

October 2015

*Practice Group(s):
Labour, Employment
Workplace Safety*

WHS Amendments Passed in Queensland and Become law (once again)

Australia Labour Employment Workplace Safety Alert by Robert King

Back to where it all began

In a recent update, we confirmed that the Queensland Labor Government had introduced a Bill to reverse a number of the Newman Government's changes to work, health and safety provisions relevant to Health and Safety Representatives (**HSRs**) and entry permit holders. The Newman Government claimed its amendments tightened the loophole which allowed union officials to easily misuse right of entry under Queensland's *Work Health and Safety Act 2011 (WHS Act)* for non-safety purposes.

What does this mean for HSRs and Entry Permit Holders?

The Labor Government Bill (now the *Work Health and Safety and Other Legislation Amendment Act 2015 (Qld)*) passed the parliament last week. The amendments include:

- reinstating a HSRs right to direct workers to cease work if the HSR holds a reasonable concern that the work being undertaken will expose workers to a serious risk to their health and safety because of an immediate or imminent exposure to a hazard
- reinstating a HSRs right to request assistance from any person (which in practice means a union WHS entry permit holder) without the entry permit holder having to give 24 hours' notice before entering the workplace
- removing the penalty provision for entry permit holders, who fail to provide notice of entry when they enter to inquire into a suspected contravention of the WHS Act, consult and advise workers or make copies of documents relevant to a suspected contravention
- decreasing the maximum penalty for contravening WHS entry permit conditions from 200 penalty units to 100 penalty units
- reinstating the office of Electrical Safety Commissioner and reinstating the Electrical Safety Education Committee and Electrical Equipment Committee.

The amendments to the WHS Act bring it back into line with the model WHS Act passed by other Australian jurisdictions.

Once again HSRs can direct that "unsafe work" cease if there is a reasonable concern of a serious risk to health and safety if that risk arises from immediate or imminent exposure to a hazard.

Once again, entry permit holders who reasonably suspect that a contravention of the WHS Act is taking place, can enter the workplace without prior notice, only having to give notice as soon as is reasonably practicable after entering.

The one amendment that was defeated on the floor of the parliament was the proposal to extend the definition of serious injury to include an injury resulting in a person requiring four consecutive days off work.

Practically, the amendments to the WHS Act (given that it returns the Act to be the same as other model WHS Act jurisdictions) may make little practical difference for many or most businesses.

Who will be most affected and what can they do to minimise risk?

The impact may be greatest in businesses which have:

- highly unionised workforces
- underlying industrial agendas
- high risks and significant hazards present in the workplace.

Imagine this scenario – a construction site, a disagreement over work being undertaken and the provisions of an enterprise agreement. Suddenly union officials (entry permit holders) are found wandering the site and talking to workers. The excuse when challenged - there was a concern about a contravention of the WHS Act and as yet there was no opportunity to notify management.

What can be done to minimise the risk of misuse of the WHS entry powers?

The answer lies in the fact that the notice provisions are not the sole compliance requirement for entry permit holders. Irrespective of the notice requirements, an entry permit holder must also comply with other reasonable work health and safety requirements for that workplace or other legislated requirements that may apply to that type of workplace.

For example, if it is a reasonable safety requirement that a visitor to the site not enter the workplace or sections of the workplace without an authorised escort, then an entry permit holder must not enter without an escort. If they do so, they may be in breach of section 128 of the WHS Act, irrespective on not having to give notice before they enter the workplace.

Minimising potential improper use of an entry permit is best managed by the business communicating effectively and clearly with entry permit holders, telling them of any (reasonable) health and safety requirements that must be met in order to enter the workplace.

Be clear what the business (the WHS Act refers to the PCBU operating the business or in control or management of the workplace) expects of entry permit holders and what areas (if any) are high risk areas and cannot be entered without an authorised escort, or use of specialised equipment or PPE (which the business will supply) or what safety sign in requirements must be adhered to for entry to the workplace.

Communicate these requirements clearly to the entry permit holders so that there is no doubt exactly what is required of entry permit holders to gain legitimate safe entry to the workplace. Then, irrespective of the WHS Act notification provision, an entry permit holder may still be bound to provide "effective" notification to the business, in order for them to comply with the reasonable safety requirements. If the entry permit holder does not comply the business' reasonable requirements, then despite notice provision, they may still be in breach of their entry permit conditions.

Please contact us if you have any questions about WHS entry provisions

Authors:

Robert King
robert.king@klgates.com
+61.7.3233.1265

K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt
Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Moscow Newark New York Orange County Palo Alto
Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle Seoul Shanghai Singapore
Spokane Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises more than 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

© 2015 K&L Gates LLP. All Rights Reserved.