contravention to align with the other entry notification periods in the WHS Act and the Fair Work Act 2009	**Replacement of s 119 (Notice of entry)** Section 119 - omit, insert - 119 Notice of entry (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry and the suspected contravention to - (a) the relevant person conducting a business or undertaking; and (b) the person with management or control of the workplace. (2) The notice must comply with a regulation made for this section. (3) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry. **Insertion of new s143A (WHS permit holder must not fail to give required notice of entry)** *Clause 16* inserts a new section 143A to prohibit a WHS permit holder from entering a workplace unless they have given the notice required under section 119 or section 120 or section 122. A maximum penalty of 200 penalty units applies.	**Section 119 Notice of entry** (1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this division, give notice of the entry and the suspected contravention, as provided under a regulation, to - (a) the relevant person conducting a business or undertaking; and (b) the person with management or control of the workplace. (2) Subsection (1) does not apply if to give the notice would - (a) defeat the purpose of the entry to the workplace; or (b) unreasonably delay the WHS entry permit holder in an urgent case. (3) Subsection (1) does not apply to an entry to a workplace under this division to inspect or make copies of documents mentioned in section 120. **S120 Entry to inspect employee records or information held by another person** (1) This section applies if a WHS entry permit holder is entitled under section 117 to enter a workplace to inquire into a suspected contravention of this Act. (2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of— (a) employee records that are directly relevant to a suspected contravention; or (b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.	**S495 Giving notice of entry** (1) A permit holder must not exercise a State or Territory OHS right to inspect or otherwise access an employee record of an employee, unless: (a) he or she has given the occupier of the premises, and any affected employer, a written notice setting out his or her intention to exercise the right, and reasons for doing so; and (b) the notice is given at least 24 hours before exercising the right. **Notes** An organisation official who has a right of entry permit (called a permit holder) may enter premises, and exercise rights whilst on the premises, for the purpose of investigating a contravention of the *Fair Work Act 2009*, the former Workplace Relations Act 1996, or a fair work instrument. The permit holder must have reasonable grounds for suspecting a contravention has occurred or is occurring. The permit holder can only exercise these rights if all the following are met: ▪ the suspected contravention relates to or affects at least one member of the permit holder's organisation ▪ the organisation is entitled to represent the industrial interests of that member ▪ the member performs work on the premises ▪ unless the Fair Work Commission has issued an exemption certificate, an entry notice is given

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
		(3) Before doing so, the WHS entry permit holder must give notice of the proposed entry to the person from whom the documents are requested and the relevant person conducting a business or undertaking. (4) The notice must comply with a regulation made for this section. (5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry. **Division 3 Entry to consult and advise workers** **121 Entry to consult and advise workers** **(**1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, 1 or more relevant workers who wish to participate in the discussions. (2) A WHS entry permit holder may, after entering a workplace under this division, warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk. **S122 Notice of entry** (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking. (2) The notice must comply with a regulation made for this section. (3) The notice must be given during the usual	to the occupier of the premises and any affected employer, during working hours at least 24 hours, but not more than 14 days, before the entry. http://www.fairwork.gov.au/resources/fact-sheets/employer-obligations/pages/right-of-entry-fact-sheet.aspx ***Safework Australia***[225] ***When 24 hours' notice is not required*** A WHS entry permit holder can enter a workplace where a relevant worker works to inquire into suspected contraventions of the WHS Act without giving any notice. As soon as is reasonably practicable after entering a workplace to inquire into a suspected WHS contravention written notice of entry must be provided to the relevant PCBU and the person with management or control of the workplace unless doing so would: • defeat the purpose of the entry, for example providing notice could result in the destruction, concealment or alteration of relevant evidence, or • would unreasonably delay the entry permit holder in an urgent case, for example if the WHS entry permit holder had a reasonable belief that workers were being exposed to a hazard that posed a serious and immediate risk to their health and safety and it was necessary to warn them. For this purpose the ***person with management or control of the workplace***

[225] http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/727/right-of-entry-interpretive-guide.pdf

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
		working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.	is the person who is in charge of the premises. This 'person' could be a body corporate or an individual.
Increase penalties for non-compliance with WHS entry permit conditions and introduce penalties for failure to comply with the entry notification requirements	**Amendment of s 123 (Contravening WHS entry permit conditions)** Section 123, penalty, '100'- *omit*, *insert* - 200	**S123 Contravening WHS entry permit conditions** A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit. WHS civil penalty provision. Maximum penalty -100 penalty units.	***Work Health and Safety Act Cwlth*** ***S144 Person must not refuse or delay entry of WHS entry permit holder*** (1) A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit holder who is entitled to enter the workplace under this Part. WHS civil penalty provision. Penalty: (a) In the case of an individual - $10,000. (b) In the case of a body corporate - $50,000.
Require at least 24 hours notice before any person assisting a health and safety representative can have access to the workplace;	**Section 68 - Powers and functions of health and safety representatives** *Insert* - (3A) Subsection (3B) applies if - (a) a health and safety representative requests the assistance of a person (the *assistant*) under subsection (2)(g); and (b) the assistant requires access to the workplace to assist the health and safety representative. (3B) The health and safety representative must give notice of the assistant's proposed entry to - (a) the person conducting the business or undertaking at the workplace; and (b) the person with management or control of the workplace. (3C) A notice given under subsection (3B) must -	**Section 68 Powers and functions of health and safety representatives** (2) In exercising a power or performing a function, the health and safety representative may - (a) inspect the workplace or any part of the workplace at which a worker in the work group works - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and (ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; **Section 71 Exceptions from obligations under s 70(1)** (5) The person conducting a business or undertaking may refuse on reasonable grounds	Note: The FW Act does not require 24 hours written notice if entry is under an WHS law, except to inspect employment records. Where entry is under an WHS law, the official must hold a federal permit and comply with the right of entry provisions in the FW Act. In addition the official must comply with requirements in the relevant State or Territory WHS law.

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
	(a) comply with a regulation made for this subsection; and (b) be given to the persons mentioned in subsection (3B)(a) and (b) - (i) during the usual working hours at the workplace; and (ii) at least 24 hours, but not more than 14 days, before the assistant's entry. **Amendment of s 71 (Exceptions from obligations under s 70(1))** *Clause 7* inserts a new subsection (5A) that provides that a PCBU may refuse to grant access to the workplace to a person assisting a HSR if the HSR has not given the required notice or has not given the information about the person assisting a HSR required under regulation.	to grant access to the workplace to a person assisting a health and safety representative for a work group. (6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter. **Division 3 Entry to consult and advise workers** **121 Entry to consult and advise workers** **(**1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, 1 or more relevant workers who wish to participate in the discussions. (2) A WHS entry permit holder may, after entering a workplace under this division, warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk. **S122 Notice of entry** (1) Before entering a workplace under this division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking. (2) The notice must comply with a regulation made for this section. (3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.	

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
Remove the power of health and safety representatives to direct workers to cease unsafe work;	**Omission of s 85 (Health and safety representative may direct that unsafe work cease)** Section 85 - *omit*. **Amendment of s 82 (Referral of issue to regulator for resolution by inspector)** *Clause 9* makes a consequential amendment to subsection 82(3)(b) as a result of omitting section 85 so that a HSR can no longer direct a worker in their work group to cease work. **Amendment of s 83 (Definition of cease work under this division)** *Clause 10* amends the definition of 'cease work under this division' to remove reference to 'cease work on a direction of a HSR'. **Amendment of s 86 (Worker to notify if ceases work)** *Clause 12* is a consequential amendment to section 86 as a result of omitting section 85 so that a HSR can no longer direct a worker in their work group to cease work.	**S84 Right of worker to cease unsafe work** A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard. **S85 Health and safety representative may direct that unsafe work cease** (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard. (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and (b) attempting to resolve the matter as an issue under division 5. (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under division 5 if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction. (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3). (5) The health and safety representative must	***Work Health and Safety Act 2011 (cwlth)*** **S85 Health and safety representative may direct that unsafe work cease** (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard. (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after: (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and (b) attempting to resolve the matter as an issue under Division 5 of this Part. (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction. (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3). (5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
		inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section. (6) A health and safety representative cannot give a direction under this section unless the representative has - (a) completed initial training prescribed under a regulation mentioned in section 72(1)(b); or (b) previously completed that training when acting as a health and safety representative for another work group; or (c) completed training equivalent to that training under a corresponding WHS law.	representative to workers under this section. (6) A health and safety representative cannot give a direction under this section unless the representative has: (a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or (b) previously completed that training when acting as a health and safety representative for another work group; or (c) completed training equivalent to that training under a corresponding WHS law. ***Additional Notes:*** WHEN CAN A HSR DIRECT A WORKER TO CEASE WORK? A HSR can only direct that work cease if the HSR has completed an approved HSR training course, or previously completed that training when acting as a HSR of another work group. A HSR may direct a worker in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk, emanating from an immediate or imminent exposure to a hazard. Before issuing the direction, the HSR must first attempt to resolve the matter by consulting the PCBU whom the workers are working for, unless the risk is so serious and immediate or imminent that there is no time to consult before giving the direction. In these situations the HSR must carry out the consultation as soon as practicable after giving the direction to cease work.

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
			The HSR must always inform the PCBU of any direction to cease unsafe work given by the HSR to workers.[226] *Glossary* PCBU - A person who conducts a business or undertaking HSR - Health and Safety Representative
Remove the requirement under the WHS Act for a person conducting a business or undertaking to provide a list of health and safety representatives to the WHS regulator	**Amendment of s 74 (List of health and safety representatives)** Section 74(2) - *omit*.	**Section 74 List of health and safety representatives** (1) A person conducting a business or undertaking must ensure that - (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and (b) a copy of the up-to-date list is displayed - (i) at the principal place of business of the business or undertaking; and (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups; in a way that is readily accessible to workers in the relevant work group or work groups. Maximum penalty—20 penalty units. (2) A person conducting a business or undertaking must provide a copy of the up-to-date list prepared under subsection (1) to the regulator as soon as practicable after it is prepared. Maximum penalty—20 penalty units.	***S152 of the WHS Act (cwlth)*** **152 Functions of regulator** The regulator has the following functions: (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act; (b) to monitor and enforce compliance with this Act; (c) to provide advice and information on work health and safety to duty holders under this Act and to the community; (d) to collect, analyse and publish statistics relating to work health and safety; (e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters; (f) to promote and support education and training on matters relating to work health and safety; (g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator; (h) to conduct and defend proceedings

[226] http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/645/Worker_Representation_and_Participation_Guide.pdf

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
		Current regulator in Qld **Workplace Health and Safety Queensland, Department of Justice and Attorney-General (WHSQ)** WHSQ is responsible for improving workplace health and safety in Queensland and helping reduce the risk of workers being killed or injured on the job. It is WHSQ role to: • enforce workplace health and safety laws • investigate workplace fatalities and serious injuries • prosecute breaches of legislation, and • educate employees and employers on their legal obligations. WHSQ also provides policy advice on workers' compensation matters.	under this Act before a court or tribunal; (i) any other function conferred on the regulator by this Act. 153 Powers of regulator (1) Subject to this Act, the regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions. (2) Without limiting subsection (1), the regulator has all the powers and functions that an inspector has under this Act. ***Other information*** **Powers of regulator to obtain information** • The regulator has broad powers to obtain information from any person they have reasonable grounds to believe are capable of giving information, producing documents or giving evidence in relation to a possible contravention of the model WHS Act, or that will assist the regulator to monitor or enforce compliance with the model WHS Act. • To request information, the regulator needs to issue a written notice requiring a person to produce documents, or provide information or evidence. This notice will set out the legality of the request, the person's obligations under the model WHS Act concerning the production of information and will advise the person that they can seek legal representation. • The model WHS Act provides that it is an offence to refuse, without reasonable excuse, to provide information, documents or evidence when requested. However, a person is not required to produce a

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
			document or provide information that is subject to legal professional privilege. • Additionally, any information or documents provided by a person is not admissible as evidence against that person other than in proceedings arising out of the false or misleading nature of the information or document.[227] ***Keeping a list of HSRs*** Keeping a list of HSRs enables workers to find out who can represent them if a work health and safety issue arises. To ensure the list is readily accessible to workers, the PCBU must display the list in a place that is accessible to all relevant work groups. The list should be displayed in a central location, such as a notice board or on the workplace intranet. A PCBU must ensure that: ▪ a list of each HSR and deputy HSR (if any) is prepared and kept up-to-date ▪ a current copy of the list is displayed at a principal place of business and at any other workplace that is appropriate to the constitution of the relevant work group(s). ▪ The person conducting the business or undertaking must provide a copy of the up-to-date list to the regulator as soon as practicable after it is prepared.[228]

[227] http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/595/FS_2011_RoleOfRegulatorInCompliance.pdf
[228] http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/645/Worker_Representation_and_Participation_Guide.pdf

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
Allow for codes of practice adopted in Queensland to be varied or revoked without requiring national consultation as required by the WHS Act	**Section 274** *Clause 17* amends section 274 by omitting subsection (2) to allow the Minister to vary and revoke approved codes of practice without the requirement for a process of consultation with the governments of the Commonwealth and each State and territory and unions and employer organisations.	**Section 274 Approved codes of practice** (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice. (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if the code of practice, variation or revocation was developed by a process that involved consultation between - (a) the Governments of the Commonwealth and each State and Territory; and (b) unions; and (c) employer organisations.	***Safe Work Australia*** The National Compliance and Enforcement Policy sets out the approach work health and safety regulators will take to compliance and enforcement under the model WHS Act and Regulations. Australian Work Health and Safety regulators are committed to adopting the National Compliance and Enforcement Policy. *The Intergovernmental Agreement for Regulatory and Operational reform in Occupational Health and Safety*, and the *Safe Work Australia Act 2008* provides for harmonised work health and safety laws to be complemented by a nationally consistent approach to compliance and enforcement. Safe Work Australia has responsibility for the development of policy to ensure a nationally consistent approach is taken to compliance and enforcement. A draft National Compliance and Enforcement Policy was developed and endorsed by the Heads of Workplace Safety Authorities and referred to Safe Work Australia to progress. The National Compliance and Enforcement Policy was endorsed by Safe Work Australia Members on 29 July 2011 and by the Workplace Relations Ministers' Council on 10 August 2011. Part 5 of the Intergovernmental Agreement 5.1.1 The Parties commit to work cooperatively to harmonise OHS regulation through the adoption and implementation of model OHS legislation. 5.1.2 The Parties support the National Review into Model Occupational Health and Safety Laws, announced by the

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
			Commonwealth Minister on 4 April 2008. 5.1.3 Model OHS legislation will comprise a model principal Act supported by model OHS regulations and model codes of practice. Model OHS legislation will be developed by [*ASCC replacement body*] in accordance with the terms of this Agreement. 5.1.4 The development process for model OHS legislation will allow for interested persons to make representations concerning any proposed model legislation. Prior to submitting any proposed model legislation to WRMC, [*ASCC replacement body*] will give due consideration to any representations duly made to it and make such alterations to the proposed legislation as it sees fit. 5.1.5 The Parties agree that a national compliance and enforcement policy will be developed to ensure a consistent regulatory approach across all jurisdictions. 5.1.6 For the purpose of ensuring that model OHS legislation applies throughout Australia, each Party to this Agreement will, subject to its parliamentary and other law-making processes, take all necessary steps to enact or otherwise give effect to model OHS legislation within its jurisdiction within the timeframes agreed by WRMC. 5.1.7 For the purposes of subclause 5.1.1, the adoption and implementation of model OHS legislation requires each jurisdiction to enact or otherwise give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction. 5.1.8 The adoption and implementation of model OHS legislation is not intended to

Bill objectives	Proposed	WHS Act (current provisions)	Fair Work Act or Work Health and Safety Act (Cwlth)
			prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation, for example, by providing for a consultative mechanism within a jurisdiction. 5.1.9 [*ASCC replacement body*] will make model OHS legislation publicly available on its website when it is agreed by WRMC. [*ASCC replacement body*] will hold and maintain all original copies of agreed model OHS legislation, including any subsequent amendments.
Increase the maximum penalty that can be prescribed for offences in the *Electrical Safety Regulation 2002* to 300 penalty units	**Amendment of s 210 (Regulation-making power)** Section 210(3), '40'- *omit*, *insert* - 300	(3) A regulation may prescribe offences for breaches of the regulation, and may fix a penalty of not more than 40 penalty units for a breach.	***For information*** The Electrical Safety Regulation 2013 commences on 1 January 2014 and replaces the Electrical Safety Regulation 2002.

Appendix E – Work health and safety duties

General principles

The WHS Act outlines the general health and safety duties of PCBUs, officers of companies, unincorporated associations, government departments and public authorities (including local governments), workers and other people at a workplace. These general duties require the duty holder to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not possible, risks must be minimised so far as is reasonably practicable.

Shared duties

A person may have more than one duty. For example, the working director of a company has duties as an officer of the company and also as a worker. More than one person may have the same duty. For example, each director on the Board of Directors of a company will owe a duty. In such cases, all directors are each fully responsible for that duty.

Duties of a PCBU

Primary duty of care

The WHS Act requires all PCBUs to ensure the health and safety of workers, so far as is reasonably practicable. Workers include volunteers, contractors and contractors' workers. PCBUs also have the same duty of care to any other people who may be at risk from work carried out by the business. A self-employed person must ensure his or her own health and safety while at work, so far as is reasonably practicable.

General duties

The WHS Act sets out specific duties which a PCBU must comply with as part of their general duty so far as is reasonably practicable. These include:

- providing and maintaining a working environment that is safe and without risks to health, including the entering and exiting of the workplace;
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work);
- ensuring the safe use, handling, storage and transport of plant, structure and substances (e.g. toxic chemicals, dusts and fibres);

- providing adequate facilities for the welfare of workers at workplaces under their management and control (e.g. washrooms, lockers and dining areas);
- providing workers with information, instruction, training or supervision needed for them to work safely and without risks to their health;
- monitoring the health of their workers and the conditions of the workplace under their management and control to prevent injury or illness; and
- maintaining any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

In addition, a PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace do not affect the health and safety of any person. Similarly, a PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant do not affect the health and safety of any person.

A PCBU who installs, erects or commissions plant or structures must also ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.

Duty to consult

A PCBU has a duty to consult with workers and HSRs about matters that directly affect them. This extends to consulting with contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees, as well as with the PCBU's own employees and volunteer workers. There may be a number of different duty holders involved in work (e.g. suppliers, contractors and building owners). If more than one person in the workplace has a health and safety duty they must consult all other people with the same duty. Each duty holder must share information in a timely manner and cooperate to meet health and safety obligations.

Duty of officers

It is the duty of an officer of a PCBU to exercise due diligence to ensure the PCBU complies with its health and safety duties and obligations. An officer may be charged with an offence under the WHS Act independently of any breach of duty by the PCBU. Due diligence includes personally taking reasonable steps to:

- acquire and keep current information on work health and safety matters;
- understand the nature and operations of the work and associated hazards and risks;
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or reduce risks to health and safety;
- ensure the PCBU has appropriate processes to receive and consider information about incidents, hazards and risks, and to respond in a timely manner; and
- ensure the PCBU has, and implements, processes for complying with their duties and obligations (e.g. reports notifiable incidents, consults with

workers, complies with notices, provides training and instruction and ensures HSRs receive training entitlements).

Duty of workers

While at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU and any reasonable policy or procedure of the PCBU to comply with the WHS Act and WHS Regulation.

Duties of other persons at the workplace

Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any actions taken by the PCBU to comply with the WHS Act and WHS Regulation.

Further duties of upstream PCBUs (designers, manufacturers, importers and suppliers)

Designers, manufacturers, importers and suppliers of plant, structures or substances can influence the safety of these products before they are used in the workplace. These people have a responsibility, so far as is reasonably practicable, to ensure these products are without risks to the health and safety of people who are at or near the workplace.

Consultation, cooperation and coordination

Consultation is a collaborative process between the PCBU and any workers undertaking work within or for the business or undertaking. It involves sharing information about health and safety. PCBUs must give workers who are, or are likely to be, directly affected by a matter relating to health and safety, a reasonable opportunity to express their views or raise issues. If an HSR is representing workers, the consultation must involve them.

A PCBU must consult with workers when:
- identifying hazards and assessing risks arising from work;
- proposing changes that may affect the health and safety of workers; and
- carrying out activities prescribed by the WHS Regulation

A PCBU must also consult with workers and take their views into account when making decisions about:
- ways to eliminate or minimise risks;
- the adequacy of facilities for workers' welfare;
- procedures for consulting workers;
- resolving health and safety issues;
- monitoring the health and safety of workers or workplace conditions; and
- how to provide health and safety information and training to workers.

Workers are entitled to:

- elect a health and safety representative;
- request the formation of a health and safety committee;
- cease unsafe work;
- have health and safety issues resolved in accordance with an agreed;
- issue resolution procedure; and
- not be discriminated against for raising health and safety issues.

Health and safety representatives

An HSR represents the health and safety interests of a work group. There can be as many HSRs and deputy HSRs as needed after consultation, negotiation and agreement between workers and their employers. A PCBU must keep a current list of all HSRs and deputy HSRs and display a copy at the workplace.

Work groups

Any worker or group of workers can ask the PCBU for whom they are carrying out work to set up a work group at one or more workplaces for the purpose of electing an HSR. A work group is a group of workers who share a similar work situation. For example, a work group might consist of all workers in the office part of a manufacturing complex, or it might consist of people of the same trade, or it might consist of all people on the night shift. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

If a request is made for the election of an HSR, a PCBU must start negotiations with workers within 14 days. Negotiations between a PCBU and workers will determine the:

- number and composition of the work group(s);
- number of HSRs and deputy HSRs; and
- workplace(s) to which the work group(s) apply.

A PCBU must negotiate a work group with a worker's representative (e.g. union) if asked by a worker. The PCBU must also notify workers as soon as practicable of the outcome of the negotiations. At any time, the parties to a work group agreement may negotiate a variation. If negotiations fail in establishing a work group, or discussing a variation to a work group agreement, any person who is a party to the negotiations can request an inspector to assist in deciding the matter (or, if the matter involves multiple businesses, to assist the negotiations).

Powers and functions

The role of an HSR is generally limited to their work group unless there is a serious risk to the health or safety of other workers from an immediate hazard or a worker in another work group asks for their assistance, and the HSR for that other work group is found to be unavailable.

An HSR can:

- inspect the workplace or any area where work is carried out by a worker in the work group;
- accompany a workplace health and safety inspector during an inspection of the area the HSR represents;
- be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about health and safety issues;
- request a health and safety committee be established;
- monitor compliance measures by the PCBU;
- represent the work group in health and safety matters;
- investigate complaints from members of the work group; and
- inquire into any risk to the health or safety of workers in the work group.

An HSR is not personally liable for anything done, or not done, in good faith while carrying out their role.

Election and eligibility

The members of a work group elect their own HSR. All members are able to vote in an election. To be eligible for election, a person must be a member of the work group and not be disqualified from acting as an HSR. Upon a request for the election of an HSR, a PCBU must provide resources and assistance to carry out the election. Members of a work group decide how to elect an HSR. Elections for a deputy HSR are carried out in the same way. The term of office for an HSR or deputy HSR is three years.

Training

If requested, a PCBU must allow HSRs and deputy HSRs to attend a work health and safety course approved by Workplace Health and Safety Queensland. Within three months of the request, the PCBU must give HSRs paid time off to attend a course and pay the course costs and reasonable expenses. A course must be selected in consultation with the PCBU to ensure it is relevant to the work carried out. If agreement can not be reached, an inspector may assist.

The PCBU has a duty to ensure the relevant training has been provided to the HSR so that they can perform their functions and exercise their powers under the WHS Act. Before the HSR can issue a provisional improvement notice (PIN) or direct a person to cease unsafe work, they must attend an approved training course. Whether or not the HSR has undergone training, a PCBU must give them the resources, facilities and assistance to enable them to carry out their functions.

Provisional improvement notices (sections 90-102)

If an HSR reasonably believes that a person is contravening, or has contravened the WHS Act in circumstances that make it likely that the contravention will continue or be repeated, they must consult with the person before issuing a provisional improvement notice (PIN).

A PIN must be in writing and include:

- that the HSR believes the WHS Act is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated;
- the section of the WHS Act considered to have been contravened and how the section is being or has been contravened; and
- the date (at least eight days from the issue date) by which the contravention must be remedied.

A PIN can include directions on how to remedy a contravention. These directions may refer to a Code of Practice and offer the person a choice of solutions. If a PCBU receives a PIN they must display it in a prominent place in the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Within seven days of being issued with a PIN, any person (or the PCBU if the person issued with the PIN is a worker), can ask Workplace Health and Safety Queensland to review the notice. An inspector will attend the workplace to confirm the notice, confirm it with changes or cancel it. A confirmed PIN must be complied with. The inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice.

Health and safety committees

A health and safety committee (HSC) facilitates cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules and procedures for the workplace. A PCBU must set up an HSC within two months of being requested to do so by an HSR, or by five or more workers in a workplace or when required by the WHS Regulation.

A PCBU can also establish an HSC on their own initiative. At least half of the members of an HSC must be workers that have not been nominated by the PCBU. An HSR can also consent to be a member of the committee and, when a workplace has more than one HSR, they can choose one or more to be members.

When agreement can not be reached on the composition of an HSC, any party to the committee can request an inspector's assistance to decide the matter.

An HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee

Right to cease unsafe work

If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard, they may cease or refuse to carry out work. A worker who ceases work must notify the PCBU as soon as possible. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

Issue resolution

If there is a health and safety issue at a workplace, the relevant parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the WHS Regulation. Relevant parties are:

- the PCBU or their representative;
- each PCBU or their representative, if the issue involves more than one PCBU;
- the HSR for that work group or his/her representative, if the worker(s) affected by the issue is/are in a work group; and
- the worker(s) or his/her representative, if the worker(s) affected by the issue is/are not in a work group.

A person's representative may enter the workplace for the purpose of attending discussions with a view to resolving the issue. If an issue remains unresolved, one of the parties may ask Workplace Health and Safety Queensland to appoint an inspector to attend the workplace and assist in resolving the issue.

Such a request does not prevent a worker from ceasing unsafe work or an HSR from issuing a PIN or directing workers to cease unsafe work. Although an inspector cannot determine the issue, the inspector may exercise any of his/her compliance powers under the WHS Act.

Discriminatory, coercive or misleading conduct

A person must not, dismiss, terminate a contract with, refuse to hire or detrimentally alter the position of a worker, or treat them less favourably, because they:

- are, were or propose to be a member of an HSC or perform a function in this capacity;
- are, were or propose to be an HSR or exercise a power or perform a function in this capacity;
- exercised a power or performed a function (or refrained from doing so)
- assisted a person to exercise a power or perform a function;
- raised a health and safety issue with a PCBU, inspector, entry permit holder, HSR, member of an HSC or another worker;
- are involved in resolving a work health and safety issue; and
- acted to get another person to comply with their duties.

A person is also engaging in discriminatory conduct if they terminate or refuse to enter a commercial arrangement with another person for these reasons. It is unlawful to engage in, threaten or organise to take any of the above actions, or to ask or encourage another person to do this.

These provisions create both criminal and civil causes of action in the event of such conduct. In addition, they do not preclude actions being taken under other relevant state and federal laws that deal with discrimination including the *Anti Discrimination Act 1991* and the *Fair Work Act 2009* (Cth).

Compliance and enforcement framework

Workplace Health and Safety Queensland (WHSQ) has adopted the National Compliance and Enforcement Policy and monitors compliance with work health and safety laws in a number of ways, such as through the use of inspection powers and carrying out audits. WHSQ receives notifications of workplace fatalities, serious injuries and illness and dangerous incidents as well as requests to respond to work health and safety issues.

In determining which complaints or reports of incidents, injury or disease to investigate and in deciding the level of resources to be deployed, WHSQ take account of a number of factors including the severity and scale of potential or actual harm, the seriousness of any potential breach of the law and the duty holder's compliance history, including such matters as prior convictions and notices issued.

Work-related fatalities and serious injuries or where there is a risk of those outcomes are priority areas for investigations. Priority is also given to offences against health and safety representatives and matters relating to entry permit holders and discrimination against workers on the basis of their work health and safety activities.

Inspectors appointed under the WHS Act visit workplaces to respond to health and safety incidents and complaints and conduct inspections and audits with the aim of assessing the extent of compliance by duty holders with work health and safety laws. Advance notice of a workplace visit by an inspector is not usually provided. Inspectors only pre-arrange their visit to a workplace if they are confident that advance notice will not jeopardise the intention of the visit.

Where an inspection or investigation reveals evidence of an alleged breach, inspectors will consider what enforcement action, if any, should be taken. There are a number of compliance tools available and inspectors will determine the most appropriate tool to be used depending on all the circumstances of a breach. Compliance tools available include providing advice and seeking voluntary compliance; issuing a prohibition or improvement notice; and resolving or assisting parties resolve certain work health and safety disputes.

In deciding on the most appropriate enforcement action to take the extent of the risk, the seriousness of the breach and the actual or potential consequences will be considered as well as the culpability of the duty holder, that is, how far below acceptable standards the conduct falls and the extent to which the duty holder contributed to the risk. The compliance history and the attitude of the duty holder will also be taken into consideration.

Inspectors have significant powers under the WHS Act including the power to require answers to questions, require the production of documents and the ability to seize items for use as evidence of an offence. Inspectors have the power to issue improvement and prohibition notices. The aim of issuing improvement and prohibition notices is to ensure that non-compliance with work health and safety laws and serious risks is remedied.

Inspectors may issue an improvement notice in any circumstance where they form a reasonable belief regarding a contravention unless some other appropriate action is considered by the inspector to achieve the desired outcome. Where there is a serious risk which emanates from an immediate or imminent exposure to a hazard, an inspector will issue a prohibition notice, which is a direction to prohibit an activity, plant or substance until the inspector is satisfied that the risk has been remedied. The direction may be given orally, but must be confirmed by written notice.

Where there is a failure to comply with an inspector's notice, the regulator may prosecute or, if there is a serious risk to health and safety, may also seek an injunction against the person to whom the notice was directed.

Improvement and prohibition notices are 'remedial' enforcement measures, not 'punitive' measures (i.e. they are not punishment). This means that in cases where punishment is warranted, other measures such as an infringement notice or prosecution may also be taken in addition to notices issued by an inspector.

Dissenting Report

Curtis Pitt MP
Member for Mulgrave

Leader of Opposition Business
Shadow Minister for Treasury and Trade, Employment, Energy and water Supply, Aboriginal and Torres Strait Islander Partnerships

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24 March 2014

Mr Steve Davies MP
Member for Capalaba
Committee Chair
Finance and Administration Committee

Dear Steve

RE: *Work Health and Safety and Other Legislation Amendment Bill* 2014

I am writing to register the Opposition's dissent from the Committee's report into the *Work Health and Safety and Other Legislation Amendment Bill 2014*.

I have serious concerns that the bill poses significant risk to workplace health and safety (WHS) standards in Queensland worksites. The changes reduce the focus on prevention in Queensland's WHS system.

I am concerned that the substance of this Bill runs counter to the national harmonisation of WHS standards and actually takes Queensland in a different and dangerous direction. In addition, taking Queensland away from harmonisation with national systems will increase red tape of businesses that operate across state borders.

This legislation should also be viewed in the context of this Government's approach to workers who are injured at work, including those injured because of the negligence of their employers. The Government seriously weakened the protection for workers injured at work by introducing a whole of person injury threshold for injured workers to have access to their common law rights, even when injured because of the negligence of their employers.

As you are aware, imposing a threshold and other changes if that legislation was in direct contradiction to the unanimous recommendations of this Committee.

It is concerning, therefore, that at the very time that changes to workers' compensation laws reduce rights and support to those who are injured, the government is now proposing changes that reduce WHS protections that actually prevents harm occurring.

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'Putting the Far North First'

I do note that some changes to the legislation are being recommended by the majority on this Committee, namely changes to Clause 11. While I do not support the Recommendation 1 (that is to pass this legislation), I do think there is merit in the change proposed to clause 11.

I will further outline my opposition to this bill during Parliamentary debate. This legislation will lower work health and safety standards across Queensland and risk more injuries to working men and women.

Yours sincerely,

Curtis Pitt MP
State Member for Mulgrave