

IEUA-QNT SUBMISSION

[20 September 2022]

Submission: Review of the Work Health and Safety Act 2011

The Independent Education Union – Queensland and Northern Territory Branch (IEU-QNT) welcomes the opportunity to provide feedback regarding the Office of Industrial Relations' Review of the Work Health and Safety Act 2011 [1] (the Act).

About IEU-QNT

IEU-QNT represents ~16,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in debate concerning industrial issues through Industrial Committee and through its national counterpart, the Independent Education Union of Australia, which receives input from teachers in all States and Territories.

In the context of the current review, we would register a general concern that the timeframes for submission are insufficient to allow broader consultation with our members and we therefore seek assurance that provision will be made for such consultation prior to progression of a draft Bill.

Further, while we offer initial comments in response to the Terms of Reference (TOR) below, we reserve the right to modify our commentary in response to subsequent feedback from our members.

Response to the Committee's Terms of Reference

TOR 1. Consider and report on any need for amendments to ensure:

a) provisions relating to health and safety representatives are effective and operating as intended;

1. With regard to provisions relating to the election of Health and Safety Representatives (HSRs), we continue to encounter incidents where a Person Conducting a Business or Undertaking (PCBU)/Employer actively discourages the election of HSRs. This includes employers providing advice to employees that HSRs are not needed because they employ a Workplace Health and Safety Officer, or because they have appointed a "Safety Champion".
2. Further, where elected HSRs are present, they are still being called on by PCBUs/Employers from time to time to undertake duties usually required of a Workplace Health and Safety Officer.
3. This occurs despite the HSR role being representative only, with no obligation to undertake any duties on behalf of the employer under the Act [1].
4. Such practices are clearly contrary to the intentions of the Act and contribute to a situation where many members are unaware of how the various personnel are

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intended to work together and we suggest that an education campaign is needed to ensure that both employers and employees are aware of the different roles, and their responsibilities under the Act.

5. We also receive member reports of a reluctance, on the part of employers, to comply with training obligations that, at times, extends to clear obstruction of access to the mandated training, which is clearly in violation of Section 72 of the Act [1].
6. Given the movement of staff within workplaces, the changing nature of work and changes in technology, we suggest that HSRs should be required to undertake their refresher training once every year, rather than every three years, as currently specified in Section 21(2) of the Regulation [2].
7. This would ensure currency of regulatory knowledge and better management of WHS risks and allow for inconsistencies and anomalies in the operation of legislative provisions to be picked up far more quickly.
8. More regular training would also contribute to greater understanding of the HSR role.
9. Union members have also raised concerns regarding payment to HSRs attending training, and the impact of this on the usual provision of penalties or allowances.
10. While we note that Section 72 (1)(c) of the Act [1] offers provision of payment to HSRs while they are undertaking training, there are provisions in other jurisdictions which make it clear that the obligation to pay while training must not financially disadvantage an employee. We recommend the adoption of similar wording in the Queensland Act.
11. We are also aware that other unions have reported instances where employers have delayed training when, for example, the elected HSR is on a short-term contract and, as a result, training is in fact never undertaken.
12. We would, therefore, suggest that Section 21 of the Regulation [2], which specifies a timeframe of 3 months to undertake the training, be reworded to ensure training is booked within 14 days of the HSR being elected and commenced within a month of that date.

b) workers are appropriately represented and assisted in the workplace for the purpose of health and safety matters;

13. As indicated in our response to TOR 1, it is not uncommon for employers to discourage worker representation and we would therefore suggest that the Act should be modified to strengthen the provisions so that employers who fail to comply with the requirement to elect a HSR are subject to greater penalty.
14. It is also not unusual for our union to uncover significant issues regarding WHS representation for different workgroups. Our union continues to encounter

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instances whereby employers unreasonably delay negotiations for agreement for work groups in an attempt to frustrate the HSR election process. We have also received reports from members where schools may have two or three campuses, but the employer will only agree to one designated Work Group and, therefore, one HSR.

15. We believe that the Act could readily be refined to better articulate minimum requirements where employees are partitioned into more than one Work Group and/or when there is more than one workplace/occupation/shift arrangements etc.
16. It is also important to note that many Workplace Health and Safety Committees continue to be employer controlled and this leads to situations where reasonable recommendations arising from even the most active Committees are not granted genuine consideration by the employer.
17. While the Act does specific that WHS Committees should contain as many worker representatives as employer representatives (Section 76), there remain Committees which are dominated by employer representatives. In that context, we would suggest that the Act could do more to reinforce equity in constitution.

c) the effectiveness of the legislative framework for review and stay provisions with enforcement notices under the WHS Act; and

18. In respect to matters relevant to this TOR, we defer to, and support, the submissions of the Queensland Council of Unions.

d) provisions relating to the issue and dispute resolution are effective and operating as intended.

19. As a registered Union, IEU-QNT is included as a party for the purposes of Dispute Resolution under the Act, but not for the purposes of Issue Resolution. This is problematic and causes employers to believe they do not need to include Unions as a party during the issue resolution process.
20. While the issue resolution provisions refer to “the worker or worker’s representative”, we have had experience where employers have taken this to be the HSR or another person and refused access to Unions, which clearly disadvantages employees.
21. Section 80 of the Act [1] therefore requires amendment to ensure there is no doubt that Unions are considered an authorised party under the Act.
22. We would suggest the inclusion of “relevant union” in Part 5 of the Act as a definition under Division 5, similar to Division 7A Section 102A [1].

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TOR 2. Any other matters relating to the Act's overall effectiveness and performance in ensuring a balanced framework to secure health and safety of workers and workplaces and consider whether any legislative or administrative amendments are required.

23. We note that, under the current Act, matters associated with Discriminatory, Coercive or Misleading Conduct (Part 6 of the Act) are referred to the Magistrates Court.
24. Due to the breadth of matters that the Magistrates Court deals with, often the Magistrates are not intimately familiar with the WHS Act requirements, or discrimination legislation more generally.
25. It is our view that claims brought against Part 6 of the Act should be referred to the QIRC, as the Commission Members have the skills, experience and understanding of workplace matters of this nature.

Concluding Comments

While our union is able to offer some initial commentary regarding the Terms of Reference for the Department of Industrial Relations' Review of the Work Health and Safety Act 2011, we have concerns regarding timeframes for initial submissions. In the past, reviews have afforded significantly more time to provide submissions, while providing much greater opportunity to receive feedback from our members on the ground.

We draw the Department's attention to several matters associated with the roles and responsibilities of various designated Workplace Health and Safety Officers and Health and Safety Representatives and how the existing legislation impedes optimal function of those roles, and local WHS Committees. In particular, we suggest that relatively minor amendments to the legislation could significantly enhance a collaborative, constructive approach to health and safety within the workplace.

Our comments also extend to amendments that would more strongly support the involvement of unions, and improved judicial processes, when significant WHS issues are uncovered and suggest that such amendments are necessary to provide employees with confidence that their health and safety at work is a priority within legislative frameworks.

We will continue to monitor this review with our members as the Department of Industrial Relations progresses with its work and develops more detailed proposals for changes to existing legislation.



Terry Burke
Branch Secretary
Independent Education Union of Australia -Queensland and Northern Territory Branch
Tuesday 20 September 2022

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References

1. *Work Health and Safety Act 2011.*
2. *Work Health and Safety Regulation 2011.*