

Impact Analysis Statement

Summary IAS

Lead department	Department of Education, Office of Industrial Relations
Name of the proposal	Work Health and Safety and Other Legislation Amendment Bill 2023 Legislating recommendations from the <i>2022 Review of the Work Health and Safety Act 2011</i> and <i>2018 Review of model work health and safety laws</i> .
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Work Health and Safety Act 2011, Safety in Recreational Water Activities Act 2011, Public Health Act 2005</i>
Date of issue	27 November 2023

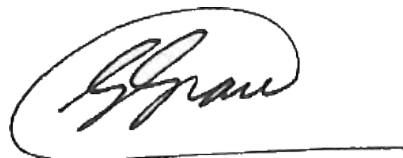
Proposal type	Details
Cabinet exemptions	<p>This proposal was exempted from further impact analysis in recognition that the recommendations from the <i>2022 Review of the Work Health and Safety Act 2011</i> were informed by fulsome consultation with industry stakeholders, and the recommendations predominately seek to clarify existing powers, functions and requirements in the Act to ensure it is operating as intended.</p> <p>Further, this proposal was exempted from further impact analysis in recognition that the <i>2018 Review of model work health and safety laws</i> (Boland Review) has been through an extensive national regulatory impact statement process.</p> <p>Cabinet approved for the Office of Industrial Relations to undertake a Post Implementation Review to start within two years of the commencement of the Work Health and Safety and Other Legislation Amendment Bill 2023. Terms of Reference will be developed in consultation with Queensland Treasury and Department of the Premier and Cabinet.</p>

Signed



Michael De'Ath
Director-General
Department of Education

Date: 24 / 11 / 2023



The Honourable Grace Grace MP
Minister for Education
Minister for Industrial Relations and
Minister for Racing

Date: 24 / 11 / 2023

Impact Analysis Statement

Summary IAS

Lead department	Department of Education, Office of Industrial Relations
Name of the proposal	Work Health and Safety and Other Legislation Amendment Bill 2023 Resolving legislative inconsistency between the <i>Work Health and Safety Act 2011</i> and the <i>Rail Safety National Law (Queensland)</i> (RSNL)
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Work Health and Safety Act 2011</i> (WHS Act)
Date of issue	27 November 2023

Proposal type	Details
Minor or machinery in nature	<p>The amendment to the WHS Act clarifies the application and scope of the WHS Act and the RSNL which is reflective of existing industry understanding and operational practice (enshrined through an agreed memorandum of understanding with the work health and safety regulators of all state and territory jurisdictions). It removes an amendment made to the WHS Act in 2017 (when amendments were made to transfer rail matters from state jurisdiction to the federal Office of the National Rail Safety Regulator). Omitting Schedule 1, Part 2, Division 3 of the WHS Act will allow the WHS Act to operate unhindered and concurrently with the RSNL.</p> <p>In restoring concurrent jurisdiction between both Acts, the legislation will reflect the current memorandum of understanding between the national rail safety regulator and state WHS regulators as well as expectations of industry who comply with the legislation according to that assumption. Regardless, the safety duties under the RSNL and WHS Act are largely analogous. Therefore, it is not anticipated for there to be any change in regulatory burden for community, industry, business or government as the change reflects current understanding, expectations and practices. As such, no regulatory impact analysis is required under the <i>Queensland Government Better Regulation Policy</i>.</p>

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Impact Analysis Statement

Summary IAS

Lead department	Department of Education, Office of Industrial Relations
Name of the proposal	Work Health and Safety and Other Legislation Amendment Bill 2023 Authority to bring proceedings under the <i>Work Health and Safety Act 2011</i>
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Work Health and Safety Act 2011</i> (WHS Act)
Date of issue	27 November 2023

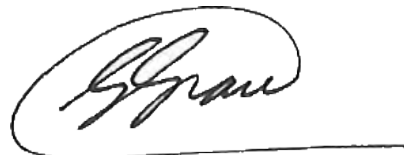
Proposal type	Details
Minor or machinery in nature	<p>The amendment allows the Work Health and Safety Prosecutor (WHS Prosecutor) to authorise the proceedings under sections 230 and 260 of the WHS Act (and consequentially the <i>Safety in Recreational Water Activities Act 2011</i>) to a qualified member of their office. It is intended for this change to increase the operational effectiveness and flow of work in the Office of the WHS Prosecutor.</p> <p>This change does not affect the scope of proceedings brought under the Acts. It is not anticipated that this change will have any regulatory impact on the community, industry, business or government. No regulatory impact analysis is required under the <i>Queensland Government Better Regulation Policy</i>.</p>

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Impact Analysis Statement

Summary IAS

Lead department	Department of Education, Office of Industrial Relations
Name of the proposal	Informal administrative release of enforcement notice information to entry permit holders and health and safety representatives
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Work Health and Safety Act 2011</i>
Date of issue	27 November 2023

What is the nature, size and scope of the problem? What are the objectives of government action?

Work health and safety entry permit holders (EPH) hold a valid entry permit under the *Fair Work Act 2009* (Cth) or *Industrial Relations Act 2016* as well as the *Work Health and Safety Act 2011* (WHS Act); and play an important role in helping keep workers safe by consulting and advising on WHS matters and inquiring into suspected contraventions of the WHS Act.

Under the WHS Act there is no legislative avenue for EPHs to directly request a copy of enforcement notices issued by inspectors to persons conducting a business or undertaking (PCBUs). Improvement notices, prohibition notices and non-disturbance notices are enforcement notices issued under Part 10 of the WHS Act. Consequently, this may limit the knowledge EPHs have of health and safety concerns at a particular worksite they have entered under the WHS Act.

While there are two avenues for an EPH to view an enforcement notice issued to a PCBU, they have their own limitations:

- section 210 (Display of notice), WHS Act requires a person issued with a notice to display a copy in a prominent place at or near the workplace; and
- administrative access through the *Right to Information Act 2009* (RTI Act).

Viewing notices under section 210 of the Work Health and Safety Act 2011

Under section 117 of the WHS Act, an EPH may enter a workplace for the purpose of inquiring into a suspected contravention under the Act that relates to, or affects, a relevant worker. The EPH must reasonably suspect before entering the workplace that the contravention has occurred or is occurring. EPHs also have a right of entry to a workplace under section 121 of the WHS Act to enter a workplace to consult on WHS matters. There is limited opportunity for an EPH to view a notice on display, as required by section 210 of the WHS Act, in circumstances where an EPH has entered a workplace under section 117 or 121 of the WHS Act. This also relies on the person issued with the notice to comply with the requirement to ensure the notice is displayed. The EPH is not able to make a copy of a notice that is on display.

Right to Information Act 2009

An EPH, like any person, may request access to notices issued to a PCBU under the RTI Act. While notices can be released under RTI, there are some limitations to EPHs accessing documents through this avenue:

- a decision of non-release, in situations where release would prejudice an ongoing investigation or a deliberative process;
- it is typically a lengthy process as consultation is required with affected parties and there is a legislative right for affected parties to dispute release; and
- fees associated with accessing documents under the RTI Act.

In order for HSRs to be able to effectively perform their role under the WHS Act, it is necessary for HSRs to be aware of health and safety issues relevant to their work group. Similar to EPHs, there is currently no legislative avenue for HSRs to request a copy of enforcement notices issued by inspectors to PCBUs. The display of notices under section 210 does not provide certainty that HSRs will be aware of the notices issued. An amendment to the WHS Act to require PCBUs to provide HSRs with copies of enforcement notices issued by inspectors is covered in a separate Summary IAS.

Objective

The objective of Government action is to ensure that EPHs and HSRs are appropriately informed and have better visibility of work health and safety issues identified by inspectors when notices have been issued under Part 10 of the WHS Act. Making relevant work health and safety information from enforcement notices available to EPHs and HSRs on request is intended to assist them in fulfilling their roles under the WHS Act.

The 2022 *Review of the Work Health and Safety Act 2011 (Review)* proposed several recommendations to clarify and enhance the role of EPHs. For example, recommendation 11a asked the Minister to consider extending the rights of EPHs to remain at a workplace for as long as is necessary to complete the exercise of their statutory powers. Similarly, the Review made recommendations relating to the provision of notices to health and safety representatives (HSRs) (recommendation 3B & 3C), on the basis that it is impossible for an HSR to be effective in the performance of their functions and powers if they are not apprised of the safety issues that have been identified at a workplace. These recommendations were accepted by the Government and are to be implemented through the Work Health and Safety and Other Legislation Bill 2023. The informal administrative release of relevant work health and safety information from enforcement notices to EPHs is similarly intended to assist EPHs in performing their role.

The rationale for allowing the regulator to disclose to a HSR of information contained in enforcement notices is that it provides an additional mechanism for an HSR to find out relevant WHS information for a work group in the event the HSR does not receive copies of notices from the PCBU.

What options were considered?

Option 1: Maintaining the status quo, that is, the ability to view notices on display under section 210 of the WHS Act and request administrative release of documents under the RTI Act.

Option 2: An amendment to the WHS Act to require a PCBU to provide a copy of an enforcement notice to an EPH: similar to WHS Act Review recommendation for a PCBU to provide a copy of an enforcement notice to an HSR.

Option 3: An amendment to the WHS Act to allow the regulator to provide information in enforcement notices to EPHs and HSRs, with safeguards to protect privacy and personal/confidential commercial information. The amendment to the WHS Act would then allow the regulator to establish an informal administrative release of information scheme for disclosure of this information on request.

What are the impacts?

For Option 2:

It was anticipated that placing a requirement on a PCBU to provide a copy of a notice to an EPH may result in an increased regulatory burden for PCBUs. Increased administrative costs were anticipated to be incurred through the actual provision of the notice, maintaining privacy of personal information, and maintaining records for a period of time.

For Option 3:

It is not anticipated that there will be any administrative or regulatory burden on EPHs or HSRs or PCBUs through the provision of notice information by the regulator. The avenue to access information from enforcement notices is new and is intended to provide an opportunity for additional information to support EPHs and HSRs in their roles established under the WHS Act. The information sought by EPHs or HSRs can be used to support their understanding of relevant workplace health and safety matters and enhance their ability represent workers on health and safety matters.

The informal administrative release of enforcement notice information provides an alternative access path for HSRs and EPHs to the RTI process. It will also remove the costs and reduce the time typically associated with RTI requests.

OIR anticipates additional costs for the department to administer this new process. The process is anticipated to include the following:

- an EPH or HSR can submit a request to the regulator in writing relating to the notice/s of interest.
- the regulator assesses whether the applicant is an EPH or HSR and may require the applicant to supply further information to support this assessment.

- the regulator assesses the request, including scope of request, sourcing the relevant information and determine any sensitivities of the information intended to be released (e.g., remove personal information in line with privacy laws).
- the regulator may release the information, or if the information cannot be released in this process an application may be referred to the RTI process.

The regulator will develop guidance material to support this new process.

Who was consulted?

Employer groups (e.g., Master Builders Queensland, Local Government Association of Queensland, Business Chamber Queensland) and unions (e.g., Queensland Council of Unions; Shop Distributive and Allied Employees' Association; Australian Workers Union; Queensland Nurses and Midwifery Union; Construction Forestry Maritime Mining Energy Union; Electrical Trades Union; Plumbers and Pipe Trades Employees Union) were consulted during development of the Work Health and Safety and Other Legislation Amendment Bill 2023 (the Bill) and were provided with an overview with this proposal; no concerns were raised with this proposal.

What is the recommended option and why?

The **recommended option** is to amend the WHS Act to enable the regulator to provide relevant work health and safety information in enforcement notices to EPHs and HSRs on request (Option 3). HSRs have been included as this provides an avenue to address circumstances where they may not have received copies of notices from a PCBU as required under another proposed amendment in the Bill. This approach reflects one of the WHS Act Review's guiding principles, namely that research has shown safety performance is improved when there is worker representation on health and safety matters. EPHs and HSRs being able to obtain relevant information from enforcement notices will enhance their ability represent workers on health and safety matters.

WorkSafe Victoria has an informal release of information avenue under the *Occupational Health and Safety Act 2004* (Vic). Under the Victorian scheme, information about occupational health, safety and welfare information (e.g., from notices) can be released to certain persons, including a registered employee organisation. WorkSafe Victoria's scheme has guidelines which explain the process for making a request. Information can only be released that is necessary to perform a designated function and is bound by other privacy legislation.

A similar approach is proposed for Queensland with an amendment to the WHS Act to be supported by guidelines. It is intended that the process will only apply to information contained in enforcement notices under Part 10 of the Act, to be provided to an EPH or HSR on request. Privacy and confidentiality will be maintained (e.g., non-release of phone numbers, personal or medical information, confidential commercial information).

Option 1 was not recommended as this would not provide appropriate access to enforcement notice information and support EPHs in exercising their rights and fulfilling their role under the WHS Act.

Option 2 was not pursued further as there would be an increase in administrative costs for PCBUs to comply with a request from an EPH for a copy of an enforcement notice. Costs for PCBUs could be incurred through the actual provision of the notice, maintaining privacy of personal information, and maintaining records for a period of time.

The recommended option is intended to provide EPHs with better visibility of relevant WHS information from notices issued by inspectors under the WHS Act and improve health and safety outcomes at workplaces. Making this information available to both EPHs and HSRs on request is intended to assist them in fulfilling their roles under the WHS Act.

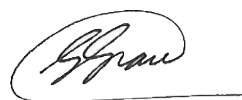
Impact assessment

	First full year	First 10 years
Direct costs – Compliance costs*	Nil.	Nil.
Direct costs – Government costs	1 x AO5 FTE (approx. \$125,600)	Cost of 1 x AO5 FTE over the course of 10 years is approximated to be: \$1,256,000

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