

**Summary of the *Review of the Work Health and Safety Act 2011 – Final Report Recommendations and the Queensland Government’s Response***

#		Recommendations	QLD Govt. position
<b>HEALTH AND SAFETY REPRESENTATIVES</b>			
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: <ul style="list-style-type: none"> <li>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, and</li> <li>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.</li> </ul>	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
	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: <ul style="list-style-type: none"> <li>a. requesting the establishment of a work group, and/or</li> <li>b. nominating for election as an HSR or deputy HSR.</li> </ul>	<b>ACCEPT</b>
2	A	That the Minister consider amending Part 5 of the WHS Act to provide that: <ul style="list-style-type: none"> <li>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.</li> <li>b. a party to failed negotiations may request the regulator to appoint an inspector to resolve the dispute.</li> <li>c. any inspector appointed to resolve the dispute must first attempt to assist the parties to resolve the dispute on their own and if such resolution is not possible, make a decision as to the constitution of the work groups within seven days. This decision would be excluded from the internal and external review process.</li> <li>d. the parties to the negotiations have the capacity to refer a dispute about the inspector’s decision to the QIRC for conciliation and/or arbitration, but that subject to any order of the QIRC, the decision of the inspector will stand and be implemented 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. These provisions should be based on the usual powers provided to the QIRC to resolve disputes.</li> </ul>	<b>ACCEPT</b>
	B	That the Minister consider amending section 16(b) of the WHS Regulation so the phrase ‘readily accessible’ expressly incorporates reference to the geographical locations in which work is performed, the work stream or work type, and shift arrangements.	<b>ACCEPT</b>

	C	That the Minister consider amending section 52(1) of the WHS Act to: <ul style="list-style-type: none"> <li>a. add a relevant union as a party principal to the negotiations. The phrase ‘relevant union’ should be defined to mean a union who is entitled to represent the industrial interests of the workers who are a party to the negotiation, and</li> <li>b. provide that the parties are to agree on the details of when and where the negotiations will occur.</li> </ul>	<b>ACCEPT</b>
3	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.	<b>ACCEPT</b>
	B	That the Minister consider amending the WHS Act to impose an obligation on PCBUs to provide HSRs with copies of any: <ul style="list-style-type: none"> <li>a. statutory notices issued by an inspector</li> <li>b. entry notices issued by WHS entry permit holders, or</li> <li>c. mandatory incident notifications made to the regulator by the PCBU.</li> </ul>	<b>ACCEPT</b>
	C	That the Minister consider amending section 68 of the WHS Act to make clear that: <ul style="list-style-type: none"> <li>a. HSRs have the capacity to request the provision of information from a PCBU about a safety issue, and</li> <li>b. the PCBU is obliged to comply with such a request.</li> </ul>	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
	E	That the Minister 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.	<b>ACCEPT</b>
4	A	That the Minister consider, consistent with recommendation 10 of the Boland Review, HSRs be permitted to choose their training provider.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
5	<p>That the Minister consider amending section 85 of the WHS Act to provide that:</p> <ul style="list-style-type: none"> <li>a. any direction to cease work by an HSR be issued to the PCBU, and</li> <li>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.</li> </ul> <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>	<b>ACCEPT</b>	

6	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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
7	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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
<b>WORKER REPRESENTATION AND PARTICIPATION</b>			
8		That the Minister consider amending section 47 of the WHS Act to require: <ul style="list-style-type: none"> <li>a. PCBUs to consult with a representative of a worker, where requested by the worker, and</li> <li>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.</li> </ul>	<b>ACCEPT</b>
9	A	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.	<b>ACCEPT</b>
	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 HSC must be established before the commencement of the high risk work.	<b>ACCEPT</b>
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: <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ul>	<b>ACCEPT</b>
11		That the Minister consider amending section 118 of the WHS Act to: <ul style="list-style-type: none"> <li>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</li> <li>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</li> </ul>	<b>ACCEPT</b>

		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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
<b>EFFECTIVENESS OF REVIEW AND STAY PROVISIONS FOR ENFORCEMENT NOTICES</b>			
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.	<b>ACCEPT</b>
<b>ISSUE AND DISPUTE RESOLUTION</b>			
18	A	That the Minister consider amending section 80(1) of the WHS Act to include a relevant union as a party principal to the dispute. Relevant union should be defined as: a. a union who is entitled to represent the industrial interests of the workers who are affected by the dispute, and b. which has sought to be involved in the resolution of the issue.	<b>ACCEPT</b>
	B	That the Minister consider amending section 80(1) of the WHS Act to 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.	<b>ACCEPT</b>
19	A	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 as an association".	<b>ACCEPT</b>
	B	That the Minister consider amending the definition of 'representative' in 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.	<b>ACCEPT</b>

	C	That the Minister consider clarifying, to the extent possible, any other circumstances in the WHS Act where ambiguity may persist in relation to the use of terms such as 'union', 'representative', 'person assisting' and the like.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
<b>ANY OTHER MATTERS RELATING TO THE WHS ACT'S OVERALL EFFECTIVENESS AND PERFORMANCE</b>			
21		That the Minister consider elevating the hierarchy of controls from Part 3.1 of the WHS Regulation to the WHS Act.	<b>ACCEPT</b>
22	A	That the Minister consider amending the definition of 'serious injury' 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.	<b>ACCEPT IN-PRINCIPLE</b>
	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.	<b>ACCEPT IN-PRINCIPLE</b>
	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.	<b>ACCEPT IN-PRINCIPLE</b>
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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
26	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.	<b>ACCEPT</b>
	B	That the Minister consider requesting OIR to assess the definition of plant items included in 'high risk plant' to ensure it is current and achieving intended public health and safety benefits.	<b>ACCEPT</b>
	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).	<b>ACCEPT IN-PRINCIPLE</b>
27		That the Minister consider conducting an annual review for a period of three years, following the introduction of any requirement to 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.	<b>ACCEPT IN-PRINCIPLE</b>

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.	<b>ACCEPT</b>
	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.	<b>ACCEPT</b>
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.	<b>ACCEPT</b>
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 <i>Guidelines for the prescription of penalty infringement notice offences</i> under the <i>State Penalties Enforcement Regulation 2014</i> , prescribing non-compliance with toilet requirements (including the requirements specific to construction workplaces in Schedule 5A of the WHS Regulation) as a penalty infringement notice offence.	<b>ACCEPT</b>
31		That the Minister consider establishing a review to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted.	<b>ACCEPT IN-PRINCIPLE</b>