

Master Builders submission on the 2022 Review of the *Work Health and Safety Act 2011* (Qld)

Executive Summary

Master Builders welcomes the opportunity to make this submission. We support all parties working together collaboratively to educate, support and advise the industry as this will lead to the best safety outcomes.

Our overall position is that the *Workplace Health and Safety Act 2011* (WHS Act) is adequately drafted and there is no evidence to support significant changes.

We support national consistency of work health and safety laws. The Queensland building industry is already heavily over-regulated and facing labour shortages, materials cost increases and impacts of unpredictable weather. Master Builders cautions against any changes that further undermine national consistency as doing so can increase red-tape and unnecessary costs to business.

Master Builders also cautions against any changes that would undermine the ability to review decisions by those impacted or impose any additional compliance burden. Any proposed changes must have a demonstrated safety benefit.

If any changes are to be made, those that enshrine principles of education and improvement as a priority over punitive measures, and consistent compliance activities should be considered. Additional training for WHS inspectors to achieve this is supported.

Introduction

Master Builders is Queensland's peak industry association for building and construction and represents the interests of over 9,500 members.

While we have consulted with our members and broader industry stakeholders on the matters contained in the terms of reference for this review, due to the short timeframe provided to make submissions, we have been limited in the evidence we can gather.

Given this, Master Builders would like the opportunity to provide further input during the review if relevant. We welcome further engagement on our submission at any time.

Building and Construction industry

ABS data indicates that as at 30 June 2021, there were a total of 79,230 construction businesses in operation across Queensland. This is more than every other sector of the economy.

The most striking feature of our industry's construction businesses is their size: of the total, the overwhelming majority (98.4 per cent) are small in size with less than 20 employees. More than half of Queensland's construction businesses (55.5 per cent) have no employees at all, typically operating as sole traders or partnerships.

Research by RMIT's Centre for Construction Work Health and Safety, contained in its August 2017 *Final Report: The Definition of a Construction Project*¹:

... less than 1% of construction businesses employ 20 or more people, and companies of this size employ only 13.6% of the construction workforce.

Any recommendations from this review should not adversely affect the majority of the industry if no demonstrable safety benefit can be identified.

Small Business and WHS

According to the Australian Chamber of Commerce and Industry's 2018 report, *Enabling Safe and Healthy Workplaces for Small Business*² (ACCI report):

A small or medium business is not just a scaled down version of a big business ... It seems plausible that a system designed around medium to large business needs will have trouble adapting to meet those of small businesses ...

The purpose of the model WHS Act is in essence to provide a framework for enabling the protection of all workers at work and of other people who may be affected by the work ... It has long been assumed that these aims universally apply to businesses of different sizes; the issue is in the further assumption that the mechanisms by which these aims are achieved are also universal ...

It is requested the review consider the effect on small business of any recommendation to amend the Act, and encourage the review to ensure that the Objects of our WHS Act are not undermined, noting *"The main object of this Act is to provide for a balanced and nationally consistent framework"*³.

National WHS System

On 10 May 2011⁴, when Queensland's *Work Health and Safety Bill* was read in Parliament, the then Minister for Education and Industrial Relations, the Hon. Cameron Dick, stated:

¹ https://www.researchgate.net/publication/345917882_The_definition_of_a_construction_project

² https://www.australianchamber.com.au/wp-content/uploads/2018/06/Enabling_Safe_and_Healthy_Workplaces_for_Small_Business.pdf

³ Section 3(1) of the WHS Act

⁴ https://documents.parliament.qld.gov.au/events/han/2011/2011_05_10_WEEKLY.PDF

The introduction of the Work Health and Safety Bill marks an historic moment in the history of work health and safety legislation, both in Queensland and Australia ...

The bill will put an end to the disparate and inconsistent health and safety laws across jurisdictions and cut red tape and barriers to productivity gains. It will assist in making Queensland and Australian workplaces safer, and provide certainty and consistency for employers and workers. Harmonised laws will make it easier for business to operate over state boundaries, while giving workers greater input into how their workplaces operate with regards to safety. The cost of enforcing compliance with workplace health and safety laws will also be cut for government. (our emphasis)

In accordance with these words, and the Objects of the Act, we support legislation “to secure the health and safety of workers and workplaces⁵” and submit that this is best achieved through consistent and certain legislation that all parties understand and support.

Any recommended changes to the WHS Act that move further away from the Model Act must be carefully considered, having regard to productivity and safety impacts.

The Objects of the WHS Act state:

maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in Queensland⁶

Master Builders is concerned that moving away from the Model Act may lead to confusion amongst members and ultimately poorer safety outcomes.

Review Terms of Reference

According to the review terms of reference:

The review will consider the overall effectiveness of the key components of the WHS Act in achieving its objects ...

The object of the Act is to, amongst other things, protect:

... workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks⁷

We submit that an overall picture of the operation of the Act must be considered, not a ‘line-by-line’ review of specific provisions. Removing or altering a specific provision can affect the Act’s overall effectiveness. The then Minister for Education and Industrial Relations, the Hon. Cameron Dick stated when introducing the Bill to Parliament on 10 May 2011⁸:

The model Work Health and Safety Act compares favourably with Queensland’s Workplace Health and Safety Act 1995 in terms of overall approach ... (our emphasis)

⁵ Section 3(1) of the WHS Act

⁶ Section 3(1)(h) of the WHS Act

⁷ Section 3(1)(a) of the WHS Act

⁸ https://documents.parliament.qld.gov.au/events/han/2011/2011_05_10_WEEKLY.PDF

For these reasons, as well the other items outlined in our submission, Master Builders' position is that the current provisions of the WHS Act overall reflect best practice as per the Robens model⁹. However, as set out below, we believe these could be implemented in more effective ways.

1.1 Are provisions relating to health and safety representatives effective and operating as intended

Master Builders submit that the health and safety representatives (HSR) provisions are effective and operating as intended, and do not consider any need to make amendments to these provisions. We are not aware of any evidence that the provisions relating to HSR's are not effective or operating as intended.

Master Builders submits that workers are appropriately represented and assisted in the workplace for the purpose of health and safety matters under the WHS Act.

Where the HSR framework is being used, we are not aware of concerns. While the framework can be challenging for smaller businesses this does not restrict those businesses with small numbers of workers properly and effectively consulting and participating in work health and safety, without having to appoint an HSR.

According to Marie Boland's *Review of the model Work Health and Safety laws Final report December 2018* (the Boland review)¹⁰:

The HSR framework is having mixed results. Where these provisions are embraced by all parties in the workplace, the framework works well. For small businesses, it can be impractical.

Master Builders agrees and submits that while the HSR framework can be impractical for small business, this is not having an adverse effect on work health and safety as it is not a requirement to appoint HSRs unless it is worker-initiated.

As to whether the provisions are operating effectively, when the *Work Health and Safety Bill 2011* was introduced into Queensland Parliament in 2011, the Explanatory Notes¹¹ that accompanied it stated:

There is considerable evidence that the effective participation of workers and the representation of their interests in work health and safety are crucial elements in improving health and safety performance at the workplace. Under the Act, this representation occurs in part through HSRs who are elected by workers to represent them in relation to health and safety matters at work (our emphasis).

Master Builders submits there is no evidence that representation is not operating effectively.

The review may receive submissions seeking the mandatory appointment of HSR's, as opposed to the current, worker initiated voluntary model. This will add to the costs associated with running a

⁹ Robens means the UK's *Safety and health at work: report of the committee 1970-1972* (Robens et al, 1972) – which has been the fundamental structure for regulating WHS since it was published.

¹⁰ https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

¹¹ <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2011-1635>

building and construction business, without any demonstrated safety benefits, and is not supported by Master Builders.

If the current model of HSR's undertaking the role voluntarily and by contributing to WHS at the workplace through their direct experience, as opposed to being a professional safety officer, is amended, this will affect the intent of the Act, and also the effectiveness of representation at work.

According to WHSQ¹²:

Health and safety representatives (HSRs) play a key role in ensuring healthier and safer workplaces, by representing the views of their work group in matters of work health and safety (WHS). HSRs are elected by their work group and consult with employers to help support good WHS outcomes ...

HSRs are not professional safety officers ... An HSR does not have an additional duty of care or statutory liability ... [they] undertake this voluntary role during their usual work hours ...

Master Builders submits that effective safety representation is achieved through the current HSR model where workers undertake the role voluntarily during their work hours. According to Robens:

an obligatory appointment can sometimes lead others to act as though their own responsibilities for safety and health are thereby decreased.

Improved safety outcomes are achieved where workers do not consider work health and safety as someone else's job, but rather buy in to the process and voluntarily seek to become a HSR.

If an HSR has to be appointed, the worker may not want to do it, but is forced to due to the PCBU having to have one. This will not improve the effectiveness of the HSR framework.

The current HSR provisions encourage frequent safety interactions at work and ownership of safety, both through formal processes and informal interactions. Research¹³ supports this as the most effective workplace health and safety framework.

The HSR is effective as they are an independent worker, sometimes not employed by the PCBU, and are active due to their willingness to take on the HSR role voluntarily.

Master Builders submits that the current HSR framework is therefore operating as intended.

The framework could be improved through more support, education and assistance from the Regulator. The focus needs to be on supporting and educating all parties as this leads to effective outcomes.

Tim Lyons' WHSQ review - *Best Practice Review of Workplace Health and Safety Queensland* (the BPR)¹⁴, supported this and recommended at Recommendation 50:

*WHSQ develop a comprehensive plan to **support** Health and Safety Representatives and Health and Safety Committees, and **encourage** uptake in industry* (our emphasis)

¹² https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0024/19293/hsr-guide-workers-hsrs-dhsrs.pdf

¹³ https://www.unisa.edu.au/contentassets/a8461340d3ca4464a85b67cbaa3eb138/safework-sa-consultation_report-27-feb-2014.pdf

¹⁴ BEST PRACTICE REVIEW OF WORKPLACE HEALTH AND SAFETY QUEENSLAND Final Report 3 July 2017 https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/22322/best-practice-review-of-whsq-final-report.pdf

1.2 Whether workers are appropriately represented and assisted in the workplace for the purpose of health and safety matters (including representation and assistance by WHS entry permit holders)

Master Builders position is the WHS framework can be improved through the Regulator focusing its efforts on education and improvement, consistency in approach and focus on advice to business as to how to comply with provisions of the WHS Act.

Master Builders opposes any changes to the WHS Act's Part 5, Division 5 (Issue resolution), and Part 7 (Workplace entry by WHS entry permit holders), that could place employers in the industry at risk of being prosecuted for breaching the Fair Work Act's provisions requiring union officials to have a Federal entry permit to exercise a State WHS right.

The WHS Act should not be changed and potentially expose employers to confusion in how to meet their obligations, and risk prosecution.

As to whether workers are appropriately represented and assisted in the workplace for the purpose of health and safety matters more broadly, Master Builders submit that the government workplace health and safety inspectors should be the best qualified to assist workers with immediate and urgent issues, in conjunction with HSR's and where relevant, union officials that hold the requisite permits. We do however urge government to ensure workplace health and safety inspectors are adequately trained to be able to advise business owners how to improve practices if found deficient and to focus on education and improvement.

1.3 The effectiveness of the legislative framework for review and stay provisions with enforcement notices under the WHS Act

Master Builders submits that the current review and stay provisions with enforcement notices under the WHS Act is appropriate. One way to improve notices would be for inspectors to provide better and more detailed reasons for issuing the notice. Additional training for inspectors is required in this regard.

We note that one of the Objects of the WHS Act is:

ensuring appropriate scrutiny and review of actions by persons exercising powers and performing functions under this Act¹⁵

Referring again to the Object of the WHS Act¹⁶:

The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces ...

To ensure the proper balance and ensure that quality decisions are made, they must be open to internal and external review. Removing the review, or altering it, may lead to a diminishing of enforcement notice quality, and poorer safety outcomes.

¹⁵ Section 3(1)(f) of the WHS Act

¹⁶ Section 3(1) of the WHS Act

If review mechanisms are removed or altered, this may remove the objectivity of the test to issue a notice and diminish fairness in decision-making. We don't support this as the current objective test allows "balance" and "appropriate scrutiny and review of actions" as per the Objects of Act

Sections 224-229 of the WHS Act outline the review and stay process. Master Builders submits that the defined process in the WHS Act ensures not only effectiveness but efficiency.

The process is effective in part because whilst there is an automatic stay for internal reviews of improvement notices, there is not an automatic stay for prohibition notices, meaning the current process is not exposing workers to increased risk. There is also no automatic stay for notices that are subject to an external review application (only internal review).

Master Builders has reviewed decisions from the QIRC in relation to external reviews, and based on that data submits that the process for internal review is efficient and effective, meaning any stays for improvement notices are short and not unnecessarily lengthy:

Year	Case	Inspector inspection date/s	Notice issued	Internal review application	Internal review decision
2022	<i>University of the Sunshine Coast v The Regulator under the Work Health and Safety Act 2011</i> [2022] QIRC 298	14-March	17-March	31-March	29-April
	<i>Eastern Plant Hire Queensland Pty Limited v The Regulator under the Work Health and Safety Act 2011</i> [2022] QIRC 79	unknown	5-July	6-Aug (out of time)	25-Aug
2021	<i>Watpac Construction Pty Ltd v The Regulator (under the Work Health and Safety Act)</i> [2021] QIRC 375	12-June	12-June	[within 14 days]	[within 14 days of application]
	<i>JBS Australia Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 367	unknown	unknown	unknown	unknown
	<i>GJT Earthmoving Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 306*	15-Aug	6-Dec	[within 14 days]	25-Jan
	<i>Watpac Construction Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 257	25-Sept 26-Sept	27-Sept	[within 14 days]	25-Oct
	<i>State of Queensland (Queensland Health) v The Regulator under the Work Health and Safety Act</i> [2021] QIRC 190	26-Nov	2-Dec	[within 14 days]	13-Jan

2020	<i>MPG Constructions Brisbane Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2020] QIRC 235	28-Sept 29-Sept	30-Sept	[within 14 days]	28-Oct
2019	<i>Multiplex Constructions Pty Ltd v The Regulator under the Work Health and Safety Act 2011 (No.2)</i> [2019] QIRC 133	31-May	31-May (verbal) 5-June (written)	12-June	26-June

* In the case of *GJT Earthmoving Pty Ltd v The Regulator under the Work Health and Safety Act 2011* [2021] QIRC 306, the delay was due to the Regulator.

It is vital that a process exist to review decisions. Whilst below is a full summary of QIRC decisions on external review applications, there is one case, *Watpac Construction Pty Ltd v The Regulator under the Work Health and Safety Act 2011* [2021] QIRC 257, where it was held that the PCBU's safety controls adequately managed the risk.

Without the review process, the employer may have been adversely affected and it would not have led to an improved safety outcome because the controls implemented had the required effect.

The summary below also demonstrates that external reviews are not common, thus demonstrating the effectiveness of the process:

Year	Case	Details
2022	(i) <i>University of the Sunshine Coast v The Regulator under the Work Health and Safety Act 2011</i> [2022] QIRC 298	<ul style="list-style-type: none"> An Inspector made a decision to issue an Improvement Notice to the Applicant because it was charging nursing students to be fit tested for respiratory protective equipment to complete clinical placements as part of their course of study Applicant applied for review of decision with the Regulator Regulator made internal review decision confirming the decision to issue the improvement notice Applicant applied to Commission for external review of internal review decision by the Regulator Applicant applied for stay of internal review decision Applicant has an arguable case on external review and the balance of convenience favours the granting of the stay sought Stay granted
	(ii) <i>Eastern Plant Hire Queensland Pty Limited v The Regulator under the Work Health and Safety Act 2011</i> [2022] QIRC 79	<ul style="list-style-type: none"> The reason for issuing the improvement notice is not known The Applicant was issued an improvement notice but did not seek review of the improvement notice within the statutory time frame Applicant sought external review of that decision QIRC was asked to consider whether a refusal to extend time is a decision reviewable by the Commission under the WHS Act Application was dismissed
2021	(i) <i>Watpac Construction Pty Ltd v The Regulator (under the Work Health and Safety Act)</i> [2021] QIRC 375	<ul style="list-style-type: none"> Two inspectors visited the Applicant's construction project on the same day, and issued the Applicant two separate improvement notices In relation to the first notice:

		<ul style="list-style-type: none"> ○ The improvement notice related to an absence of emergency backup lighting in a specific area where work was being undertaken ○ Applicant asserted that the inspector did not hold the requisite 'reasonable belief' of contravention required to warrant the issuing of the improvement notices ○ The Applicant did not challenge the fact that emergency backup lighting was not operational at the time of inspection, instead it argued that it was being installed and that it was installed by the time the improvement notice was sent ○ The Applicant argued that as the PC, it was not their responsibility, it was the subcontractor in control of the area ○ The Applicant also submitted they were not in breach of the Act in relation to emergency backup lighting ○ The QIRC held that the Applicant was the PCBU and could not delegate their responsibility to a subcontractor, and that even if backup emergency lighting was being installed it was not at the time of the inspection. ▪ In relation to the second notice: <ul style="list-style-type: none"> ○ The improvement notice related to risk from the disposal of wastewater and building products when a subcontractor was cutting masonry blocks ○ The Applicant asserted that this was the subcontractor's responsibility to manage and rectify ○ The Applicant asserted that the inspector did not hold the requisite 'reasonable belief' of contravention because they did not make enquiries about how the risk was being managed and the surrounding circumstances that may have led to the safety risk ○ The Applicant also submitted that the notice had inadequate particulars about the breach and what they had to do to rectify it ○ The QIRC held that this notice was validly issued ▪ The Application was dismissed
	(ii) <i>JBS Australia Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 367	<ul style="list-style-type: none"> ▪ The Applicant sought an external review of an improvement notice ▪ Prior to Hearing, the Applicant outlined the reasons why they sought a review of the notice ▪ The Respondent subsequently withdrew the improvement notice via email, stating "It is the respondent's position that we are no longer able to defend [the notice] ..." ▪ The case regarded costs, which were awarded to the Applicant
	(iii) <i>GJT Earthmoving Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 306	<ul style="list-style-type: none"> ▪ The Applicant sought an external review of an improvement notice for failing "to ensure that asbestos waste is contained, labelled and disposed of at a site authorised to accept asbestos waste" ▪ The Applicant argued that they are not an asbestos removal business, that they were not aware the demolition they were contracted to do contained asbestos, that the asbestos removal should have been

		<p>controlled and managed by the PC and not them, and that once commenced they were directed by the PC to bury asbestos during the demolition.</p> <ul style="list-style-type: none"> ▪ The QIRC held that the notice was correctly issued to the Applicant, that the external review should be dismissed, and the Improvement Notice confirmed.
	(iv) <i>Watpac Construction Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2021] QIRC 257	<ul style="list-style-type: none"> ▪ The Applicant was issued an Improvement Notice for failing “to maintain an emergency plan for the workplace so that it remains effective ... [and] (t)here is no reference in the emergency plan how to manage the risks associated with the advent of a fire requiring the use of fire hydrants and fire hose reels” ▪ The improvement notice was issued following a review of the Applicant’s Project Emergency Response Plan (PERP) after the inspection ▪ The Applicant submitted that there was no specific requirement under the WHS Act or Regulation that fire hose reels or fire hydrants must form part of the emergency response plan, and that the PERP was intentionally written to not encourage workers to attempt to extinguish fires with hose reels and extinguishers because it can create additional safety risks, and that the Inspector wrongly identified a breach of the National Construction Code rather than the WHS Act. ▪ The QIRC held that the Inspector “was not able to articulate in any meaningful way why the Applicant’s emergency plan was not effective” as per the WHS Act and Regulation, and that the improvement notice be withdrawn
	(v) <i>State of Queensland (Queensland Health) v The Regulator under the Work Health and Safety Act</i> [2021] QIRC 190	<ul style="list-style-type: none"> ▪ The Applicant - Gold Coast Hospital and Health Service, sought a stay on an improvement notice ▪ The improvement notice concerned a lack of training for emergency department staff exposed to physically and verbally aggressive clients ▪ The notice also stated that training to control this risk is provided to staff at other hospitals ▪ The QIRC held that the Applicant established an arguable case and granted the stay
2020	(i) <i>MPG Constructions Brisbane Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2020] QIRC 235	<ul style="list-style-type: none"> ▪ The Applicant sought a stay on an improvement notice ▪ The Applicant was issued an improvement notice in relation to a gantry erected on their construction site, over public footpath areas. The notice stated that the gantry posts were “very close” to a busy road and not guarded or protected against impact from passing vehicles, which may lead to failure or collapse of the gantry, which was carrying various site sheds ▪ The Applicant submitted that the gantry had been signed off by an engineer ▪ The QIRC held that engineer did not cater for vehicular impact loadings in the gantry design process ▪ The QIRC refused the stay
	(ii) <i>Watpac Construction Pty Ltd v The Regulator under the Work Health and Safety Act 2011</i> [2020] QIRC 187	<ul style="list-style-type: none"> ▪ This matter was an application for costs following the Regulator withdrawing a number of improvement notices against the Applicant

	(iii) <i>Multiplex Constructions Pty Ltd v The Regulator under the Work Health and Safety Act 2011 (No.2)</i> [2019] QIRC 133	<ul style="list-style-type: none"> ▪ The Applicant was issued a prohibition notice after notifying WHSQ of an incident involving a subcontractor operating the hoist, and a reinforcing bar falling outside the hoist enclosure and outside an exclusion zone on their construction site ▪ The QIRC held that the inspector's "rationale for issuing the Notice was to focus Multiplex's attention in respect of falling objects on the Project and that the activity the subject of the Notice and the associated risks had been ameliorated" and that the inspector "did not have any knowledge of the control measures Multiplex had implemented to address each of the prior incidents of falling objects" ▪ The QIRC also held "There was no serious risk to health and safety emanating from an immediate or imminent exposure to a hazard as the matters that gave rise to any risk had been remedied" and thus the notice be withdrawn.
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This demonstrates that external reviews are effective. There is not a flood of reviews being sought, and no evidence that such reviews led to negative safety outcomes, as in all cases the safety issues were rectified whilst the external review was being conducted.

In particular, it shows that education and immediate rectification should be the result – not prosecution in such cases. Where an applicant produces evidence that the safety issue has been rectified, and therefore made safe, a notice should not be issued. The decision in *Watpac Construction Pty Ltd v The Regulator (under the Work Health and Safety Act)* [2021] QIRC 375 demonstrates this. A stay and review process is therefore essential to ensure the effectiveness of the process.

Master Builders support the Objects of the Act in this regard, including:

*securing compliance with this Act through effective and appropriate compliance and enforcement measures*¹⁷

Effective and appropriate compliance, including the issuing of enforcement notices, is a serious matter and can affect a business greatly if a decision to issue one is in error. Businesses must have the ability to review such decisions.

If review rights are proposed to be restricted in any way, Master Builders submits that notices must be issued with sufficient detail to fully explain the issue, and detailed information about how the issue can be rectified.

Those not impacted by the decision ought not be granted review rights, as this will also impact on business. Only the affected PCBU receiving a notice should have the right to review a decision to issue.

There is also protection in the WHS Act¹⁸ against minor defects in notices being used to stay the rectification of a safety hazard, as follows:

Formal irregularities or defects in notice

A notice is not invalid only because of –

¹⁷ Section 3 of the WHS Act

¹⁸ Section 208 of the WHS Act

- (a) *a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or*
- (b) *a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person under section 209.*

Master Builders submits that a process to review decisions is an essential component of good regulatory practice, administrative decision-making and is consistent with nationally agreed principles. According to the Office of Industrial Relations' *Compliance Monitoring and Enforcement Policy – December 2018* (the CMEP)¹⁹

The regulator is guided by seven nationally agreed principles when undertaking its compliance monitoring and enforcement role, exercising its regulatory responsibility and administering the legislation. The principles [include] ... The regulator is willing to explain its decisions and make available avenues of complaint or appeal

1.4 Are provisions relating to the issue and dispute resolution effective and operating as intended

Master Builders reiterates our opposition to changes to the WHS Act's Part 5, Division 5 (Issue resolution), and Part 7 (Workplace entry by WHS entry permit holders), as changes could place employers in the industry at risk of being prosecuted for breaching the Fair Work Act's provisions requiring union officials to have a Federal entry permit to exercise a State WHS right, even if the State WHS right is to assist parties with dispute resolution.

More specifically, Master Builders also submit that the Inspectorate is best placed to assist where a issue is not resolved at the work level, and that the current sections 82 and 141 of the WHS Act are effective and operating as intended where the Inspectorate is well resourced, well trained and experienced in interpreting the Act, Regulations and Codes of Practice, and settling disputes.

Any other matters

Code of Practice expiry

Section 274(4C) of the WHS Act states that a code of practice expires 5 years after it is approved.

Master Builders submits that WHS laws should be flexible enough to accommodate changes in technology and work practices at any time. This is consistent with the Objects of the Act, namely:

*providing a framework for continuous improvement and progressively higher standards of work health and safety*²⁰

Whilst we acknowledge that subsection 4C was only introduced in 2017, we do not believe that it is supporting the effective operation of the Act nor assisting in achieving the Act's Objects.

When the *Work Health and Safety and Other Legislation Amendment Bill* was read for a second time in Queensland Parliament, the Hon. Grace Grace, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs stated:

¹⁹ https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0016/22174/compliance-monitoring-enforcement-policy.pdf

²⁰ Section 3(1)(g) of the WHS Act

... to ensure that current industry best practice is reflected in codes of practice, the bill requires codes of practice to be re-approved every five years. This ensures that the minimum standards in each code of practice are responsive to industry needs and continue to reflect best practice²¹.

Master Builders supports the concept of codes of practice reflecting industry best practice, however has concerns that the 5 year expiry may lead to periods where new technologies or improved work practices are implemented, but the Minister waits until the 5 year expiry before considering updating the code.

Master Builders agree with the Minister that Codes must be responsive to industry needs, and fear that the current 5 year expiry may restrict and inhibit urgent review where necessary.

As previously stated, when the current WHS Act was first introduced in Queensland in 2011, the Government stated that its introduction *will put an end to the disparate and inconsistent health and safety laws across jurisdictions and cut red tape and barriers to productivity gains.*

The current process of approving codes of practice is also time-consuming and there should be a more stream-lined process with better national consistency. For example, the draft psychosocial code of practice, which will have huge impacts on businesses.

Master Builders submit that by moving away from the Model Act's provisions and introducing subsection 4C, a further layer of red tape was created and the ability of the Act to be responsive was removed.

Enforcement

The WHS framework can be improved by a legislated primary focus on education and improvement, consistency of application of provisions, and increased capability of the inspectorate.

Further, there is no evidence to support any increased regulation than currently provided for in the Act and Regulation.

Master Builders members have provided feedback that often WHS inspectors are unable to advise business-owners what compliance looks like, in instances where codes are complied with but an incident still occurs. This makes compliance impossible if industry and the regulator do not have a clear understanding of what 'compliance' is.

Where ambiguity exists, Master Builders believes education is the appropriate response from the regulator unless and until a clear pathway to compliance is established.

23 September 2022

²¹ https://documents.parliament.qld.gov.au/events/han/2017/2017_10_11_WEEKLY.PDF