



CCF QLD SUBMISSION REGARDING THE SAFE WORK AUSTRALIA REVIEW OF THE MODEL WORK HEALTH AND SAFETY LAWS

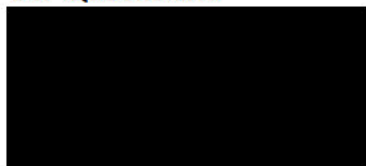


CIVIL CONTRACTORS
FEDERATION

CONTENTS

	PAGE
ABOUT THE CIVIL CONTRACTORS FEDERATION - QUEENSLAND	2
BACKGROUND	2
INDUSTRY PERSPECTIVE	2
WHITE CARD REFORM	2
PLANT OPERATOR LICENCING	3
QUEENSLAND TRENDS IN WH&S	4
RECOMMENDATIONS	5
CONCLUSION	5

This submission has been prepared on behalf of CCF QLD by:
James Burgess – Client Services – Policy and Research Officer
CCF Queensland



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ABOUT THE CIVIL CONTRACTORS FEDERATION - QUEENSLAND

The Civil Contractors Federation (CCF QLD) is the peak industry body for the civil construction industry in Queensland.

CCF QLD prides itself on being the voice of the civil construction industry and advocates for the interests of the industry to all levels of government. Furthermore, CCF QLD understands the local, state and national issues facing the civil construction industry.

Queensland's civil contractors range from small local businesses to publically listed companies and are involved in a range of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, port facilities and other civil infrastructure that support Queensland communities.

BACKGROUND

Through active engagement with civil contractor members and industry stakeholders, CCF QLD has identified multivariate perspectives on the implementation of the Model WH&S Act, Model WH&S Regulations and Model Codes of Practice.

Industry Perspective

The outlook within the civil construction industry has been positive on the WH&S harmonisation process. The application of a single set of legal requirements supports civil construction businesses operate across state boundaries. In addition, single suite of legal requirements allows for the development of more efficient and effective WH&S systems. This is clearly in contrast with the experience of the United Kingdom WH&S Model which contains two hundred sets of hazard specific Regulations under a single Act.

Civil contractors were optimistic regarding the future implications of the Model WH&S Laws and the continued harmonisation process. A trend of harmonisation 'creep' has been occurring as the relevant State Government authorities implement piecemeal changes to the Act and Regulations. Whilst this trend did not elicit concern, civil contractors have requested for the development of a mechanism to assist the user to more easily identify those subtle changes from state to state.

White Card Reform

The mandated Construction White Card is an excellent requirement. However, CCF QLD has recorded industry concerns regarding the insufficiency of Queensland's General Construction Induction (White Card) qualification, (Unit of Competency - CPCCWHS1001 *Prepare to work safely in the construction industry*).

White Card standards are necessary to properly prepare workers for a safety conscious career within the civil construction industry. Workplace Health and Safety Queensland (WHSQ) authorises registered training organisations (RTOs) to issue and replace general construction induction training cards white cards. As such, RTO's must enter into an agreement with WHSQ before delivering the training in Queensland. To obtain a general construction induction card an individual is required to undertake training with an RTO.

Industry trends indicate the proliferation of low cost online White Card courses which are often unduly short with less than three hours content. As such, these courses do not provide the depth of knowledge to equip an individual beginning a career in the civil construction industry.

While the White Card is mandated as a requirement for individuals who seek employment in the civil construction industry, the primary concern is centred on the likelihood that the required depth of knowledge of a participant will not be received given that most of these courses are now completed online.

By contrast, experts have indicated that a four to six hour interactive training course utilising both theoretical and practical methods is considered the base standard necessary for the delivery of training and preparation for individuals who seek to work within a civil construction environment.

The insufficiency of the current White Card is evident in the disconnect between the material delivered in the White Card courses and the training requirements identified in legislation such as manual handling, hazardous substances, safe use of hand-tools, working safely around operating plant etc. As such, all course material covered in a White Card induction should cover the necessary areas of an employer's responsibility. Furthermore, the implementation of national harmonisation of White Card content and standards would improve safety standards for civil contractors and workforces operating across States.

Plant Operator Licencing

An additional industry concern includes the deregulation of plant machinery operating licences. This retrograde step has had a negative impact on civil construction worksite safety. The identification of plant operator competency can be ensured through licencing via an accredited training provider and the provision of licencing, tickets and certification as evidence. As such, an optimal outcome would be the legislative determination of licensing requirements for mobile plant operators.

Under Schedule 19 of the *Work Health and Safety Regulation 2011*, the definition of competent person is outlined as:

Competent person means -

(g) For any other case—a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task

As such, there remains difficulty in demonstrating experience as evidence for mobile plant operation when no licensing requirements are mandated.

Queensland Trends in WH&S

In 2017, the Queensland Government passed the *Work Health and Safety and Other Legislation Amendment Bill 2017*. CCF QLD did not support the legislation as it would not achieve the intended objectives and deliver safer workplaces. CCF QLD supports initiatives that improve safety in the workplace as well as improve the safety culture and attitude in their businesses. Positive outcomes are achieved through proactive measures in education safety programs and safety leadership mentoring.

CCF QLD does not support the Government's offence of 'Industrial Manslaughter.' The introduction of this offence would not achieve the stated intention. Firstly, the Workplace Health & Safety Act and the Queensland Criminal Code contains offences which sufficiently cover the issues identified. Secondly, unsuccessful prosecutions do not justify legislative change. Thirdly, these changes are consequential for both the civil construction industry as well as various other industries throughout Queensland. Finally, these amendments will change the enforcement framework which in turn will challenge national consistency.

The argument that there is a gap in the current WH&S offences framework is incorrect. At present, Queensland legislation maintains a range of enforcement options, which provides the regulator with the flexibility to match their responses to the facts of the case. These enforcement options include provisional improvement notices, prohibition notices, non-disturbance notices, enforceable undertakings as well as the three categories of penalties. Furthermore, the Director of Public Prosecutions (DPP) would be able to prosecute via the criminal penalty of 'Manslaughter' outlined in the Queensland Criminal Code.

CCF QLD would also like to highlight potential unintended consequences of the Government's 'Industrial Manslaughter' amendments. While 'officer' is defined with specific duties within the WH&S Act (2011), the 'senior officer' terminology used in the amendment is not specific and can be represented by a broader group. Unfortunately, there is potential for the amendments to be applied to local, state and private hospital boards of directors, their senior clinicians and doctors; Directors-General, Deputy Directors-General and senior executives of government departments and Boards of private and independent schools and principals.

Lastly, the introduction of these amendments will increase national inconsistencies, irrespective of the trend of both Federal and State Governments working to increase

harmonisation of WH&S legislation. A decrease of legislative harmonisation in this space will negatively impact Queensland's desirability as a destination for business investment impacting the civil construction industry and the broader community.

CCF QLD did not support the Government's proposed amendment seeking to prohibit enforceable undertakings as an alternative to prosecution in cases of death. Furthermore, CCF QLD recommended that the prohibition of enforceable undertakings not be applied to category two offences in cases of fatality. 'Enforceable undertakings' are applicable toward category two level offences when a death occurs in particular circumstances. These circumstances include suicide, deaths of family members or partners, and the removal of the prosecutor's discretion to allow an enforceable undertaking could stifle safety improvements.

CCF QLD opposed the amendments to reshape the health and safety dispute resolution process and transfer authority from Queensland Civil and Administrative Tribunal (QCAT), to the Queensland Industrial Relations Commission (QIRC).

The legislation proposed to expand the jurisdiction of the QIRC to hear and determine disputes between a person conducting a business or undertaking, a worker, a Health and Safety Representative (HSR) or a relevant union on a WHS matter. Furthermore, WHS matters are classed as access to information by HSR, request by HSR for an assistant to have access to the worksite, a matter of WHS issue resolution process and an issue of cessation of work.

The central argument by the Government is that the amendments are required as the current review system is ineffectual. However, CCF QLD views this change as an attempt to radically change a system which has displayed little sign of inadequacy. The trends show that the current procedures work and health and safety dispute matters are being efficiently resolved. Firstly, since 2012, QCAT has heard fourteen matters related to external review functions under work health and safety laws. Secondly, there have been no requests for reviews regarding improvement notices or prohibition notices in relation to cessation of work. Thirdly, not a single review of notices was sought in relation to requests for assistance regarding work health and safety issues in 2016.

CCF QLD opposed the proposed amendment which creates a twenty four hour window for inspectors attending a dispute. Unfortunately, this change will significantly shift the majority of disputes to the QIRC as the inspectorate would not be properly resourced to address events when numerous inspectors are required. Furthermore, emphasising the QIRC as the primary party will undermine the fostering of good WH&S practices on projects. The relegation of the inspectorate to a less relevant position will undermine the role of the inspector and will remove the resolution of complex onsite safety issues from project sites and into courtrooms. In addition, civil construction projects could potentially be exposed to unnecessary shutdowns throughout the safety dispute resolution period thus placing increased burdens on jobs, costs and productivity.

RECOMMENDATIONS

CCF QLD proposes the following recommendation to the Safe Work Australia Review:

- ✎ The implementation of a WH&S legal framework should be oriented toward deterrence which is effectively coupled with innovations in education, training, safety programs, targeted compliance campaigns and safety leadership monitoring.
- ✎ Continued focus on harmonisation of WH&S laws between States, with particular focus on the States which have most strongly committed to harmonisation.
- ✎ Transition regulatory authority of WH&S from States to the Commonwealth Government. The National Heavy Vehicle Law is an example of successful unification of regulatory frameworks to increase efficiency and safety outcomes.
- ✎ Reinstate Plant Machine operator licencing.
- ✎ Review the content and delivery method of the Construction White Card to ensure entrants into the civil construction industry are provided with quality preparation and safety training.
- ✎ The provision of a simple document which highlights the subtle changes that States have made to the WH&S Model Laws and WH&S Model Regulations.
- ✎ Registration of RTO's White Card courses should mandate acceptable times and content with an emphasis on practical course content, including a prohibition of online White Card courses.
- ✎ The White Card qualifications should be tracked to ensure individuals are best placed to meet the challenges of their respective work environments.
- ✎ Implement a White Card expiry date which would allow individuals within the civil construction industry to remain concurrent with changing standards within the industry.

CONCLUSION

In summary, CCF QLD supports initiatives which aim to assist, empower and encourage all individuals within the civil construction industry to innovate and improve workplace safety standards. The Safe Work Australia Review should support the allocation of resources to safety programs, practical safety solutions and industry awareness rather than unconstructive coercion, fear and retribution and an increase in red tape and regulation. In addition, CCF QLD supports policy aimed at both maintaining and strengthening the national harmonisation of WH&S legislation.



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