



Work Health and Safety and Other Legislation Amendment Bill 2023

Report No. 2, 57th Parliament

Education, Employment, Training and Skills Committee

February 2024

Education, Employment, Training and Skills Committee

Chair	Mr Mark Bailey MP, Member for Miller
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	Mr Brent Mickelberg MP, Member for Buderim
	Mr Nick Dametto MP, Member for Hinchinbrook
	Mr Barry O'Rourke MP, Member for Rockhampton
	Mr Joe Kelly MP, Member for Greenslopes

Committee Secretariat

Telephone	+61 7 3553 6657
Email	eetsc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/EETSC

Acknowledgements

The committee acknowledges the assistance provided by the Office of Industrial Relations, Department of State Development and Infrastructure.

All web address references are current at the time of publishing.

Appendix E lists the abbreviations and acronyms used in this report.

Contents

Chair’s foreword	iii
Recommendations	iv
Executive Summary	v
1 Introduction	1
1.1 Policy objectives of the Bill	1
1.2 Legislative compliance	2
1.2.1 <i>Human Rights Act 2019</i>	2
1.2.2 <i>Legislative Standards Act 1992</i>	3
1.3 Consultation for the development of the Bill	4
1.4 The Bill should be passed	4
2 Examination of the Bill	6
2.1 Role and Function of Health and Safety Representatives (HSRs)	6
2.1.1 <i>Background</i>	6
2.1.2 <i>HSRs issuing cease work notices (Clause 32)</i>	7
2.1.3 <i>HSRs accompanying in inspectors or permit holders on site visits (Clause 24)</i>	9
2.1.4 <i>HSR Training</i>	10
2.1.5 <i>Submissions</i>	10
2.1.6 <i>Departmental response</i>	11
2.2 Power of the regulator to give information to particular persons (clause 52)	12
2.2.1 <i>Background</i>	12
2.2.2 <i>Submissions</i>	12
2.2.3 <i>Departmental response</i>	12
2.3 Restrictions on entities that may assist workers, or represent the workers’ industrial interests, in relation to WHS matters (clause 17)	13
2.3.1 <i>Background</i>	13
2.3.2 <i>Impact on human rights</i>	14
2.3.3 <i>Submissions</i>	15
2.3.4 <i>Departmental response</i>	16
2.4 Enabling relevant unions to be a party principal to work group negotiations (clause 20)	17
2.4.1 <i>Background</i>	17
2.4.2 <i>Submissions</i>	17
2.4.3 <i>Departmental response</i>	17
2.5 Negligence as a fault element in the Category 1 offence (clauses 8 and 16)	18
2.5.1 <i>Background</i>	18
2.5.2 <i>Submissions</i>	18
2.5.3 <i>Departmental response</i>	18
2.6 Prohibiting persons from entering insurance contracts or being granted indemnity, or benefiting from these arrangements, to cover liability for WHS fines (clause 13)	19
2.6.1 <i>Background</i>	19
2.6.2 <i>New penalties</i>	20

2.6.3	Impact on human rights	20
2.6.4	Submissions	20
2.6.5	Departmental response	20
	Appendix A – Submitters	22
	Appendix B – Officials at public briefings	23
	Appendix C – Witnesses at public hearing	24
	Appendix D – Mapping recommendations to relevant parts of the Bill	25
	Appendix E – Abbreviations and acronyms	40
	Statement of Reservation	42

Chair's foreword

On behalf of the Education, Employment, Training and Skills Committee, I present this report on the committee's examination of the Work Health and Safety and Other Legislation Amendment Bill 2023. The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The primary objective of the Bill is give effect to the Queensland Government's response to recommendations from the Review of the *Work Health and Safety Act 2011* – Final Report 2022 (the WHS Act Review Report) and particular recommendations from the 2018 Review of the Model Work Health and Safety Laws (the Boland Review).

To inform its examination of the Bill, the committee sought and received written submissions from stakeholders, received a briefing from the Office of Industrial Relations, Department of State Development and Infrastructure, and heard evidence from key stakeholders at a public hearing on 30 January 2024.

On the basis of this evidence, the committee is satisfied that the Bill will achieve its policy objectives. The committee has made five recommendations, firstly that the Bill be passed, and four further recommendations designed to assist the Bill's implementation.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff as well as the officers from the Office of Industrial Relations, Department of State Development and Infrastructure who assisted the committee during this inquiry.

I commend this report to the House.



Mark Bailey MP
Chair

Recommendations

- Recommendation 1** **5**
- The committee recommends that the Work Health and Safety and Other Legislation Amendment Bill 2023 **be passed**.
- Recommendation 2** **12**
- The committee recommends that the Office of Industrial Relations develop guidance and resource materials, in consultation with a range of industries, to train and support health and safety representatives in utilising the new powers proposed in the Bill to implement new operational obligations being introduced.
- Recommendation 3** **12**
- The committee recommends that the Office of Industrial Relations include consideration of how industry specific knowledge is incorporated into HRS training as part of its review into HSR training, particularly in high-risk industries such as Health, Construction, Transport and Manufacturing. This is to ensure any sector specific aspects of health and safety are covered.
- Recommendation 4** **12**
- The Office of Industrial Relations should consult with registered employer and employee organisations as part of its review into HSR training.
- Recommendation 5** **16**
- The committee recommends that, if the Bill is passed, the OIR consider undertaking an awareness campaign so relevant organisations and workers are fully informed about the changes to who can lawfully represent workers under the new definitions contained within the Bill.

Executive Summary

This report presents a summary of the Education, Employment, Training and Skills Committee's examination of the Work Health and Safety and Other Legislation Amendment Bill 2023 (the Bill).

The Bill proposes amendments to the *Work Health and Safety Act 2011* and the *Safety in Recreational Water Activities Act 2011*, and a consequential amendment to the *Public Health Act 2005*. These amendments aim to give effect to the Queensland Government's response to recommendations from the Review of the *Work Health and Safety Act 2011* – Final Report 2022¹ (the WHS Act Review Report) and particular recommendations from the 2018 Review of the Model Work Health and Safety Laws (the Boland Review).²

Key reforms proposed by the Bill include:³

- strengthening the role of health and safety representatives, and enabling them to choose the provider of their required training
- clarifying the rights of work health and safety (WHS) entry permit holders
- clarifying entities that may assist workers, and act as their representative, in relation to WHS issues
- moving certain proceedings from the Magistrates Court to the Queensland Industrial relations Commission
- amending category 1 offences to include negligence as a fault element, in addition to reckless conduct
- prohibiting a person from providing, entering into, or benefiting from insurance to cover liability for monetary penalty under the *Work Health and Safety Act 2011*
- clarifying information sharing arrangements with other regulators in relation to WHS breaches.

Committee comment

The committee is satisfied that the Bill will meet these policy objectives, and therefore recommends that the Bill be passed.

The Bill raises several issues relating to human rights and the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA), including:

- the right to privacy is relevant to clause 64 which proposes to insert a new section 271A (Additional ways that regulator may use and share information) of the WHS Act and a proposed complementary clause 11 which proposes to amend section 41 (Confidentiality of information) of the SRWA Act. The clauses provide for exceptions from prohibitions on the disclosure of private information. Under s271A WHS Act, a regulator may share information necessary for the administration or enforcement of another law prescribed by regulation.
- the right to freedom of association is relevant to clause 17 which proposes amendments to clarify which entities or persons may assist workers and act as their representatives in

¹ Review of the Work Health and Safety Act 2011 Final Report December 2022, available at: <https://www.oir.qld.gov.au/system/files/2023-04/review-work-health-safety-act-final-report.pdf>

² Review of the model Work Health and Safety laws Final report December 2018, available at: https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

³ Explanatory notes, pp 1-2.

relation to WHS issues. The Bill proposes to amend the definitions of union, representative (for a worker), and relevant union and introduces the terms suitable entity and excluded entity to clarify who is entitled to represent or assist workers on WHS issues.

- the right to property is relevant to clause 4 which proposes to insert new section 42A and 42B in the SRWA Act and clause 13 which proposes to insert new sections 272A and 272B in the WHS Act. The purpose of the proposed limitations are to prohibit a person from insuring or indemnifying themselves against a monetary penalty under the WHS Act or the SRWA Act, or providing a contract of insurance or indemnity for monetary penalties under the WHS Act or SRWA Act, or taking the benefit of insurance or indemnity against monetary penalties under the WHS Act or the SRWA Act.
- The rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (s 4(3)(a) LSA is relevant to clause 70, with respect to the bill proposing to omit the internal review stage for inspector decisions in relation to work group negotiations and the constitution of health and safety committees (HSCs), meaning that if a party wishes to seek review of a decision, it must apply for external review.
- sufficient regard to rights and liberties of individuals (s 4(2)(a) LSA) is relevant with respect to the proposals in the Bill to:
 - allow a WHS entry permit holder to remain on site during business hours for the purposes of investigating a suspected contravention of the WHS Act or the *Electrical Safety Act 2002* (ES Act) (clause 45)
 - require a person conducting a business or undertaking (PCBU) to allow all the parties to an issue to remain at the workplace for the purpose of attending discussions with a view to resolving the issue (clause 31), and
 - enable a HSR to issue a cease work notice to a PCBU (clause 32).⁴

Committee comment

After considering these issues, the committee is satisfied the Bill is compatible with the *Human Rights Act 2019* (HRA), and has sufficient regard to fundamental legislative principles.

The committee has made four recommendations designed to support the implementation of the provisions of the Bill. Three of these recommendations are in relation to the training of work of health and safety representatives (HSRs). The third recommendation is that the Office for Industrial Relations (OIR) undertake a campaign of awareness so relevant organisations and workers are fully informed of the changes to who can lawfully represent workers under the new definitions contained within the proposed Bill.

⁴ See also explanatory notes, pp 19-25.

1 Introduction

1.1 Policy objectives of the Bill

The Work Health and Safety and Other Legislation Amendment Bill 2023 (the Bill) aims to give effect to the Queensland Government's response to recommendations from the Review of the *Work Health and Safety Act 2011* – Final Report 2022⁵ (the WHS Act Review Report) and particular recommendations from the 2018 Review of the Model Work Health and Safety Laws (the Boland Review).⁶ The WHS Act Review Report made 31 recommendations, consisting of 55 sub-recommendations, all of which the Queensland Government accepted in full or in-principle.⁷ The WHS Act Review Report and Queensland Government response were published on 5 May 2023.

The Bill proposes to implement the majority of the WHS Act Review Report's sub-recommendations. The Boland Review was the first full review of the national model Work Health and Safety (WHS) laws which were implemented in Queensland on 1 January 2012. The Boland Review found that the model WHS laws are working as intended, and made recommendations to improve clarity and consistency in the model laws. The Bill proposes to give effect to nine recommendations from the Boland Review.⁸

The explanatory notes state that the remaining recommendations will be implemented either through future amendment to the *Work Health and Safety Act 2011* (WHS Act) or the Work Health and Safety Regulation 2011 (WHS Regulation), administratively, or will be subject to national review, targeted Queensland reviews and further consultation with stakeholders.⁹

The explanatory notes further state that the Bill also proposes additional amendments to improve the operation and administration of the WHS Act identified through consultation with the Office of the National Rail Safety Regulator and the Work Health and Safety (WHS) Prosecutor. The Bill includes amendments to remove inconsistencies with rail safety legislation, and to amend the WHS Act to allow the WHS Prosecutor to authorise an appropriately qualified member of staff to bring proceedings under the WHS Act.¹⁰

Appendix D maps the relevant recommendations from the WHS Act Review and the Boland review to the parts of the Bill that implement them.

As stated in the explanatory notes, the bill seeks to achieve the policy objectives by amending the WHS Act to:

- strengthen and promote the role of HSRs, including clarifying powers they can exercise and functions they can perform at the workplace
- promote consultation about WHS with workers and their representatives
- clarify rights that WHS entry permit holders can exercise at a workplace to assist workers in relation to suspected contraventions of the WHS Act
- clarify which entities or persons may assist workers and act as their representatives in relation to WHS issues by:

⁵ Review of the Work Health and Safety Act 2011 Final Report December 2022, available at: <https://www.oir.qld.gov.au/system/files/2023-04/review-work-health-safety-act-final-report.pdf>

⁶ Review of the model Work Health and Safety laws Final report December 2018, available at: https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

⁷ Queensland government response to the WHS Act Review report, available at: <https://www.oir.qld.gov.au/system/files/2023-04/queensland-government-response-whs-act-review.pdf>

⁸ Explanatory notes, p 1

⁹ Explanatory notes, p 1

¹⁰ Explanatory notes, p 1, p26.

- ensuring a relevant union whose rules entitle it to represent the worker’s industrial interests may assist workers or act as their representatives in relation to a WHS issue, and
 - excluding other entities such as: associations of employees or independent contractors; other entities that represent or are purporting to represent the industrial interests of the worker; entities that demand or receive a fee from such bodies; and individuals connected with excluded bodies. Excluding associations of employees or independent contractors which are not registered unions under the *Fair Work (Registered Organisations) Act 2009* (Cwlth) (FW(RO)Act) or the *Industrial Relations Act 2016* (IR Act) is consistent with 2022 amendments to the IR Act
- clarify and streamline the dispute resolution process
 - move certain proceedings from the Magistrates Court to the Queensland Industrial Relations Commission (QIRC)
 - amend the Category 1 offence to include negligence as a fault element, in addition to reckless conduct
 - enable HSRs to choose their training provider
 - prohibit persons from entering insurance contracts or being granted indemnity, or benefiting from these arrangements, to cover liability for WHS fines
 - extend the 12-month deadline, to 18 months, for a person to request the WHS Prosecutor bring a prosecution for a Category 1 or 2 offence; and
 - make other amendments to enhance the operation and administration of the WHS Act, including minor technical amendments for clarity or consistency.¹¹

The bill also proposes amendments to the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and the *Public Health Act 2005*.¹²

1.2 Legislative compliance

In accordance with s 93 of the *Parliament of Queensland Act 2001*, the committee’s examination of the Bill included consideration of: the policy to be given effect by the legislation; the application of FLPs contained in the LSA; and the Bill’s compatibility with the HRA.

Committee comment

The Bill raises a number of issues relating to human rights and fundamental legislative principles.

Having considered these issues, the committee is satisfied the Bill is compatible with the *Human Rights Act 2019*, and has sufficient regard to fundamental legislative principles.

1.2.1 Human Rights Act 2019

The Bill engages a number of human rights. As such, one of the key issues considered by the committee was whether the safeguards included in the Bill are sufficient to protect human rights and – where human rights would be limited – the extent to which those limitations are reasonable and justified.

The most significant human rights issues considered by the committee include:

- the right to privacy is relevant to clause 64 which proposes to insert a new section 271A (Additional ways that regulator may use and share information) of the WHS Act and a proposed complementary clause 11 which proposes to amend section 41 (Confidentiality

¹¹ Explanatory notes, pp 1-2.

¹² Explanatory notes, pp 1-2.

of information) of the SRWA Act. The clauses provide for exceptions from prohibitions on the disclosure of private information. Under s271A WHS Act, a regulator may share information necessary for the administration or enforcement of another law prescribed by regulation.

- the right to freedom of association is relevant to clause 17 which proposes amendments to clarify which entities or persons may assist workers and act as their representatives in relation to WHS issues. The Bill proposes to amend the definitions of union, representative (for a worker), and relevant union and introduces the terms suitable entity and excluded entity to clarify who is entitled to represent or assist workers on WHS issues.
- the right to property is relevant to clause 4 which proposes to insert new section 42A and 42B in the SRWA Act and clause 13 which proposes to insert new sections 272A and 272B in the WHS Act. The purpose of the proposed limitations are to prohibit a person from insuring or indemnifying themselves against a monetary penalty under the WHS Act or the SRWA Act, or providing a contract of insurance or indemnity for monetary penalties under the WHS Act or SRWA Act, or taking the benefit of insurance or indemnity against monetary penalties under the WHS Act or the SRWA Act.

1.2.1.1 Statement of compatibility

Section 38 of the HRA requires a statement of compatibility to be tabled for the Bill.

Committee comment

The committee is satisfied that the safeguards included in the Bill to protect human rights are sufficient, and that the extent of any limitations on human rights are reasonable and justified in the circumstance.

The committee is also satisfied with the level of detail provided in the Statement of Compatibility tabled with the Bill.

1.2.2 Legislative Standards Act 1992

The committee's assessment of the Bill's compliance with the LSA included consideration of fundamental legislative principles (FLP), which are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. These principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The Bill raises several issues relating to FLPs. One of these overlaps with the human rights issues noted in the previous section:

- sufficient regard to the rights and liberties of individuals (s 4(2)(a) LSA):
 - the bill proposes to prohibit persons from entering into or benefiting from a contract of insurance or other arrangement that purports to insure or indemnify a person for a liability for all or part of a monetary penalty under the WHS Act or the SRWA Act (clauses 4 and 13).¹³

Other FLP issues considered by the committee included the FLP's relating to:

- making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (s 4(3)(a) LSA, with respect to the bill proposing to omit the internal review stage for inspector decisions in relation to work group negotiations and the constitution of health and safety committees (HSCs), meaning that if a party wishes to seek review of a decision, it must apply for external review (clause 70)

¹³ Clauses 4 and 13, Statement of compatibility, p 6.

- sufficient regard to rights and liberties of individuals (s 4(2)(a) LSA) with respect to the proposals in the bill to:
 - allow a WHS entry permit holder to remain on site during business hours for the purposes of investigating a suspected contravention of the WHS Act or the *Electrical Safety Act 2002* (ES Act) (clause 45)
 - require a person conducting a business or undertaking (PCBU) to allow all the parties to an issue to remain at the workplace for the purpose of attending discussions with a view to resolving the issue (clause 31), and
 - enable a HSR to issue a cease work notice to a PCBU (clause 32).¹⁴

1.2.2.1 *Explanatory note*

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

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

Committee comment

Having considered the provisions of the Bill, the committee is satisfied that its impact on fundamental legislative principles in regard to rights and liberties of individuals, obligations dependent on administrative power, property rights, general rights and liberties, particularly with respect to restricting how they conduct their business is justified.

On this basis, the committee considers that the Bill is, therefore, compatible with fundamental legislative principles.

1.3 Consultation for the development of the Bill

The majority of measures contained in the Bill seek to implement or address recommendations for legislative change from the WHS Act Review and the Boland Review. These reviews and reports had separate consultation processes.¹⁵

Further targeted consultation was undertaken by the Office of Industrial Relations during the drafting of the Bill with key stakeholders from registered unions and employer organisations, industry and government bodies. Feedback received was incorporated into the final draft of the Bill where appropriate.¹⁶

Organisations which participated in consultation for the Bill include the Queensland Council of Unions, Queensland Nurses and Midwives' Union, Australian Workers' Union, Shop Distributive and Allied Employees' Association, the Building Trade Group Unions (which includes the Construction, Forestry, Mining and Energy Union, the Electrical Trades Union, the Plumbing and Pipe Trades Employees Union, and the Australian Manufacturing Workers' Union), Master Builders Queensland, Business Chamber Queensland, and the Local Government Association of Queensland.¹⁷

1.4 The Bill should be passed

The committee is required to determine whether or not to recommend that the Bill be passed.

¹⁴ See also explanatory notes, pp 19-25.

¹⁵ Explanatory notes, p 25.

¹⁶ Explanatory notes, p 26.

¹⁷ Explanatory notes, p 26.

Recommendation 1

The committee recommends that the Work Health and Safety and Other Legislation Amendment Bill 2023 **be passed**.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of and consultation on the Bill. It does not discuss all consequential, minor or technical amendments. Accordingly, below details the committee's consideration of proposed amendments in the Bill that relate to:

- strengthening the role and function of Health and Safety Representatives (HSRs) (clauses 24, 25, 26, 37, and 52)
- power of the regulator to give particular information to particular persons (clause 52)
- restrictions on entities that may assist workers, or represent the workers' industrial interests, in relation to WHS matters (clause 17)
- enabling relevant unions to be a party principle to work group negotiations (clause 20)
- lowering the threshold for Category 1 offence (clauses and 16)
- prohibiting insurance cover for WHS fines (clause 13).

2.1 Role and Function of Health and Safety Representatives (HSRs)

2.1.1 Background

Work Health and Safety Queensland (WHSQ) describes the primary role of a HSR as representing the health and safety interests of a *work group*¹⁸ and to raise any issues with their employer. There can be as many HSRs and deputy HSRs as needed, after consultation, negotiation and agreement between workers and the employer, or persons conducting a business or undertaking (PCBUs).

The WHS Act sets out specific powers and functions an HSR can perform in the interests of the workers they represent including:

- representing the work group in health and safety matters
- monitoring compliance measures taken by the PCBU that relate to the workers in their work group
- investigating WHS complaints from members of their work group
- inquiring into any risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking.¹⁹

The WHS Act Review found that, for HSRs to be able to perform the role envisaged by the WHS Act, it was necessary for them to be completely integrated into the identification and resolution of safety issues at the workplace. The reviewers identified the need to clarify:

- the interaction between HSRs, inspectors and WHS entry permit holders; and
- the right of HSRs to receive relevant information about work health and safety.

To address these issues, the Bill proposes that PCBUs:

- inform an HSR when an inspector or WHS entry permit holder is on site, and permit the HSR to accompany them, where the visit is relevant to their work group (Clause 24)

¹⁸ Work Health and Safety Queensland defines a work group as a group of workers who share a similar work situation; the HSR represents the health and safety interests of the workers in that group. A worker or group of workers can ask the PCBU they are carrying out work for to facilitate the election of one or more HSRs (worksafe.qld.gov.au).

¹⁹ Explanatory notes, p 4.

- provide HSRs with copies of enforcement notices issued by an inspector, copies of entry notices provided by WHS entry permit holders, and mandatory incident notifications made to the regulator by the PCBU (Clause 25).²⁰

A number of stakeholders in the inquiry were concerned that the Bill proposes to expand the role and function of HSRs. The following areas were highlighted.

2.1.2 HSRs issuing cease work notices (Clause 32)

Clause 32 seeks to amend section 85 (Health and safety representative may direct that unsafe work cease) of the WHS Act to provide for the HSR to issue a written notice (cease work notice) to the PCBU requiring them to direct one or more workers to cease unsafe work, if consultation has failed to resolve the issue. The PCBU would then be obliged to direct the relevant workers to cease, or not start, work to the extent it relates to the matter referred to in the notice.²¹ The cease work direction would remain in effect until resolved, or an inspector issues a prohibition notice or the QIRC decides or deals with the dispute.²²

The proposed amendments to section 85 would not alter the existing power for a HSR to direct workers in the work group they represent to cease work without first consulting with the PCBU, or attempting to resolve the issue, if the risk to workers is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

2.1.2.1 Submissions

The Australian Meat Industry Council (AMIC),²³ Civil Contractors Federation Queensland Limited (CCF)²⁴ and Master Builders Queensland (MBQ)²⁵ voiced concerns about the high level of responsibility taken by a HSR when issuing a cease work notice. They argued that the impact on industry can be costly, with the AMIC citing compound issues in the meat industry, including animal welfare obligations, refrigeration of products, market access and transport delays. The MEA, the CCF, and the MBQ raised high construction and material costs that may be lost, such a time sensitive concrete deliveries, if a stop work direction is issued by a HSR.

The AMIC further stated that it considered the 5-day training program that HSRs generally complete was insufficient to equip HSRs to make the extremely significant decision to stop work operations for a breach of safety issue. They argued that, if HSRs are strongly union-affiliated, there is a potential for them to use new powers to disrupt a business on unreasonable grounds.²⁶

2.1.2.2 Departmental response

In its advice to the committee on issues raised in submissions, the Office of Industrial Relations (OIR) highlighted the existing provisions within the *Work Health and Safety Act 2011* that permit trained HSRs to issue cease work directions to workers:

- when the HSR has a reasonable concern that to carry out the work would expose a worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard
- after consultation with the PCBU and attempting to resolve the matter as an issue under division 5 (issue resolution) have failed to resolve the matter, or

²⁰ Explanatory notes, pp 4-5.

²¹ Clause 32.

²² Explanatory notes, p 35.

²³ Submission 4, p 5.

²⁴ Submission 7, pp 3-4.

²⁵ Submission 10, pp 5-6.

²⁶ Submission 4, p 5.

- immediately to workers without first consulting the PCBU if the risk is so serious it is not practical to consult first. In that instance, the HSR must consult with the PCBU as soon as practicable after giving a direction.²⁷

The OIR emphasised this aspect of HSR functions will not change, however, noted that the proposed Bill does implement recommendation 5 of the WHS Act Review to provide that the direction to cease work must now be issued to the PCBU (rather than directly to workers) in the event consultation and issue resolution has failed. The Bill also proposes that the PCBU would have an obligation to then cease the work that the cease work direction relates to.²⁸

Further, clause 33 inserts a new section 85A (Contents of cease work notice) which sets out the content requirements of a cease work notice. Proposed new section 85A would require a cease work notice to be in writing, at the time the cease work direction is given, to provide clarity and support resolution of the issue.²⁹

The cease work notice would outline the details of the immediate or imminent hazard that presents the serious risk to worker health and safety, the unsafe work and the relevant workers.³⁰ It would provide the details necessary for the PCBU to rectify the issue, clarify what work must not be undertaken and indicate the statutory pre-conditions have been fulfilled by the HSR, giving assurance to workers that they will not be undertaking unlawful industrial action.³¹ There would be a further requirement to display a copy of the cease work notice in a prominent way at the workplace to provide clear information to affected workers.³²

In its response to submitters' concerns, the OIR confirmed the amendments relating to ceasing unsafe work will be incorporated into HSR training. It is the department's intention to update the training that HSRs received, and to produce templates and guidance.³³

The OIR highlighted that any potential misuse of this power could be immediately referred to the Queensland Industrial Relations Commission (QIRC). In addition, section 65 of the WHS Act currently allows persons adversely affected by an HSR's exercise of a power or the performance of a function to make an application to the QIRC to disqualify the HSR on the ground that the representative has exercised a power or performed a function as an HSR for an improper purpose.³⁴

Committee comment

The committee has considered the proposed amendment to 85 of the WHS Act in clause 32 of the Bill that would require HSRs to issue a written cease work notice to PCBUs requiring them to direct one or more workers to cease unsafe work, if consultation has failed to resolve the issue.

The committee is satisfied the proposed amendment is a change of process and not a change in parameters of HSR powers for issuing cease work notices.

The requirement for HSRs to issue a written notice to PCBUs would provide greater clarity. It also notes the department's intention to develop templates and guidance material to support HSRs issuing such notices. However, there also needs to be appropriate training and support for all HSRs to complete a written cease work notice. That training would need to be appropriate for HSRs who don't

²⁷ OIR response to submissions 1-13, p 4.

²⁸ OIR response to submissions 1-13, p 4.

²⁹ Explanatory notes, pp 35.

³⁰ Explanatory notes, pp 35.

³¹ Explanatory notes, pp 35-36.

³² Explanatory notes, p 6.

³³ Public briefing transcript, Brisbane, 1 December 2023, p 5.

³⁴ OIR response to submissions 1-13, p 5.

have strong literacy skills, and provide an understanding of statutory pre-conditions, and any required industry specific knowledge.

2.1.3 HSRs accompanying in inspectors or permit holders on site visits (Clause 24)

Clause 24 would amend section 68 (Powers and functions of health and safety representatives) of the WHS Act to clarify the powers of HSRs. New section 68(2)(aa) would permit a HSR to accompany a WHS entry permit holder when the entry permit holder's reason for entry relates to the HSR's work group or a part of the workplace where a worker in the work group works.³⁵

The explanatory notes provide that the amendment to section 68(2)(f) in clause 24 would clarify that the HSR is entitled to request, as well as receive, information concerning the work health and safety of workers in the work group.³⁶

2.1.3.1 Submissions

In its submission, the AMIC argued that allowing HSRs to accompany permit holders, and notifying them when permit holders are onsite, would not be practical within the meat industry. AMIC stated that HSRs were usually skilled production employees within their area of work, and it was impractical to remove them from their production role, as this would either cause a loss of production or extra costs to replace the HSR whilst not in their normal role.³⁷

The CCF contended that 'right of entry' permits only protected workers when used in a collaborative and educational manner. It referenced unacceptable behaviour of permit holders and some recent case law. The CCF also advocated for permit holders to have a demonstrable knowledge of WHS operations and management, with either relevant industry experience in the areas to be inspected or demonstration of formal WHS training.³⁸

2.1.3.2 Departmental response

In its advice to the committee on issues raised in submissions, the OIR highlighted that the WHS Act already requires a PCBU to permit a HSR for a work group to accompany an inspector where the visit is relevant to the HSR's work group (existing section 70(1)(h)). The proposed amendment in the Bill seeks to extend this right to accompanying WHS entry permit holders. It originates from recommendation 3A of the WHS Act Review.³⁹

The OIR advised the amendment is intended to clarify the interaction between HSRs, inspectors and WHS entry permit holders, and provide an additional way in which a HSR can become aware of health and safety issues at the workplace. In conjunction with other amendments intended to enhance an HSR's access to health and safety information, the amendment is intended to assist HSRs in performing the role envisaged by the WHS Act and enable HSRs to be integrated into the identification and resolution of health safety issues at the workplace.⁴⁰

It also advised a HSR would not be required to accompany an inspector or WHS entry permit holder at the workplace. However, where the HSR would like to accompany an inspector or WHS entry permit holder, it is intended the PCBU must allow them to do so.⁴¹

³⁵ See also explanatory notes, p 32.

³⁶ Explanatory notes, p 32.

³⁷ Submission 4, pp 6-7.

³⁸ Submission 7, pp 3-4.

³⁹ OIR response to submissions 1-13, p 6.

⁴⁰ OIR response to submissions 1-13, p 6.

⁴¹ OIR response to submissions 1-13, p 6.

Committee comment

The committee has considered the proposed amendments to section 68 (Powers and functions of health and safety representatives) of the WHS Act in clause 24 of the Bill that would extend a HSR's right to accompanying WHS entry permit holders as well as an inspector when the visit is relevant to the HSR's work group.

The committee is satisfied the changes are appropriate and fulfil the policy objective to clarify the interaction between HSRs, inspectors and WHS entry permit holders and provides an additional way in which an HSR can become aware of health and safety issues at the workplace.

2.1.4 HSR Training

Since 1 February 2019, all HSRs have been required to undertake the relevant approved training course within three months of their election unless a training course is not reasonably available within that period.⁴² Existing HSRs, who had not already completed the training, were also required to complete the training within the required period. If a worker chooses not to undertake the training within the time period, they will no longer be eligible to fulfil the role of HSR and will need to be replaced.

HSRs and deputy HSRs can make a request to a PCBU to arrange an approved course. A HSR can only issue a provisional improvement notice (PIN) if they have attended an approved training course.

Training courses approved under section 21 of the Work Health and Safety Regulation 2011, are:

- an initial five day training course delivered by a registered training organisation (RTO)
- a one day refresher course at least every three years. The entitlement to refresher training begins three years after the initial training

Clause 27 of the Bill proposes amendments to section 72 (Obligation to train health and safety representatives) of the WHS Act to implement Recommendation 10 of the Boland Review and Recommendation 4A of the WHS Act Review. This amendment would provide that HSRs are entitled to choose the training course without consulting with the PCBU.⁴³

2.1.5 Submissions

In its submission, the Shop Distributive and Allied Employees Association Queensland (SDA) states that HSRs, or anyone who sits on a health and safety committee, requires more training which incorporates industry specific information and guidelines on appropriate conduct for meetings, not just relevant WHS information. This, it argued, may prevent HSRs being intimidated when they are new in the role and bring them more awareness of the function of their role.⁴⁴

The Urban Development Institute of Australia Queensland (UDIA) cited a need for more careful oversight by government of HSR training curricula. It submitted that a more detailed, collaborative approach is required to develop and refine an appropriate syllabus to respond to concerns over consistency of training outcomes.⁴⁵

The United Fire Fighters Union Queensland (UFUQ)⁴⁶ supported HRSs being able to choose their own RTO.

AMIC strongly opposed this change. The AMIC considers that because the majority of the meat industry is rural based, this industry would not have a great selection of nearby RTOs. It further

⁴² WHSQ, see www.worksafe.qld.gov.au

⁴³ Explanatory notes, p 34.

⁴⁴ Submission 1, p 2.

⁴⁵ Submission 9, p 3.

⁴⁶ Submission 3, pp 1-2.

maintained that businesses usually have an admin/training/HR person who would engage with reputable RTOs to deliver training on site to several staff, and that this arrangement should remain.⁴⁷

2.1.6 Departmental response

In its advice to the committee on issues raised in submissions, the OIR highlights that the entitlement for a HSR to choose the training course does not preclude delivery of the course by a RTO on site, providing the course has been chosen by the HSR. Where there is a disagreement on the training fees and reasonable costs the Bill allows parties to request the assistance of a WHS inspector or go directly to the QIRC to decide the matter.⁴⁸

At the public briefing on 30 January 2024, Andrea Fox, Executive Director of WHS Engagement and Policy Services, OIR, told the committee:

I would note that there is a review currently happening at the moment around HSR training in the department around the delivery method and ways of improving that training. I did note lots of interest today from various parties in industry-specific training. The department has long had a view that there would be potential merit in that. That is something that has been discussed and explored in the department.⁴⁹

On the subject of providing guidance and a template for HSRs to issues a cease work notice, Ms Fox said:

...there is an undertaking by the department to provide a template for what that may look like and guidance material around that to support all parties. I think PCBUs, workers and HSRs would like to know more about what that will look like. I would note that HSRs receive training currently in their course around what a serious and imminent risk looks like. That is not a new concept for them. Again, obviously cease work is itself not a new concept for them. However, I do note the valid point that has been raised by one of the unions today around ensuring that anything like this is not unnecessarily difficult for workers who may have literacy issues or access to material. I think there is work there for the department to consider how best we support all workers in being able to use templates.⁵⁰

Further, at the public briefing on 30 January 2024, Mr Peter McKay, Deputy Director General, OIR, told the committee:

...we will be developing significant guidance material in consultation with stakeholders, PCBUs, representative organisations and unions on the changes should the bill pass. That will in turn become part of the training package that the department supports for the delivery of training for HSRs.⁵¹

Committee comment

Given the capacity that HSRs have to improve health and safety standards at a workplace, the committee acknowledges the vital importance of the training and support provided to individuals taking on this role. Well trained HSRs have the potential to be an asset to employers and workers alike in being able to help resolve health and safety issues with competence and efficiency.

The committee has considered the proposed amendments to section 72 (Obligation to train health and safety representatives) of the WHS Act, and taken on board the various comments on the overall training of HSRs.

The committee is satisfied that the proposed amendments to section 72 are appropriate and allow a HRS to take responsibility for their training.

⁴⁷ Submission 4, p 6.

⁴⁸ OIR response to submission 1-13, p 5.

⁴⁹ Public briefing transcript, Brisbane, 30 January 2024, p 3.

⁵⁰ Public briefing transcript, Brisbane, 30 January 2024, pp 3-4.

⁵¹ Public briefing transcript, Brisbane, 30 January 2024, pp 3.

In relation to the training of HSRs, the committee also supports and welcomes the significant guidance material being planned for development by the OIR should the Bill pass. This needs to form the basis for training of HSRs in their new powers in the proposed Bill, including all aspects of the new written process for issuing cease work notices to PCBUs; and enhanced knowledge of when a cease work notice fulfils statutory pre-conditions and is an appropriate course of action.

The committee notes the department is currently reviewing HSR training. As part of this review, the committee encourages the department to include what level of industry specific knowledge is required for HRSs to be fully trained to perform their role and function in any specific sector.

Recommendation 2

The committee recommends that the Office of Industrial Relations develop guidance and resource materials, in consultation with a range of industries, to train and support health and safety representatives in utilising the new powers proposed in the Bill to implement new operational obligations being introduced.

Recommendation 3

The committee recommends that the Office of Industrial Relations include consideration of how industry specific knowledge is incorporated into HRS training as part of its review into HSR training, particularly in high-risk industries such as Health, Construction, Transport and Manufacturing. This is to ensure any sector specific aspects of health and safety are covered.

Recommendation 4

The Office of Industrial Relations should consult with registered employer and employee organisations as part of its review into HSR training.

2.2 Power of the regulator to give information to particular persons (clause 52)

2.2.1 Background

Clause 52 proposes to insert new section 155A (Power of regulator to give particular information to particular persons) to provide that the regulator can, on request, give information contained in improvement, prohibition and non-disturbance notices (a relevant notice) to HSRs for a worker for the workplace to which the relevant notice relates; and WHS entry permit holders representing a relevant union for a relevant worker for the workplace to which the relevant notice relates.⁵²

2.2.2 Submissions

The AMIC considered the Bill to be proposing significant amendments to the powers of the regulator. They cited a concerning part for the meat industry being the powers to share information with HSR's and unions. AMIC was strongly against this.⁵³

The MBQ did not support allowing HSRs and WHS entry permit holders access to notices issued by inspectors. They expressed concern over the perceived lack of clarity as to what workplaces the access to notices applied to, and the lack of a time limit on how far back notices can be requested for.⁵⁴

2.2.3 Departmental response

In its advice to the committee on issues raised in submissions, the OIR highlights that personal information and commercial in confidence information from a notice cannot be provided. In addition, clause 64 in the Bill provides that section 271 (Confidentiality of information) applies to a WHS entry

⁵² See also, explanatory notes, p 39.

⁵³ Submission 4, p 10.

⁵⁴ Submission 10, p 1.

permit holder or HSR who obtains information under new section 155A. To be an entitled person the HSR or WHS entry permit holder must represent workers at the workplace to which the notice relates. This clarifies that the notice must be relevant to the workplace where the HSR or WHS entry permit holder have representation of workers.⁵⁵

The OIR advised that the plan for implementing new section 155A is to allow the regulator to establish an informal administrative release of information scheme relating to enforcement notice information, similar to the scheme administered by the Worksafe Authority in Victoria. It is proposed that the scheme be supported by a guide and application form to enable requests to be considered and processed. OIR will consider the issues raised by MBQ in developing guidance to support the implementation of this aspect of the proposed Bill.⁵⁶

Committee comment

The committee has considered the proposed insertion of a new section 155A (Power of the regulator to give particular information to particular persons) that enables the regulator to provide a WHS entry permit holder or HSR with relevant information from an improvement notice, prohibition notice or non-disturbance notice issued by an inspector under Part 10 of the WHS Act.

The committee is satisfied that the proposed change is appropriate and allows HSRs to access relevant information to fulfil their role. The committee notes the protection of personal and commercial in confidence information at clause 64 - section 271 (Confidentiality of information) - which applies to a WHS entry permit holder or HSR who obtains information under new section 155A.

2.3 Restrictions on entities that may assist workers, or represent the workers' industrial interests, in relation to WHS matters (clause 17)

2.3.1 Background

Clause 17 of the Bill proposes to amend the definitions of 'representatives in relation to workers' and 'relevant union' to clarify who is entitled to represent or assist workers, including HSRs, under the WHS Act. It would insert new sections 45A (Definitions for part) and 45B (Meaning of excluded entity) which include new terms 'suitable entity' and 'excluded entity'.⁵⁷ These proposed definitions are outlined in Table 1 below.

The explanatory notes detail the WHS Act Review consideration around who can be a 'representative', 'union' and 'relevant union', noting various circumstances under the WHS Act permit representation and assistance for workers. The WHS Act Review referenced the *Five-year Review of Queensland's Industrial Relations Act 2016 Final Report (2021)*, which found an increase in the number of associations and other bodies corporate claiming to act on behalf of employees that are not registered under the FW(RO) Act or the IR Act, and noted that these entities were not subject to the regulation contained in either the FW(RO) Act or the IR Act.⁵⁸

The WHS Act Review concluded that the existence of such unregulated bodies declaring to represent employees was undesirable and more clarity was needed. It proposed the definitions of 'union', 'representative', and any other circumstances where a person is granted the right to assist or represent a worker (including an HSR), be amended to make it clear that if a worker's representative is a 'union' it must be a registered union under the FW(RO) Act or the IR Act.⁵⁹

⁵⁵ OIR response to submission 1-13, p 17.

⁵⁶ OIR response to submission 1-13, p 18.

⁵⁷ See also, explanatory note, p 30.

⁵⁸ Explanatory notes, p 12.

⁵⁹ Explanatory notes, p 12.

Table 1 – New definitions in proposed Bill

Term	Proposed definition
Union	Union means— <ul style="list-style-type: none"> a) an employee organisation registered under the Fair Work (Registered Organisations) Act 2009 (Cwlth); or b) an employee organisation registered under the Industrial Relations Act 2016, chapter 12.
Relevant union	Relevant union, for a worker, whether the worker is a health and safety representative or another worker, means a union— <ul style="list-style-type: none"> a) of which the worker is a member or is eligible to be a member; and b) whose rules entitle the union to represent the worker’s industrial interests
Representative, in relation to workers	representative, in relation to a worker, means— <ul style="list-style-type: none"> a) the health and safety representative for the worker; or b) a suitable entity for representing the worker that is authorised by the worker to represent the worker
Suitable entity	Suitable entity, for representing or assisting a worker or the health and safety representative for a worker, means — <ul style="list-style-type: none"> a) a relevant union for the worker; or b) another entity that— <ul style="list-style-type: none"> (i) is authorised by the worker or representative to represent or assist the worker or representative; but (ii) is not an excluded entity for representing or assisting the worker or representative.
Excluded entity	Each of the following entities is an excluded entity for representing or assisting a worker or the health and safety representative for a worker — <ul style="list-style-type: none"> a) the following entities (each an excluded body)— <ul style="list-style-type: none"> (i) an entity, other than a union, that is an association of employees or independent contractors, or both; (ii) an entity, other than a union or an association mentioned in subparagraph

2.3.2 Impact on human rights

The committee notes that the Bill has the potential to impact a person’s human rights in relation to right to freedom of association. Section 22 HRA protects the right of all persons to freedom of association, or the right of persons to join formally with others to pursue a common interest. The relevant clauses in the Bill relate to this right by clarifying which organisations, including trade unions, may assist workers and act as their representatives in relation to WHS matters.

The statement of compatibility accompanying the Bill states that the purpose of the amendments regarding definitions for union, relevant union, suitable entity and excluded entity is to ensure that the WHS interests of workers are effectively represented by entities subject to regulation under the IR Act or the FW(RO) Act, rather than unregulated entities which are not required to meet the high level of transparency and accountability requirements under those laws. It notes this is a proper

purpose and is considered consistent with a free and democratic society based on human dignity, equality and freedom.⁶⁰

The statement of compatibility notes that the Bill is considered to achieve the purpose of the limitations in relation to the right to freedom of association without unreasonably restricting human rights and is considered necessary due to the lack of less restrictive, reasonably available alternatives.⁶¹

2.3.3 Submissions

The Queensland Law Society (QLS) supported the proposed amendment that seeks to ensure a relevant union (whose rules entitle it to represent the worker's industrial interests) can assist workers and act as their representatives in relation to a WHS issue, and exclude unregistered bodies. It considers it incongruous that unregistered organisations could currently operate and attempt to exercise representational and other rights without the correlative obligations that registered organisations are required to uphold to exercise the same rights.⁶²

The SDA strongly agreed with clause 48 of the proposed Bill to make referencing to unions, or union officials, apply only to Registered Trade Unions.⁶³ The QNMU also supported the proposed Bill in providing for a definition of union.⁶⁴

The explanatory notes detail how clause 48 proposes to amend s 137 (Expiry of WHS entry permit) of the WHS Act as a consequence of the amendment to the definition of a union which excludes associations that are not registered employee organisations under the FW(RO) Act or Chapter 12 of the IR Act and removes the words 'or taken to be registered' in paragraph (a) to avoid any confusion in relation to those excluded associations.⁶⁵

The AMIC stated that businesses should not need to include unions when consulting with employees and HSRs on matters for their respected areas/facilities. They maintained that unions have no place in such consultation, were not deemed subject matter experts in regards to improving businesses facilities, and would not be considered safety experts.⁶⁶

The Construction, Forestry, Mining, Energy Union (CFMEU) highlighted the amended definition of 'representative' and the proposed changes to the meaning of 'representative'.

Appearing at the public hearing on 30 January 2024, Mr Kurt Pauls, the CFMEU's OHS Co-ordinated said:

The CFMEU considers the word 'representative' needs to stay. The review did not recommend the removal of the word 'representative' but, as a party principal, registered union be added. I and others in the CFMEU have actually utilised this provision of the Workplace Health and Safety Act for probably five years now. It has been very successful in reaching outcomes for members and workers to do with issue resolution on health and safety matters on the project they are working on.⁶⁷

The Red Union Support Hub contended that the proposed changes penalised workers who had chosen to leave registered unions due to the high costs of membership. Graham Haycroft, Director at the Red Union Support Hub, argued at the public hearing on 30 January 2024:

⁶⁰ Statement of compatibility, p 5.

⁶¹ Statement of compatibility, p 5.

⁶² Submission 13, p 2.

⁶³ Submission 1, p 2.

⁶⁴ Submission 8, P 7.

⁶⁵ Explanatory notes, p 38.

⁶⁶ Submission 4, p 8.

⁶⁷ Public briefing transcript, Brisbane, 30 January 2024, p 30.

This is legislation to prevent them from accessing workplace health and safety rights should they have a claim. If they appear before a commissioner on a matter with a lawyer the commission will be bound to ask, 'Who is paying the lawyer?' If it is anyone other than the complainant themselves or a registered trade union, they will be denied their fundamental right of representation; they will be on their own.⁶⁸

2.3.4 Departmental response

In the explanatory notes, the OIR points to the WHS Act Review, which recognised that the involvement of registered unions improves safety outcomes and is an established way to enable participation and representation of workers in WHS matters. The reviewers considered that registered unions, with well-established eligibility rules, have a recognised interest in regulating the performance of the way in which work is performed within their area of coverage. Further, the reviewers noted it has long been recognised that registered unions' interests extend to conditions of both members and non-members in the calling for which they are responsible.⁶⁹

The Bill would not restrict an individual's freedom to join an excluded entity. It seeks to make clear that certain entities, or their employees or agents, cannot lawfully represent their members under the WHS Act. The objective is to ensure that workers' WHS interests are only represented by entities subject to proper regulation. Such entities have transparency and accountability requirements under law.⁷⁰

Key stakeholders were consulted on the definitions of 'relevant union', 'representative', 'suitable entity' and 'excluded entity' during the development of the proposed Bill to ensure they captured the desired outcome of the WHS Act Review.⁷¹

Workers will also still have the option to authorise other representatives providing they are not an excluded entity, such as a technical expert (e.g. an engineer).⁷²

Committee comment

The committee has considered the proposed new sections 45A (Definitions for part) and 45B (Meaning of excluded entity) proposed in clause 17 of the Bill to amend the definitions of 'union', 'representatives in relation to workers' and 'relevant union,' and include new terms 'suitable entity' and 'excluded entity'.

The committee notes the department's advice in relation to the right to freedom of association being relevant to this element of the proposed Bill. In this instance, the committee is satisfied that the limitations are reasonable and justified. The amendments provide clarity about which bodies can lawfully represent workers under the WHS Act. In performing such a role, it is appropriate that anyone operating in this capacity are subject to regulatory oversight and can be held accountable for their conduct and performance under the law.

Recommendation 5

The committee recommends that, if the Bill is passed, the OIR consider undertaking an awareness campaign so relevant organisations and workers are fully informed about the changes to who can lawfully represent workers under the new definitions contained within the Bill.

⁶⁸ Public briefing transcript, Brisbane, 30 January 2024, p 34.

⁶⁹ Explanatory notes, p 21.

⁷⁰ Explanatory notes, pp 21-22.

⁷¹ OIR response to submission 14, p 2.

⁷² Explanatory notes, p 21.

2.4 Enabling relevant unions to be a party principal to work group negotiations (clause 20)

2.4.1 Background

Clause 20 seeks to amend section 52 (Negotiations for agreement for work group) to clarify the parties to negotiations about work groups, the timeframes for negotiations and to establish that a relevant union has party principal status in circumstances where the relevant union has indicated in writing to the PCBU that they want to be involved (as defined in clause 17). The proposed amendment of section 52(1)(b) seeks to clarify that the PCBU must negotiate with the workers who are proposed to form the work group or their representatives.⁷³

2.4.2 Submissions

The QCU⁷⁴ supported the changes at clause 20 and the UFUQ⁷⁵ was pleased to note the proposed amendment would provide that a relevant union may apply to the QIRC for an order in relation to a contravention or alleged contravention.

The AMIC was concerned that the provisions of the Bill would provide for unions to create their own loopholes to build on memberships, union revenue and remain largely unchecked during the process. It argued that this relaxation appeared to provide that unions take on a regulatory role that would normally be reserved for government bodies/agencies. The AMIC argued these changes could create significant unrest in the meat industry, and hinder progress.⁷⁶

The MEA suggested the wording of section 52(4B) risks being interpreted too broadly and suggested that 'if requested' be included in the amendment.⁷⁷

The UDIA did not support the changes to increase the rights of other parties to be involved in various discussions and negotiations with workers and a PCBU, such as union representatives.⁷⁸

2.4.3 Departmental response

The OIR advised that the purpose of the proposed amendment to section 52 in clause 20 of the Bill is to implement Recommendation 2C of the WHS Act Review to give a relevant union party principal status in work group negotiations. This includes negotiations related to a variation of an agreement.⁷⁹

Currently under the WHS Act, unions may only participate in work group negotiations when requested by a worker. The reviewers found that workers may be reticent to identify themselves as either a member of a union or the person who asked for representation by a union for fear of reprisal. The Bill proposes to ensure that a relevant union can become a party to work group negotiations without a request from a worker. Relevant unions will need to advise the PCBU in writing if they want to participate to ensure adequate notice that the relevant union wants to participate.⁸⁰

Committee comment

The committee has considered the proposed amendment to section 52 (Negotiations for agreement for work group) to clarify the parties to negotiations about work groups, the timeframes for

⁷³ Explanatory notes, p 31.

⁷⁴ Submission 6, p 6.

⁷⁵ Submission 3, p 4.

⁷⁶ Submission 4, pp 8-9.

⁷⁷ Submission 5, pp 1-2.

⁷⁸ Submission 9, p 3.

⁷⁹ OIR response to submissions 1-13, pp 9-10.

⁸⁰ OIR response to submissions 1-13, pp 9-10.

negotiations and to establish that a relevant union has party principal status in circumstances where the relevant union has indicated in writing to the PCBU that they want to be involved.

The proposed amendment at section 52(1)(b) to clarify that the PCBU must negotiate with the workers who are proposed to form the work group or their representatives was also considered.

The committee is satisfied that proposed amendments are refining the process for a registered union to become a party to work group negotiations, a role it can currently take on if formally requested by a worker. The committee notes that a worker is still permitted to make such a request should they wish to, and that, historically, making such a request may have risked action being taken against them by employers for raising a safety issue.

2.5 Negligence as a fault element in the Category 1 offence (clauses 8 and 16)

2.5.1 Background

Clause 8 of the Bill proposes to amend the heading for section 21 to ‘Negligent or reckless conduct – category 1’ and insert negligence as a fault element for the Category 1 offence. This amendment complements the Category 1 offence amendment made in clause 16 to section 31 of the WHS Act.⁸¹

The explanatory notes state that the intention of providing an alternative fault element of negligence is to lower the threshold for conviction for Category 1 offences. Unlike recklessness, the fault element of negligence does not require the prosecution to prove that the offender had a subjective awareness that their conduct posed a substantial risk of death or serious injury or illness and continued on with their conduct regardless.⁸²

2.5.2 Submissions

The Consultative Committee for Work-related Fatalities and Serious Injuries strongly supported the amendment, and the AWU considered it an important step in protecting the welfare of workers.⁸³ There was further support from the QCU.⁸⁴

However, the CCF challenged the change, and argued that lowering the threshold for a Category 1 offence to increase prosecutions will not improve safety on its own. They contended that the focus for safety should start with increasing lead indicators such as audits and inspections, safety training participation, and reporting near misses.⁸⁵

The QLS questioned the impact of including negligence as a fault element, in addition to reckless conduct. It commented that the charge of negligence was a difficult one to prosecute and there was a subjective element to proving any element of recklessness.⁸⁶

2.5.3 Departmental response

In its advice to the committee in issues raised in submissions, the OIR stated that these proposed changes implement recommendation 23a of the Boland Review and would see Category 1 offences include conduct where the fault element is negligence or recklessness that exposes an individual to a risk of death or serious injury or serious illness without reasonable excuse. The prosecution would be required to prove either the fault element of negligence or recklessness in addition to proving the physical elements of the offence.⁸⁷

⁸¹ Explanatory notes, p 28.

⁸² Explanatory notes, p 16.

⁸³ Submission 2, p 1.

⁸⁴ Submission 6, 14.

⁸⁵ Submission 7, p 4.

⁸⁶ Submission 13, p 3.

⁸⁷ OIR response to submissions 1-13, p 13.

The Boland Review found that the threshold of reckless conduct was contributing to a low number of successful Category 1 prosecutions across WHS jurisdictions and recommended an alternative fault element of gross negligence, or equivalent, be included in the Category 1 offence in the model WHS Act.⁸⁸

The alternative fault element of negligence is designed to ensure the effective operation of the offence and penalty framework and remove barriers to successful conviction for Category 1 offences. This will ensure the deterrent effect of the offence is achieved and that convictions for the most serious breaches of the WHS Act involving criminal negligence can incur the significantly higher penalties available for Category 1 convictions.⁸⁹

Category 1 offences would address the most serious breaches where there was a high level of risk of death or serious harm and the duty holder was reckless or negligent in their conduct.⁹⁰

Committee comment

The committee has considered the proposed amendment to the heading for section 21 to 'Negligent or reckless conduct – category 1' and the insertion of negligence as a fault element for the Category 1 offence. The committee is satisfied the amendment will fulfil its intention to remove barriers to successful conviction for Category 1 offences and ensure the deterrent effect with the most serious criminal negligence incurring significantly higher penalties available for Category 1 convictions.

2.6 Prohibiting persons from entering insurance contracts or being granted indemnity, or benefiting from these arrangements, to cover liability for WHS fines (clause 13)

2.6.1 Background

Clause 13 inserts new sections 272A (Insurance or other indemnity against penalties) and 272B (Officer may be taken to have committed offence against s272A).

Proposed new section 272A would make it an offence for a person, without a reasonable excuse, to:

- enter into a contract of insurance or other arrangement that purports to insure or indemnify a person for a liability for all, or part of, a monetary penalty under the WHS Act;
- provide a contract of insurance or an indemnity for a liability for all or part of a monetary penalty under the WHS Act
- take the benefit of any of these arrangements that purport to insure or indemnify a person for a liability for all, or part of, a monetary penalty under the WHS Act.⁹¹

The maximum penalty for this new offence is 500 penalty units.⁹²

The explanatory notes state that the proposed new section 272B seeks to provide for the liability of an officer of a body corporate where they are involved in the commission of the offence by the body corporate. The proposed new section 272B is a deemed liability provision under which the officer will only be liable if they authorised or permitted the conduct or were knowingly concerned in the offence committed by the body corporate.⁹³

⁸⁸ Explanatory notes, p 16.

⁸⁹ OIR response to submissions 1-13, p 13.

⁹⁰ Explanatory note, p 17.

⁹¹ See also explanatory notes, p 29.

⁹² Clause 13, see also explanatory notes, p 18.

⁹³ Explanatory notes, p 18.

2.6.2 New penalties

With these changes, the Bill proposes a maximum penalty of 500 penalty units (\$77,400) should someone knowingly enter into or benefit from a contract of insurance or other arrangement that purports to insure or indemnify a person for a liability for all or part of a monetary penalty under the WHS Act or the SRWA Act. If a body corporate commits the offence, in certain circumstances each officer of the body corporate is taken to have also committed the offence. Bill, cl 4 (SRWA Act, new ss 42A, 42B); Bill cl 13 (WHS Act, new ss 272A, 272B). The value of a penalty unit in this instance is \$154.80.⁹⁴

2.6.3 Impact on human rights

The committee notes the Bill has the potential to impact a person's human rights in relation to right to property.

The Boland review found that the deterrent effect of these laws is threatened by the capacity of companies to insure themselves against penalties for non-compliance with WHS laws. The purpose of the proposed limitation is to prohibit a person from insuring or indemnifying themselves against a monetary penalty under the WHS Act, or providing a contract of insurance or indemnity for monetary penalties under the WHS Act, or taking the benefit of insurance or indemnity against monetary penalties under the WHS Act.

There is a strong connection between the limitation and its purpose. By prohibiting people from insuring or indemnifying themselves or others against monetary penalties for non-compliance with the WHS Act, the relevant limitations enhance the deterrent effect of WHS law. Persons found to have violated their obligations under the WHS Act will have to take financial responsibility for such failure.

2.6.4 Submissions

The Consultative Committee for Work-related Fatalities and Serious Injuries fully endorsed the proposed new offence 272A in clause 13. It believes this will be a deterrent to PCBUs and individuals who actively avoid their obligations to maintain a safe workplace.⁹⁵ This change was also supported by the QCU⁹⁶ and the AWU.⁹⁷

The QLS was broadly supportive of the amendments to the insurance provisions noting that these provisions have been recommended by review and inquiries.⁹⁸

The QLS questioned reversal of the onus of proof. In QLS's view the offence provisions could be drafted in a way that the onus of proving the elements remains with the prosecuting authority.⁹⁹

The AMIC contended that insurance prohibition should not cover insurance that covers WHS fines that could have come about by genuine mistake, mistaken advice, or something a reasonable person could not have foreseen occurring. The AMIC argued that some reference had to be taken to defending the coverage of insurance for indemnity related to incorrect legal advice, and that there is no coverage for genuine mistake/accident/or something that was not reasonably foreseeable.¹⁰⁰

2.6.5 Departmental response

Under the new offence, it is a defence if the person can show they had a reasonable excuse for entering the contract or arrangement, providing the insurance or indemnity, or taking the benefit of

⁹⁴ Explanatory notes, pp 17-18.

⁹⁵ Submission 2, p 1.

⁹⁶ Submission 6, p 14.

⁹⁷ Submission 12, p 3.

⁹⁸ Submission 13, pp 3-4.

⁹⁹ Submission 13, pp 3-4.

¹⁰⁰ Submission 4, p 10.

the contract, arrangement or indemnity. The evidential burden is on the accused to demonstrate they had a reasonable excuse.

This potentially infringes the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. In the case of this offence, it is justified because the defendant is the only person who will be able to provide evidence of any reasonable excuse relating to the offence. For example, a reasonable excuse may be that the person entered the insurance contract based on negligent legal advice that led them to reasonably believe the contract did not cover monetary penalties under the Act. This would not be known to the prosecution.¹⁰¹

Committee comment

The committee has considered the proposed new sections 272A (Insurance or other indemnity against penalties) and 272B (Officer may be taken to have committed offence against s272A) to prohibit persons from entering insurance contracts or being granted indemnity, or benefiting from these arrangements, to cover liability for WHS fines.

The committee is satisfied that its impact in regard to limiting the rights and liberties of individuals to engage in ordinary activities (taking out an insurance policy) is balanced and justifiable 'as the deterrent effect of penalties imposed under the WHS and SRWA legislation is significantly undermined if insurance or other arrangements can be used to pay the fines'.¹⁰²

¹⁰¹ OIR response to submissions 1-13, p 22.

¹⁰² Explanatory notes, p 23.

Appendix A – Submitters

Sub #	Submitter
001	The Shop Distributive and Allied Employees Association Queensland (SDA)
002	Consultative Committee for Work-related Fatalities and Serious Inc
003	United Fire Fighters Union Queensland (UFUQ)
004	Australian Meat Industry Council (AMIC)
005	Master Electricians Australia (MEA)
006	Queensland Council of Unions (QCU)
007	Civil Contractors Federation Queensland Limited (CCF)
008	Queensland Nurses and Midwives' Union (QUMU)
009	Urban Development Institute of Australia Queensland (UDIA)
010	Master Builders Queensland (MBQ)
011	Australian Rail, Tram and Bus Union, Queensland Branch (RTBU)
012	Australian Workers Union (AWU)
013	Queensland Law Society (QLS)
014	Construction, Forestry, Maritime and Employees Union (CFMEU)
015	Red Union Support Hub

Appendix B – Officials at public briefings

The committee held public briefings on 1 December 2023 and 30 January 2024.

The same officers provided both briefings.

Office of Industrial Relations, Department of Education

- Mr Peter McKay, Deputy Director-General
- Ms Andrea Fox, Executive Director, WHS Engagement and Policy Services
- Ms Janine McPherson, Director (Emergent and Environment WHS Policy), Work and Electrical Safety Policy
- Ms Renee McCarroll, Manager, Safety Legislation Reform, Work and Electrical Safety Policy

Appendix C – Witnesses at public hearing

The committee held a public hearing in Brisbane on 30 January 2024.

Queensland Council of Unions (QCU)

- Mrs Jacqueline King, General Secretary
- Mr Nate Tosh, Legislation and Policy Officer

Australian Meat Industry Council (AMIC)

- Mr Lyle Ward, Training and Workforce Adviser
- Ms Cheryl Wolens, General Manager Workforce Services

Master Electricians Australia (MEA)

- Mr Chris Lehmann, National Advocacy Manager
- Ms Georgia Holmes, Policy and Communication Advisor

Master Builders Queensland (MBQ)

- Mr Craig Dearling, General Manager, Workforce Services
- Ms Kate Raymond, General Manager, Advocacy and Policy

Urban Development Institute Australia Queensland

- Ms Kirsty Chessher-Brown, Chief Executive Officer
- Ms Anna Cox, Director of Policy and Regional Services

United Fire Fighters Union Queensland (UFUQ)

- Mr Alex Griffin, Industrial Officer

Queensland Nurses and Midwives' Union (QUMU)

- Ms Deborah Twigg, Senior Research and Policy Officer
- Mr James Gilbert, Occupational Health and Safety Officer

Australian Rail, Tram and Bus Union, Queensland Branch (RTBU)

- Mr Peter Allen, Secretary
- Mr Lucas Kennedy, Principal Industrial Officer

The Shop Distributive and Allied Employees Association Queensland (SDA)

- Mr Darryn Gaffy, Senior Industrial Officer
- Mr Justin Power, Branch Secretary

Construction, Forestry, Maritime and Employees Union (CFMEU)

- Mr Michael Ravbar, Queensland Secretary
- Mr Kurt Pauls, OHS Co-ordinator

Red Union Supports Hub

- Mr Graeme Haycroft, Director
- Mr Chris Dekker, Director of Industrial Relations

Appendix D – Mapping recommendations to relevant parts of the Bill

Recommendation	How the Bill responds	Relevant clauses
<p>Review of the WHS Act <i>Review of the Work Health and Safety Act 2011 – Final Report 2022</i></p>		
<p>1 A. That the Minister consider amending Part 5 of the WHS Act to impose an obligation on PCBUs to, at least annually, advise workers in the business or undertaking:</p> <p>(a) about Part 5 of the WHS Act, in particular the capacity for workers to request the establishment of a work group, the election of an HSR, and the role, functions and powers of an HSR</p> <p>(b) that the PCBU invites a request for the establishment of a work group or work groups and the election of HSRs and deputy HSRs.</p> <p>B. That the Minister consider the manner and form of the advice by the PCBU to its workers should depend on the size of the business or undertaking. For PCBUs with less than 10 workers, the obligation could be discharged by the provision of a written form or other suitable means of prescribed information.</p> <p>C. That the Minister consider any necessary action, including amending the WHS Act, that should be taken to prevent PCBUs from discouraging or hindering worker(s) from: (a) requesting the establishment of a work group, and/or (b) nominating for election as an HSR or deputy HSR.</p>	<ul style="list-style-type: none"> - Insertion of a new ss 50B Invitation to request election of health and safety representatives - Insertion of new s 50A prohibiting the hindering, etc a worker from requesting the conduct of an election - Insertion of new s 62A with maximum penalty – 200 unit points <p>Rec 1B - The Bill does not implement this recommendation. Guidance will be developed to implement this recommendation subject to the passage and commencement of the Bill.</p>	<p>Clause 19</p> <p>Clause 19</p> <p>Clause 23</p>
<p>2 That the Minister consider amending Part 5 of the WHS Act to provide that:</p> <p>(a) negotiations for a work group be completed within 14 days of the request to establish a work group. This period may be extended by mutual agreement between the parties to the negotiations.</p> <p>(b) a party to failed negotiations may request the regulator to appoint an inspector to resolve the dispute.</p>	<ul style="list-style-type: none"> - Amendment of s 52 (Negotiations for agreement for work group); - Replacement of s 54 (Failure of negotiations) - Amendment of s 102 (Definitions for division) - Amendment of s102AA (Application of division) 	<p>Clause 20</p> <p>Clause 21</p> <p>Clause 37</p>

Recommendation	How the Bill responds	Relevant clauses
	<ul style="list-style-type: none"> - Amendment of s102B (Notice of dispute may be given to commission) - Insertion of new s 102BA - Amendment of s 102D (Review of particular decisions made by inspector) - Amendment of sch 2A (Reviewable decisions) <p>Rec 2B will be implemented by amendment to the WHS Regulation early in 2024.</p>	<p>Clause 38</p> <p>Clause 39</p> <p>Clause 40</p> <p>Clause 41</p> <p>Clause 70</p>
<p>3</p> <p>A. That the Minister consider amending the WHS Act to impose an obligation on PCBUs, so far as is reasonably practicable, to inform an HSR, and where the HSR is present on site make them available, when an inspector or WHS entry permit holder is on site and the visit is relevant to their work group.</p> <p>B. That the Minister consider amending the WHS Act to impose an obligation on PCBUs to provide HSRs with copies of any: (a) statutory notices issued by an inspector (b) entry notices issued by WHS entry permit holders, or (c) mandatory incident notifications made to the regulator by the PCBU.</p> <p>C. That the Minister consider amending section 68 of the WHS Act to make clear that: (a) HSRs have the capacity to request the provision of information from a PCBU about a safety issue, and (b)the PCBU is obliged to comply with such a request.</p> <p>D. That the Minister consider amending section 68 of the WHS Act to clarify that HSRs are permitted to take photographs, make videos, and take measurements and/or samples in the performance of their role.</p> <p>E. That the Minster consider introducing a regulation which provides that the resources, facilities, and assistance to be provided to an HSR by a PCBU are consistent with the relevant SWA Guidance.</p>	<ul style="list-style-type: none"> - Amendment of s 68 (Powers and functions of health and safety representatives) - Amendment of s 70 (General obligations of person conducting business or undertaking) - Insertion of new s 155A (Power of regulator to give particular information to particular persons) - Insertion of new pt 16, div 8, div 2 (transitional provision), new section 330 <p>Recommendation 3D is not being implemented in this Bill</p>	<p>Clause 24</p> <p>Clause 25</p> <p>Clause 52</p> <p>Clause 67</p>

Recommendation	How the Bill responds	Relevant clauses
<p>4</p> <p>A. That the Minister consider, consistent with recommendation 10 of the Boland Review, HSRs be permitted to choose their training provider.</p> <p>B. That the Minister consider amending section 21(2) of the WHS Regulation so the requirement for an HSR to complete their initial training in three months be shortened to 28 days, save for any circumstances where training is not available in the 28 day period, or where there is some pressing necessity at the business or undertaking which renders it impractical for the HSR to attend the training in that period.</p> <p>C. That the Minister consider amending section 21(1) of the WHS Regulation to reduce the requirement that HSRs conduct refresher training every three years to every 12 months.</p> <p>D. That the Minister consider amending section 72(4) of the WHS Act to reflect that during a period of training, HSRs are entitled to receive payment of the usual remuneration they would have received if they had been at work instead of at training.</p>	<ul style="list-style-type: none"> - Amendment of s 72 (Obligation to train health and safety representatives) - Insertion of new s 102AA <p>Rec 4B and 4C will be implemented by amendment to the WHS Regulation early in 2024.</p>	<p>Clause 27</p> <p>Clause 38</p>
<p>5</p> <p>That the Minister consider amending section 85 of the WHS Act to provide that:</p> <p>(a) any direction to cease work by an HSR be issued to the PCBU, and</p> <p>(b) the PCBU has an obligation to cease work that is the subject of the direction until such time as the issue is resolved or the direction is set aside in accordance with the dispute resolution process.</p> <p>Section 85 of the WHS Act should still maintain the capacity for an HSR to issue a directive to a worker in circumstances where there is an immediate exposure to risk.</p>	<ul style="list-style-type: none"> - Amended section 85 (Health and safety representative may direct that unsafe work cease). - Insertion of a new section 85A (Contents of cease work notice) which sets out the content requirements of a cease work notice. - Insertion of new pt 16, div 8, sdiv 2 (transitional provision), new section 333 	<p>Clause 32</p> <p>Clause 33</p> <p>Clause 67</p>
<p>6</p> <p>A. That the Minister consider amending the WHS Act to reduce the time for compliance with a PIN from eight days to four days, except in circumstances where all parties agree to extend the timeframe.</p>	<ul style="list-style-type: none"> - Amendment of s 92 (Contents of provisional improvement notice) 	<p>Clause 34</p> <p>Clause 35</p>

Recommendation	How the Bill responds	Relevant clauses
<p>B. That the Minister consider reducing the period for when a person can ask the regulator to review a PIN to three days to align with the proposed timeframe in recommendation 6A.</p>	<ul style="list-style-type: none"> - Amendment of s 94 (Minor changes to provisional improvement notice) - Amendment of s 100 (Request for review of provisional improvement notice) - Insertion of new pt 16, div 8, sdiv 2 (transitional provision), new section 334 	<p>Clause 36</p> <p>Clause 67</p>
<p>7</p> <p>A. That the Minister consider amending the definition of ‘discriminatory conduct’ in Section 105 of the WHS Act to reflect the definition of ‘adverse action’ in the IR Act.</p> <p>B. That the Minister consider amending section 112 of the WHS Act to enable proceedings to be conducted in the QIRC and clarify that a relevant union has standing to commence the proceeding. Relevant union should be defined to mean a union who is entitled to represent the industrial interests of the worker/s affected by the contravention.</p>	<ul style="list-style-type: none"> - Amendment of s 105 (What is discriminatory conduct) - Amendment of s 112 (Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct) - Consequential amendment of s 114 (General provisions relating to orders) - Insertion of new pt 16, div 8, sdiv 2 (transitional provision), new section 335 	<p>Clause 42</p> <p>Clause 43</p> <p>Clause 44</p> <p>Clause 67</p>
<p>8</p> <p>That the Minister consider amending section 47 of the WHS Act to require:</p> <p>(a) PCBUs to consult with a representative of a worker, where requested by the worker, and</p> <p>(b) provide that, where a representative is requested by a worker, the parties agree on the details of when and where the consultation will occur.</p>	<ul style="list-style-type: none"> - Amendment of s 48 (Nature of consultation) - Insertion of new pt 16, div 8, sdiv 2 (transitional provisions), new section 328 	<p>Clause 18</p> <p>Clause 67</p>
<p>9</p> <p>That the Minister consider amending section 75 of the WHS Act to provide that an HSC be established as soon as practicable but no later than 28 days after a request is made.</p> <p>B. That the Minister consider whether section 75 of the WHS Act should permit the making of regulations which identify a definition of high risk work and provide that in the case of such high risk work, an</p>	<ul style="list-style-type: none"> - Amendment of s 75 (Health and safety committees) - Amendment of sch 1 (Application of Act) - Insertion of new pt 16, div 8, sdiv 2 (transitional provision), new section 331 	<p>Clause 28</p> <p>Clause 68</p> <p>Clause 67</p>

Recommendation	How the Bill responds	Relevant clauses
<p>HSC must be established before the commencement of the high risk work.</p>	<p>Recommendation 9B is to be considered for a future amendment to the WHS Regulation</p>	
<p>10 That the Minister consider amending Part 5, Division 4 of the WHS Act to provide that in the event there is a dispute about the formation or composition of an HSC:</p> <p>(a) A party is entitled, at any time during the 28 day period proposed in recommendation 9A, to request that the regulator appoint an inspector to resolve the dispute.</p> <p>(b) Within seven days of being appointed, the inspector must first attempt to assist the parties to resolve the dispute on their own and if such resolution is not possible, make a determination about the formation or composition of the HSC. This decision would be excluded from the internal and external review process.</p> <p>(c) The parties to the dispute may notify the QIRC about a dispute over that determination. However, pending any order of the QIRC, the determination of the inspector will remain in force until the matter is heard and determined by the QIRC. Specific legislative provisions will need to be added granting the QIRC power to deal with such matters.</p>	<ul style="list-style-type: none"> - No direct referencing to Part 5, Div 4 but covered in clause (page 31 of Bill). - Amendment of s75 (Health and safety committees) within s75(1)(a) - Amendment of s76 (Constitution of committee), s76(5), (6), (6A), (6B) and (8) - Amendment of s 102D (Review of particular decisions made by inspector) - Amendment of sch 2A (Reviewable decisions) 	<p>Clause 28</p> <p>Clause 29</p> <p>Clause 29</p> <p>Clause 41</p> <p>Clause 70</p>
<p>11 That the Minister consider amending section 118 of the WHS Act to:</p> <p>(a) provide that WHS entry permit holders are permitted to remain at the premises for so long as is necessary to complete the exercise of their statutory powers, subject to the limitation imposed by section 126 of the WHS Act</p> <p>(b) confirm that a WHS entry permit holder is entitled to gain access to employee records that relate to the suspected contravention without needing to wait the 24 hours provided for in section 120 of the WHS Act. This would also require changes to allow WHS permit holders to consult with workers about the resolution and finalisation of any suspected contraventions without the need to give 24 hours' notice as required by section 122 of the WHS Act, and</p>	<ul style="list-style-type: none"> - Amendment of s118 (Rights that may be exercised while at workplace) - Amendment of s119(3) (Notice of entry). <p>Recommendation 11(c) is not being implemented in this Bill</p>	<p>Clause 45</p> <p>Clause 46</p>

Recommendation	How the Bill responds	Relevant clauses
(c) provide that WHS entry permit holders may take photographs, take videos, or make measurements and/or samples while at the premises.		
12 That the Minister consider amending section 148(a) of the WHS Act to make clear that the risk of injury or danger to public safety referred to is not related to the suspected contravention, but a risk of injury or danger to public safety at large.	- Amendment of s 148 (Unauthorised use or disclosure of information or documents)	Clause 49
13 That the Minister consider amending section 119 of the WHS Act to clarify that the provision of the notice is not a pre-condition to entry and that any defects or invalidity in the notice issued does not affect the validity of an entry pursuant to section 117 of the WHS Act.	- Amendment of s 119 (Notice of entry)	Clause 46
14 That the Minister consider amending section 128 of the WHS Act to clarify that a PCBU cannot require a WHS entry permit holder to comply with an occupational health and safety requirement at the site if compliance with that requirement would unreasonably hinder or delay the exercise of the statutory rights conferred by sections 117 and 118 of the WHS Act or would otherwise defeat the exercise of those rights.	- Amendment of s 128 (Work health and safety requirements)	Clause 47
15 That the Minister consider requesting OIR to explore all mechanisms available to ensure the anonymity of the worker and prevention of any adverse action including any necessary amendments to clarify section 130 of the WHS Act.	Not addressed in the Bill	
16 A. That the Minister consider amending the WHS Act to give registered unions, WHS entry permit holders, and persons affected standing to commence civil penalty proceedings for contraventions of sections 126 and 144 to 147 of the WHS Act. Further, in consultation with OIR, consideration be given to whether it is desirable for the persons identified to be given standing to commence civil penalty proceedings for the balance of civil penalty offences contained in Part 7 of the WHS Act.	<ul style="list-style-type: none"> - Amendment of s 255 (Proceedings for contravention of WHS civil penalty provision) - Amendment of s 258 (Civil proceeding rules and procedure to apply) - Amendment of s 259 (Proceeding for a contravention of a WHS civil penalty provision) - Replacement of ss 260 and 261 	<ul style="list-style-type: none"> Clause 58 Clause 59 Clause 60 Clause 61

Recommendation	How the Bill responds	Relevant clauses
<p>B. That the Minister consider amending the WHS Act to transfer civil penalty proceedings for a contravention of a WHS civil penalty provision to the QIRC.</p>	<ul style="list-style-type: none"> - Amendment of s 262 (Recovery of monetary penalty) - Amendment of 263 (Civil double jeopardy) - Insertion of new pt 16, div 8, sdiv 2 (transitional provisions), new section 337 	<p>Clause 62</p> <p>Clause 63</p> <p>Clause 67</p>
<p>17 That the Minister consider amending the WHS Act to provide that, in the case of an application for external review, the costs of the hearing follow the event and that no other order for costs may be made.</p>	<ul style="list-style-type: none"> - Insertion of new s 229EA. - Insertion of new pt 16, div 8, sdiv 2 (transitional provisions), new section 336 	<p>Clause 55</p> <p>Clause 67</p>
<p>18 That the Minister consider amending section 80(1) of the WHS Act to:</p> <p>A. include a relevant union as a party principal to the dispute. Relevant union should be defined as:</p> <p>(a) a union who is entitled to represent the industrial interests of the workers who are affected by the dispute, and</p> <p>(b) which has sought to be involved in the resolution of the issue.</p> <p>B. clarify that where a worker(s) is in a work group where an HSR has not yet been elected, the worker(s) may appoint a representative.</p>	<ul style="list-style-type: none"> - Amendment of s 80 (Parties to an issue) - Amendment of s 102A (Definitions for division) - Insertion of new pt 16, div 8, sdiv 2, new section 332 	<p>Clause 30</p> <p>Clause 37</p> <p>Clause 67</p>
<p>19 That the Minister consider amending the definition of a ‘union’ in Schedule 5 of the WHS Act to delete sub-paragraph (c) which includes “an association of employees or independent contractors, or both, that is registered or recognised”.</p> <p>B. Schedule 5 of the WHS Act to exclude an employee or officer of, or acting for, an entity (other than a union as defined in Schedule 5) that purports to represent the industrial interests of employees or employers.</p> <p>C. That the Minister consider clarifying, to the extent possible, any other circumstances in the WHS Act where ambiguity may persist in</p>	<ul style="list-style-type: none"> - Amendment of Sch 5 (Dictionary) new definition of ‘union’ - Insertion of new pt 5, div 1AA, definitions of ‘representative’, ‘excluded entity’ and ‘suitable entity’ - Amendment of s 61 (Procedure for election of health and safety representatives) - Amendment of s 68 (Powers and functions of health and safety representatives) 	<p>Clause 71</p> <p>Clause 17</p> <p>Clause 22</p> <p>Clause 24</p>

Recommendation	How the Bill responds	Relevant clauses
<p>relation to the use of terms such as 'union', 'representative', 'person assisting' and the like.</p>	<ul style="list-style-type: none"> - Amendment of s 70 (General obligations of person conducting business or undertaking) - Amendment of s 112 (Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct) 	<p>Clause 25</p> <p>Clause 43</p>
<p>20 A. That the Minister consider amending section 102B(1) of the WHS Act to delete the requirement that the parties first seek to have an inspector appointed to resolve a WHS dispute before notifying a dispute to the QIRC.</p> <p>B. That the Minister consider requesting the inspectorate to undertake a comprehensive internal review of procedures and conduct an education program to ensure that inspectors are aware that when they are appointed to assist in resolving a dispute, they still retain their compliance powers and that they should exercise those powers if they consider that the circumstances warrant the exercise of a compliance power.</p>	<ul style="list-style-type: none"> - Insertion of new s 102AA - Amendment of s 102B (Notice of dispute may be given to commission) - Insertion of new s 102BA <p>Recommendation 20B is a non legislative recommendation</p>	<p>Clause 38</p> <p>Clause 39</p> <p>Clause 40</p>
<p>21 That the Minister consider elevating the hierarchy of controls from Part 3.1 of the WHS Regulation to the WHS Act</p>	<p>Not addressed in the Bill</p>	
<p>22 A. to refer to where an employee has been absent from work for four consecutive days, or a more beneficial definition if one is identified through the considerations of incident notification that are occurring nationally in response to the Boland Review.</p> <p>B. That the Minister consider amending the WHS Act to introduce a new obligation for a PCBU to notify an incident which did not result in a serious injury or illness but had the capacity to do so.</p> <p>C. That the Minister consider requesting OIR to confer with DJAG as to whether non-compliance with the notifiable incident reporting requirements should be an infringeable offence.</p>	<p>Not addressed in the Bill</p>	

Recommendation	How the Bill responds	Relevant clauses
<p>23 That the Minister consider requesting OIR to assess what administrative arrangements may be necessary to ensure that the inspectorate is bringing cases where a PCBU has multiple statutory notices issued to them to the attention of the WHSP. The purpose of this would be to ascertain whether the history of non-compliance reveals a systemic failure to comply with the duties imposed by the WHS Act and whether a prosecution is appropriate.</p>	<p>Not addressed in the Bill</p>	
<p>24 That the Minister consider ensuring effective enforcement action can be taken against an accredited assessor for providing false and misleading information in the context of conducting assessments.</p>	<p>Not addressed in the Bill</p>	
<p>25 That the Minister consider amending the WHS Act to remove the automatic expiry of codes of practice after five years and instead provide for a review of codes of practice at least every five years with the level of review to be determined by OIR.</p>	<ul style="list-style-type: none"> - Amendment to s274 (Approved codes of practice) to remove section 274(4C) which provides that a code of practice expires 5 years after approval. - New s274(7) requires the Minister to ensure a code of practice is reviewed at least every 5 years - Insertion of new pt 16, div 8, sdiv 2, new section 338 	<p>Clause 66</p> <p>Clause 66</p> <p>Clause 67</p>
<p>26</p> <p>A. That the Minister consider amending the definition of ‘high risk plant’ in Schedule 1, Part 1, of the WHS Act to reflect Schedule 1, section 6 of the model WHS Act, that high risk plant means plant prescribed as high risk plant.</p> <p>B. That the Minister consider requesting OIR to assess the definition of plant items included in ‘high risk’ to ensure it is current and achieving intended public health and safety benefits.</p> <p>C. That the Minister consider whether inspectors should have the ability to issue prohibition notices for plant items that present a risk of catastrophic failure if inspection, maintenance and testing requirements are not evidenced (e.g., amusement devices, cranes and concrete pumping plant).</p>	<ul style="list-style-type: none"> - Amendment of Sch 1 (Application of Act) - Recommendations 26B and 26C are not addressed in the Bill 	<p>Clause 68</p>
<p>27 That the Minister consider conducting an annual review for a period of three years, following the introduction of any requirement to</p>	<p>Not addressed in the Bill</p>	

Recommendation	How the Bill responds	Relevant clauses
<p>report near misses. The purpose of such a review will be to establish the extent of incidents involving mobile plant and whether licensing for mobile plant should be reintroduced.</p>		
<p>28 A. That the Minister consider clarifying the role of the WHS Board and the interaction between the WHS Board and OIR to ensure a singular focus on improving WHS outcomes</p> <p>B. That the Minister consider reviewing the current ISSCs to ensure appropriate coverage of relevant industries, and that specific consideration given to the size and complexity of the ISSCs. The Minister could consider subsequent legislative or administrative changes.</p>	<ul style="list-style-type: none"> - Recommendation 28A not addressed in the Bill - Amendment of sch 2 (The regulator and local tripartite consultation arrangements) - Insert pt 16, div 8, sdiv 2 (transitional provision) (new section 339) 	<p>Clause 69</p> <p>Clause 67</p>
<p>29 That the Minister consider amending Schedule 2, section 23B of the WHS Act so that the Affected Persons Committee is renamed the Consultative Committee for Work-related Fatalities and Serious Incidents.</p>	<ul style="list-style-type: none"> - Insert pt 16, div 8, sdiv 2 (transitional provision) (new section 340 (Change in committee name)) - Amends Schedule 2, section 23B renames the Persons Affected by Work-related Fatalities and Serious Incidents Consultative Committee (the affected persons committee) as the Consultative Committee for Work-related Fatalities and Serious Incidents* <p><i>*Note; this amendment does not establish a new committee.</i></p> <ul style="list-style-type: none"> - Consequential amendments due to the name change of the committee. 	<p>Clause 67</p> <p>Clause 69</p> <p>Clause 71</p> <p>Bill, Schedule 2, Part 2A</p>
<p>30 That the Minister consider elevating existing requirements for toilets in the code of practice into the WHS Regulation and harmonising the language used in the new provisions. Consideration should also be given to, consistent with the Guidelines for the prescription of penalty infringement notice offences under the State Penalties Enforcement Regulation 2014, prescribing non-compliance with toilet requirements (including the requirements specific to construction</p>	<ul style="list-style-type: none"> - Not addressed in the Bill 	

Recommendation	How the Bill responds	Relevant clauses
<p>19 Enable cross-border information sharing between regulators. Amend the model WHS Act to include a specific power enabling regulators to share information between jurisdictions in situations where it would aid them in performing their functions in accordance with the model WHS laws</p>	<p>Australia or where the notice relates to information, documents or evidence in another jurisdiction.</p> <ul style="list-style-type: none"> - New section 271A clarifies circumstances in which WHS regulators can share information with other persons (corresponding regulators in other jurisdictions). Essentially restructures existing provision s271 and inserts new s271A to provide for circumstances when information can be shared with a corresponding regulator to facilitate cross-jurisdictional investigations. - New section 271A(3)(b) includes a reference to ‘another Act or law’ to enable Commonwealth laws to be prescribed by regulation *. - Consequential amendments to s 271 – including as a result of new section 155A - Additionally amends 41(3)(c)(ii) SRWA Act to enable Commonwealth laws to be prescribed under a regulation.* <p>Note* <i>This amendment ensures regulators can disclose, give access to, or use information where reasonably believed by the regulator that the disclosure, access or use is necessary for the enforcement of a Commonwealth law prescribed by regulation.</i></p>	<p>Clause 65</p> <p>Clause 65</p> <p>Clause 64</p> <p>Clause 11</p>
<p>23a. Enhance Category 1 offence. Amend s 31 of the model WHS Act to include that a duty holder commits a Category 1 offence if the duty holder is grossly exposing an individual to a risk of serious harm or death.</p>	<ul style="list-style-type: none"> - Includes negligence as a fault element in the Category 1 offence, in conjunction with reckless conduct.* - The amendment is mirrored in the SRWA Act 	<p>Clause 16</p> <p>Clause 8</p>

Recommendation	How the Bill responds	Relevant clauses
	<ul style="list-style-type: none"> - Note* <i>The incorporation of negligence seeks to lower the threshold for conviction for Category 1 offence.</i> 	
<p>23b Amend the model WHS Act to provide for a new offence of industrial manslaughter.</p> <p>Note: The model Work Health and Safety Act has been amended to provide that each jurisdiction may insert provisions to create an offence of industrial manslaughter. The agreed model industrial manslaughter penalty amounts, \$18 million for a body corporate and 20 years imprisonment for an individual.</p>	<ul style="list-style-type: none"> - An industrial manslaughter offence was introduced into the WHS Act by the Work Health and Safety and Other Legislative Amendment Act 2017 (QLD). 	
<p>24 Improve WHS regulator accountability for investigation progress. Amend the model WHS Act to remove the 12-month deadline for a request under s 231 that the regulator bring a prosecution in response to a Category 1 or Category 2 offence and to ensure ongoing accountability to the person who made the request until a decision is made on whether a prosecution will be brought</p>	<ul style="list-style-type: none"> - Amends s231 to extend 12 months to no more than 18 months to request a category 1 or 2 prosecution after an act or omission. - Includes that a person may request a category 1 or 2 prosecution be brought within 6 months of a coronial report being made and/or an inquiry or inquest ending - 231(2A)(a) requires regulator to provide update on of the investigation, at least every 3 months to the applicant making the request until completion of the investigation. - 231(2A)(b) requires WHS Prosecutor to, when the investigation is complete; advise applicant of outcome of complaint, including reasoning for or against prosecution and, to advise the person whom the application is made against, including reasoning for or against prosecution. 	<p>Clause 57</p> <p>Clause 57</p> <p>Clause 57</p> <p>Clause 57</p>

Recommendation	How the Bill responds	Relevant clauses
<p>26 Prohibit insurance for WHS fines. Amend the model WHS Act to make it an offence to:</p> <ul style="list-style-type: none"> • enter into a contract of insurance or other arrangement under which the person or another person is covered for liability for a monetary penalty under the model WHS Act • provide insurance or a grant of indemnity for liability for a monetary penalty under the model WHS Act, and • take the benefit of such insurance or such an indemnity 	<ul style="list-style-type: none"> - Introduction of new offence in 272A (Insurance or other indemnity against penalties). New section 272B provides for the liability of an officer of a body corporate where they are involved in the commission of the offence by the body corporate. - Transitional provisions delay the commencement of the offence in the WHS Act - The offence is mirrored in the SRWA Act - Transitional provisions delay the commencement of the offence in the SRWA Act 	<p>Clause 13</p> <p>Clause 14</p> <p>Clause 4</p> <p>Clause 6</p>

Appendix E – Abbreviations and acronyms

Abbreviation/acronym	Definition
Bill	Work Health and Safety and Other Legislation Amendment Bill 2023
committee	Education, Employment, Training and Skills Committee
WHS Act	Work Health and Safety Act 2011
WHS Regulation	Work Health and Safety Regulation 2011
WHS Act Review Report	Review of the <i>Work Health and Safety Act 2011</i> – Final Report 2022
The Boland Review	Review of the Model Work Health and Safety Laws 2018
OIR	Office for Industrial Relations
<i>FLPs</i>	Fundamental legislative principles
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
HSR	Health and Safety Representative
PSBU	Person conducting a business or undertaking
RTO	Registered training organisation
PIN	Provisional improvement notice
QIRC	Queensland Industrial Relations Commission
SDA	The Shop Distributive and Allied Employees Association Queensland
UFUQ	United Fire Fighters Union Queensland
AMIC	Australian Meat Industry Council
MEA	Master Electricians Australia
QCU	Queensland Council of Unions
CCF	Civil Contractors Federation Queensland Limited
QUMU	Queensland Nurses and Midwives' Union
UDIA	Urban Development Institute of Australia Queensland
MBQ	Master Builders Queensland

RTBU	Australian Rail, Tram and Bus Union, Queensland Branch
AWU	Australian Workers Union
QLS	Queensland Law Society
CFMEU	Construction, Forestry, Maritime and Employees Union

All Acts are Queensland Acts unless otherwise specified.

Statement of Reservation

LNP Members of the Education, Employment, Training and Skills Committee

The LNP Opposition members of the committee dissent from the recommendations of this committee report and we do not agree that the Work Health and Safety and Other Legislation Amendment Bill 2023 (the bill) should be passed. Although the WHS Act Review cited in the explanatory notes states that there is widespread support for the measures in this bill, the identity of submitters and consulted stakeholders has been made confidential by the review's authors. It is therefore far from certain that the support referred to is in fact as broad as stated.

The Labor Government claims that this bill's purpose is to implement necessary reforms to strengthen workers representation in relation to Work Health and Safety (WHS) matters in their workplaces. We believe that the safety of people in their workplaces is absolutely paramount. However this bill, far from enhancing workers' advocacy and interests in relation to WHS matters, is a backwards step. The bill in fact removes a worker's right to choose who is involved in representing their interests, and it empowers Labor Party-supporting and/or affiliated the trade unions¹ (unions) to barge in and "represent" workers on WHS matters – even in cases where such intervention by a union is opposed by the workers concerned. This bill is, in our view, a sell-out of Queensland workers in order to reward the Miles Labor Government's financial and political benefactors in the trade union movement.

Specifically, the bill seeks to legislatively establish a monopoly for a single predetermined union as the sole entity allowed to represent or assist workers on WHS matters in a workplace. It also legislatively creates new right-of-entry powers which enable a predesignated union to enter workplaces and intrude upon WHS matters, irrespective of the wishes of the workers involved.

As we know, when a product or service provider attains a monopoly, it's conduct, the quality of its product/service offerings, and its prices cease to be moderated by competitive forces – and this is invariably to the detriment of customers. In the context of WHS representation, the monopoly status and coercive entry powers conferred on unions by this bill will, in our view, result in poorer outcomes for workers.

Proponents of creating WHS representation monopolies for existing registered unions, (such as union bosses and the Labor Government), advance the notion that only *registered* unions are fit and sufficiently supervised to faithfully attend to and defend the interests of workers. This proposition is unconvincing and self-serving. At its core is the institutionalised assumption (or pretence) that an industrial organisation's status as registered or not registered, is the sole distinguishing test as to whether or not it will successfully advocate for and advance a worker's interests. If that is so, then why not permit all entities currently engaged by Queensland workers to represent their interests in WHS matters to register, and thereby be subject to the same regulatory oversight and accountability which is held up as the abiding assurance of excellence?

Indeed, at the public committee hearing conducted on 30 January 2024, it was put to representatives of the QNMU by the Member for Southern Downs that "Red Unions", such as the Teachers Professional Association of Queensland and the Nurses Professional Association of Queensland (which the QNMU argues are unfit to represent workers) might be admitted to registration with the Industrial Commission in order that Red Unions might be subject to the necessary regulatory strictures and oversight. The QNMU dismissed this suggestion out of hand.

¹Some unions such as the Queensland Nurses and Midwives' Union (QNWU) and Queensland Teachers' Union (QTU) publicly claim not to support any political party, however they channel their members' funds to/for the Labor Party through contributions to the Queensland Council of Unions. Unions aligned with the Labor Party also provide support to Labor Party electioneering in the form of paid union staff support, research, facilities and third party election campaigning including electronic and print media advertising, social media campaigns and billboards.

This rejection, in our view, exposes the real objection entertained by unions to the likes of “Red Unions” in being able to represent workers in WHS matters. That objection, of course, is an objection to unwelcome competition from entities which offer better services, but at a lower cost.

We are particularly concerned about the glaring and shameful conflict of interest that exists where the government uses its majority in parliament to simultaneously legislate for the benefit of its financial and political benefactors, and also to the detriment of those financial and political benefactors’ competitors.

Specifically, the governing Labor Party benefits from large financial and in-kind election campaigning support funded by the trade union movement (both directly and via the Queensland Council of Unions), and also through third party campaigning activities undertaken by unions. The LNP members do not view such conflicts of interest as acceptable in a modern democracy.

Furthermore, Labor Party MPs depend upon the political patronage of trade unions for party endorsement in their respective seats, and for selection for additional ministerial and parliamentary appointments. Indeed, the decisive role of union powerbrokers in the ascension of Premier Steven Miles to his current position was extensively reported in the media. This dependence of Labor MPs upon union influence to retain their jobs is another clear conflict of interest in the case of this bill, as the bill’s provisions will reward those unions with monopoly powers and new rights of entry into workplaces, whilst simultaneously disadvantaging organisations which compete with those unions by locking them out of the system.

As LNP members of the committee, we believe that workers are entitled to choice, and that assumptions that “unions know best” are paternalistic and offensive.

A handwritten signature in blue ink, appearing to read 'J. Lister', with a large, sweeping flourish at the end.

Mr James Lister MP
Deputy Chair
Member for Southern Downs

A handwritten signature in blue ink, reading 'Brent Mickelberg', with a large, sweeping flourish at the end.

Mr Brent Mickelberg MP
Member for Buderim