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**BEST PRACTICE REVIEW OF  
WORKPLACE HEALTH AND  
SAFETY QUEENSLAND**



## Best Practice Review of WPHS Queensland

Master Electricians Australia (MEA) is a national employer association representing the interests of electrical contractors and the broader electrotechnology industry. As one of the longest running organisations of its kind, MEA has established itself as the leading voice of the electrotechnology sector. MEA is recognised by industry, government and the community as the electrical industry's foremost business partner, knowledge source and advocate. The organisation's website is: [www.masterelectricians.com.au](http://www.masterelectricians.com.au)

MEA appreciates the opportunity to contribute to the review, however the association has some concerns regarding the review.

The first concern, relates to the scope of the Workplace Health and Safety Queensland review and the impact any recommendations, actions, may have on the Electrical Industry. As you would be aware our industry utilises both the Workplace Health and Safety Act and the Electrical Safety Act and Regulations for licensing, enforcement and safety regulation. This review does not contain any data, performance statistics, structures or activities related to the Electrical Industry. The WHS Act and the ES Act share a considerable amount of detail, however there are significant and important differences that may be affected. We would strongly recommend that no recommendations or actions are made by the reviewer or Government without significant consultation from electrical industry participants.

The second concern, is one of timing and consultation. The Governments deadline for the review, has resulted in only 12 business days of consultation before submissions. Workplace Health and Safety affects every one of the 425,000 business in Queensland, to conduct a review that affects this significant proportion of industry with only 12 days of consultation is inadequate. We are unable to identify what has lead the Government to require such a short time frame for the reviewer's report. Even though there are 3 significant matters before the courts at present, which this review will now not be able to influence those proceedings having already commenced.

Considering the above concerns MEA strongly suggest that the Government consider lengthening the due date of the review and review the terms of reference to facilitate a more appropriate consultation period and conducting the review more aligned with parliamentary processes and facilitating submission access, transparency and if necessary response submissions.

A significant number of the Reviews questions ask for qualitative data regarding perceptions and experience in dealings with Work Health and Safety Queensland (WHSQ), Inspectors and investigations. MEA submissions will address some questions as posed however due to insufficient consultation time broad and reliable qualitative data was not able to be sort from members.

### Discussion paper questions 1 - 2

MEA believes that the legislative framework in conjunction with the Electrical Safety Act are appropriate. The framework delivers what we believe to be a balanced approach, where the rights, responsibilities, obligations and interests of all parties are well documented, protected and if breached suitable corrective action and enforcement penalties are at the disposal of the Regulators.

### Discussion paper question 3

MEA would seek more detailed feedback from industry concerning WHSQ balance between enforcement and providing the right tools, however based on timelines, this was not able to be undertaken. MEA would make the following suggestions regarding tools that may assist

- a) a committed (perhaps legislated), longitudinal statistical collection and publication of data, across well-defined metrics, which can be linked to Safework Australia data but provide detailed location injury and industry data to assist business benchmark.
- b) Investigate ways to improve the frequency and reduce the time by which WHSQ issue safety alerts on serious injuries / near misses/ fatalities. MEA recognises that publications about an ongoing investigation can affect future prosecutions and legal proceedings, however, we believe a balance can be struck that protects the rights of those involved by not prejudicing a case, but allows the regulator to inform the broader industry to ensure as reasonably practicable, no other persons are placed at risk and hazards are controlled.

### Discussion paper question 4

MEA wishes to refrain from commenting on the 2012 -22 strategy until the midterm review is completed.

### Discussion paper question 5

MEA wishes to refrain from commenting on the 2014 - 2017 plans until a review and publication of the effectiveness of these plans has been undertaken.

### Discussion paper questions 6 - 9

MEA believe industry lead indicators should begin to be collected by WHSQ and Industry. The advancement in technology and its uptake in businesses provides a massive opportunity for improvement that will assist safety engagement and enforcement. Lead indicators in WHS generally include indicators that report on proactive actions and tasks targeting safety. These include frequency and results of risk assessment, safety observations and different training and consultation activities etc.

MEA would suggest an approach that focusses on personal risk management and safety that utilises these tools (and indicators) as an enabler. These tools must be simple and inherent in the process to produce a seamless interaction. Achieving this will assist in reducing serious and fatal workplace incidences, improve personal awareness of safety and enable targeted education, encouragement, and enforcement programs to initiate a broad-based industry driven safety culture.

To demonstrate the point, the current Electrical Industry practice and process requirement to test and record electrical installations to ensure the installation is electrically safe for consumers. This program is in place and is efficient at ensuring safety for consumers. Electrical incidents are rare, other hazards are common, such as those detailed in the WHSQ Action Plans. A series/combination of improvements such as Continuous Professional Development (CPD) and change to testing documentation to include a simple hazard / risk management of the site combined with the testing data developed electronically uploaded for review and collation by the Employer and ESO. Utilising the data received, ESO or WHSQ in other cases, is able to cross match with WorkCover data and undertake targeted education and enforcement programs. Many larger Industry participants already have electronic cloud based system for just these situations and indicate it does assist employer and employees to improve and track their risks and improve employee personal safety culture. A pilot program could be undertaken utilising a small representative group of employer's employees and WPHS specialist to develop.

#### **Discussion paper questions 10 - 24**

Without the ability to consult with members in detail, these questions are difficult to answer and any answer may well give unreliable qualitative data. In addition, with the electrical industry outside the scope of this review, the Electrical Safety Office is not subject to this review and therefore comment is reserved.

#### **Discussion paper questions 25 – 29: Prosecutions Board**

Currently there are 3 major prosecutions being undertaken that involve a mix of WHS Act Category 1 offenses and two manslaughter charges. One manslaughter charge is related to the death of Jason Garrels. This case was also subject to a Queensland Coronial Inquest. The second manslaughter charge has been brought after a Tilt Slab accident at New Farm and charges were brought by the Queensland Police Service soon after the incident. The Category 1 prosecution involves a roofing company in the death of an employee after a fall.

The process undertaken in each case is different, however all test the current legislative framework with a broad set of individual circumstances. This demonstrates that the current system can work with a variety of circumstances including multiple deaths, and ensure those involved receive natural and procedural justice.

The discussion paper proposes the introduction of a Prosecution Board. MEA is concerned by the proposal, and the lack of evidence around the need for its introduction. The creation of this Board may result in reduced separation of powers and may become a partisan body. This would threaten the natural and procedural justice that all citizens are entitled to. It is proposed the Board would review decisions of the Department to prosecute, however it is hard to envisage how this Board would operate differently compared to the current DPP guidelines and address any shortcomings.

We envisage some parties may suggest that an independent statutory authority may be introduced to oversee this process in substitution of the Prosecution Board. The Queensland DPP is an independent statutory authority, already. We see no advantage in creating a further authority to take on responsibilities that would effectively duplicate the DPP expertise and only review decisions made by

the Department. The WHS Act incorporates 3 of the DPP guidelines in determining which prosecutions proceed, to create a separate body to make decisions about a very small number of cases each year when expertise and independence already exists in our view is quizzical.

If there is concern over less serious prosecutions then a clear identification of the issues, backed by data, outcomes and an analysis of reasons for cases not proceeding to prosecution, should be released for comment.

### **Discussion paper questions 30 - 32**

On this topic without the chance to consult with members in detail, these questions are difficult to answer and any answer may be unreliable given the lack of qualitative data. The scope of this review does not include the Electrical Safety Act or ESO but does include the Electrical Industry we therefore reserve making comment at this time.

### **Discussion paper questions 33 - 34: Licensing Framework**

Electrical licensing is outside the scope of this review, we believe that this review may benefit from a similar issue that is currently being discussed in the Electrical Industry. In the recent KPMG report to Minister Grace into Review of the regulatory requirements for Queensland electrical licences, the Electrical industry identified concerns regarding RTO's assessing participants and the ESO issuing licenses with no checks or balances on the persons' competence. RTO's are subject to Australian Skills Quality Authority (ASQA) requirements however electrical industry participants perceived, whether real or perceived, that RTO's have a conflict of interest. The conflict arises where their payment is linked to a student's successful completion of training. The Industry's' perception that participants are "pushed through" to ensure the RTO receives their payment, was raised in the report, albeit denied by RTO's.

To assist the WHSQ avoid similar concerns MEA suggest that final assessment for a license be held separate from the RTO competence assessment. In the electrical industry, this would mean the final CAPSTONE tests are conducted by the regulator or an independent testing company. Separation of teaching and licensing (including final assessment of competence) would support the regulator to ensure those licenses administered by WHSQ were not called into question and that standards were maintained.

### **Discussion paper questions 35 - 41: ISSUING RESOLUTION PROCESS**

MEA is concerned regarding the QCU proposal to amend the WHS Act 2011. The proposal has not been reproduced in full. MEA would request a copy of the full proposal and reserve comment until the comprehensive document has been reviewed.

MEA is perplexed by the QCU proposal and the discussion paper proposal dot point. If a HSR cease work the current practice of involving an inspector and utilising the internal and external process of review has worked and is timely. Referring the decision of a HSR to QIRC, an Industrial Commission, rather than a skilled and responsive decision from an inspector, results in a lengthy legal argument. An

inspector can make a decision within a few hours, on site, through consultation and ensure safety. This current model has delivered resolutions as demonstrated by the statistics displayed by the discussion paper. To alter this introduces disharmony with other states and achieves nothing except lengthy delays.

MEA believes that the cease work and the WHS issues resolution procedures are essential and should be maintained to ensure, as far as practicable, workers ability to protect themselves from imminent danger and that safety issues are resolved as close to the workplace as possible. At no time should safety be seen to be, or used, as an industrial relations tool to further other non-safety agendas.

The WHS issues and cease work statistics identified, do not demonstrate any glaring or controversial trend that these processes are failing. In both cases decisions are reviewable to internal and external parties.

The discussion paper states Unions have concerns, however none of these concerns are detailed, no examples of gaps have been identified and no qualitative or quantitative data support such concerns. MEA does not support an additional issues resolution process without an evidence based approach.

There are no reasons identified within the discussion paper that demonstrate a need to involve the QIRC. QCAT can review decisions by Inspectors. There have been no cases reviewed or identified. There is no evidence that would indicate that QCAT is not capable, lack the resources or that parties would suffer significant delays in undertaking this process through QCAT. The discussion paper infers a referral directly from the HSR issue raised to the QIRC and bypass a proven process that engages all parties and resolves the issue quickly. This proposed process would only result in delays and a drawn-out process which will be open to abuse and result in no improvement in safety but increase disputation in the industry.

QCAT is an independent tribunal and is part of the Justice Services Division of the Department of Justice and Attorney General, who's significant role is to adjudicate on administrative decisions. It is an independent statutory authority.

#### **Discussion paper questions 42 - 48**

MEA experience is these types of campaigns are effective. Through our own experience with the ESO, and other partners, we see tangible results, advantage and benefit of these types of campaigns. Examples include "Switch thinking" campaign and the "Safer up there turn off down here" campaign run over the last 3 years with ESO. We would strongly support these types of campaigns being continued and improved upon.

#### **Discussion paper questions 49 - 51**

On this topic without the chance to consult with members in detail, these questions are difficult to answer and any answer may well be unreliable given the lack of qualitative data. The scope of this review does not include the Electrical Safety Act or ESO but does include the Electrical Industry we therefore reserve making comment at this time.

### Discussion paper questions 52 – 53

The discussion paper refers to introducing an offence call gross negligence which can be referred to as “industrial manslaughter” offence in layman’s terms. No definition has been provided. Manslaughter may be defined as the crime of killing a human being without malice aforethought, or in circumstances not amounting to murder. It is difficult for any person in an industry, with no expertise in criminal law, to determine if there is a gap between the definition of manslaughter and the term gross negligence. We would observe that at the very least both include, a serious disregard to an obvious risk - that is, it arises without intent to cause (serious) injury.

It seems common between the two offences that the consideration is that of intent, albeit a lack of intent to cause death. MEA does not profess to be experts in this legal area and we would strongly suggest that the reviewer seek legal opinion from the DPP, Bar Association, Law Society and Council for Civil Liberties. As referred to earlier our view is if there is no identified gap between Category 1 and the imprisonment of up to 5 years and a manslaughter charge of up to 25 years then we do not see a reason to introduce such an offence.

### Discussion paper questions 54 – 56

We refer to the issues raised in question 52 and 53 regarding legal expertise, however the discussion paper and current laws have not been shown that a relevant gap exists. Criminal prosecutions can treat multiple fatalities as multiple individual charges. The prosecution may then decide to only bring one charge to court to “test” the prosecution, or alternatively prosecute all charges simultaneously depending on the evidence and referencing the DPP guidelines for prosecution. In the event of convictions, sentences may be served either concurrently, or sequentially depending on the submissions made by defence and prosecution and the decision of the Court. Queensland’s saw this approach by the DPP with Dr J Patel from Bundaberg where he faced several charges. These were overturned on appeal and was subjected to a retrial on manslaughter but only on one charge which was eventually dismissed.

### Discussion paper questions 57 – 58

MEA believes the penalties are appropriate and are an effective deterrent to poor health and safety practices.

We look forward to being able to provide further comment on topics once other submissions information and documents are released.



**Jason O'Dwyer**

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