

Safety Matters Alert

See you tomorrow – changes to WHS right of entry laws in Queensland

Work Health and Safety and Other Legislation Amendment Act 2014

WHAT YOU NEED TO KNOW

- New legislation in Queensland is designed to clamp down on the misuse of work health and safety (**WHS**) right of entry powers by unions and to make other changes in response to Queensland's recent review of the national model WHS laws (these laws started in Queensland on 1 January 2012).
- Queensland is likely to move further away from the national model WHS laws over time.

WHAT YOU NEED TO DO

When the new legislation starts:

- Ensure that WHS entry permit holders give 24 hours' notice before entering the workplace for suspected contraventions.
- Ensure that health and safety representatives (**HSRs**) give 24 hours' notice of before entry to a workplace of a person assisting a HSR.
- Educate HSRs on the removal of their power to direct workers to cease work.
- Stop sending the WHS Regulator up to date lists of HSRs.
- Use the reforms as an opportunity to re-engage with your workforce on health and safety matters.
- Continue to provide industry feedback to the Queensland Government on the national model WHS laws.

On 3 April 2014, the *Work Health and Safety and Other Legislation Amendment Bill 2014* (Qld) (**amendment Act**) was passed by the Queensland Parliament. It is expected to start on a date to be proclaimed in the near future.

In brief, the amendment Act will amend the *Work Health and Safety Act 2011* (Qld) (**WHS Act**) and the *Electrical Safety Act 2002* (Qld) (**ES Act**) to:

- require WHS entry permit holders to provide at least 24 hours', but no more than 14 days', notice of entry to a workplace to inquire into a suspected contravention;
- increase penalties for non-compliance with WHS entry permit conditions and introduce new penalties for failure to comply with notice of entry requirements;
- require HSRs to provide at least 24 hours', but no more than 14 days', notice of entry to a workplace of a person assisting the HSR;
- remove the power of HSRs to direct workers to cease unsafe work;
- remove the obligation on persons conducting a business or undertaking (**PCBUs**) to provide up to date lists of HSRs to the WHS regulator;
- allow for codes of practice adopted in Queensland to be approved, varied or revoked without requiring national consultation; and
- increase the maximum penalty that can be prescribed for offences in the regulations to the ES Act.

24 hour notice of WHS entry for suspected contraventions

The WHS Act currently says that a WHS entry permit holder must give notice of the entry and the suspected

contravention "as soon as is reasonably practicable *after* entering the workplace".

Feedback from the construction industry is that unions have been misusing right of entry powers to disrupt or shut down workplaces by "surprising" businesses with unsubstantiated concerns about WHS risks. The construction industry's concerns are said to be supported by evidence that WHS inspectors responded to 57 right of entry disputes at construction workplaces between July 2011 and July 2013 and found that the majority of the safety issues raised did not represent immediate or imminent risks to workers.

The amendment Act amends the notice of entry provisions in the WHS Act to require WHS entry permit holders to give at least 24 hours', but no more than 14 days', notice of the proposed entry and the suspected contravention to the relevant PCBU and the person with management or control of the workplace.

The same notice of entry requirements apply to HSRs when HSRs require persons assisting them to have access to the workplace.

The amendment Act also increases the maximum penalties for non-compliance with WHS entry permit conditions from \$10,000 to \$20,000, and introduces a new maximum penalty of \$20,000 for failure to comply with the notice of entry requirements. The Explanatory Note states that the new and increased penalties reflect "the need for more robust enforcement tools to allow the regulator to adequately deal with breaches and to have a deterrent effect against non-compliance".

Reduced powers for HSRs

Under the WHS Act, HSRs currently have the power to direct workers to cease work "if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard."

What amounts to a "serious risk" posed by an "immediate or imminent" danger can be a source of contention between HSRs and managers.

The amendment Act removes the power of HSRs to direct workers to cease unsafe work.

Individual workers will retain a statutory right to cease unsafe work. HSRs will still be able to issue provisional improvement notices. HSRs and individual

workers will still be able to raise safety concerns directly with the WHS regulator.

Stop sending HSR lists to regulator

One of the policy objectives of the amendment Act is to reduce the regulatory burden on, and compliance costs for, businesses. One of the ways the amendment Act aims to achieve this is by removing the requirement on PCBUs to provide up to date lists of HSRs and deputy HSRs to the WHS regulator. However, PCBUs will still be required to display up to date lists at the workplace.

Flexibility to vary codes of practice

The WHS Act currently requires the relevant Queensland Minister to consult with the Commonwealth, State and Territory governments, unions and employer organisations before approving, varying or revoking a Queensland code of practice. The amendments allow the Minister to approve, vary and revoke model codes of practice without the need for national consultation.

Increased penalties for electrical safety breaches

An amendment has been made to the ES Act so that the maximum penalty for an offence under the regulations to the ES Act is increased from \$4,000 to \$30,000. This amendment provides consistency with the maximum penalties under the regulations to the WHS Act.

Ashurst Comment

The reforms are likely to provide businesses with less disruption and greater operational certainty. They provide an opportunity for businesses to re-engage directly with their workforces on WHS matters. In practice, they are expected to increase the role that the WHS regulator plays in helping business and their workers to resolve WHS issues and disputes while reducing the role played by unions. The WHS regulator can also be expected to take enforcement action against WHS entry permit holders and HSRs who do not comply with the amendment Act (when it is in force).

The Queensland Government is still finalising its response to other issues that were considered by the industry review of the national model WHS laws. It is likely that additional amendments to the WHS Act will be introduced in time with a view to further reducing the administrative burden and cost on businesses.

Accordingly, Queensland is likely to move further away from the national model WHS laws over time. Other States have refused to adopt all aspects of the national model WHS laws and Victoria has refused to adopt them at all. It seems apparent that complete national harmonisation of WHS laws will not be realised under the current process.

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