

# Work Health and Safety and Other Legislation Amendment (WHSOLA) Act 2024

Information session

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30 July 2024

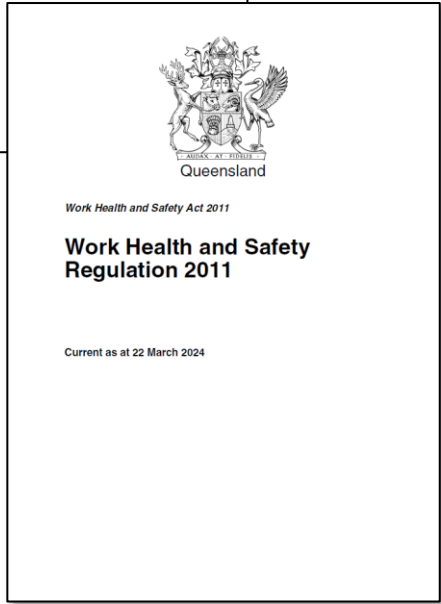
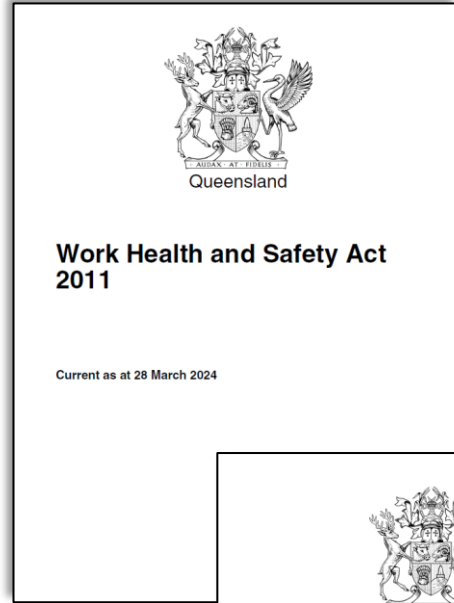
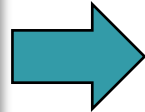
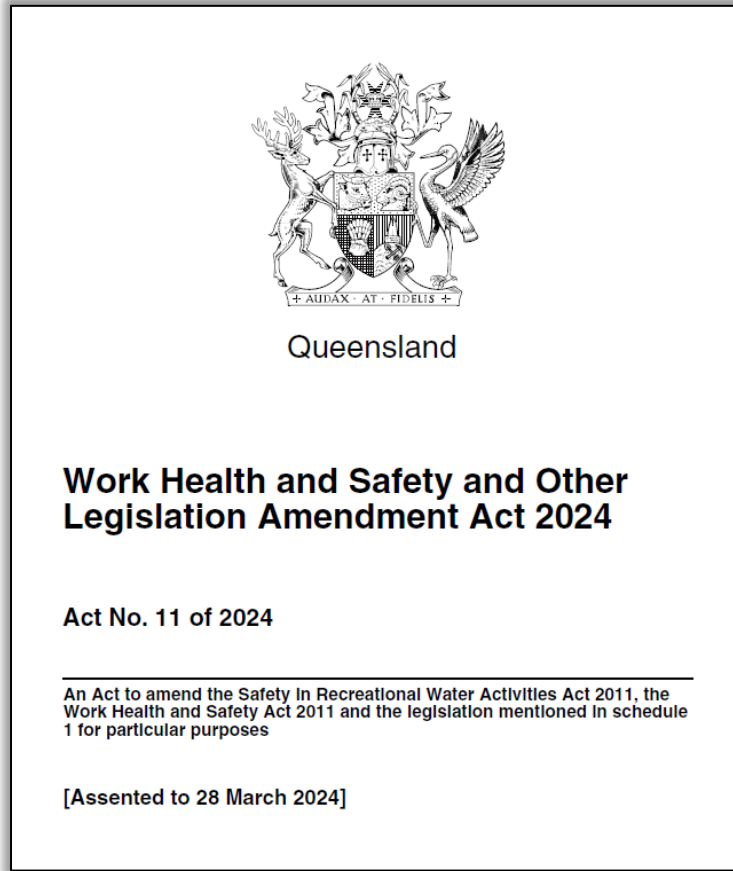
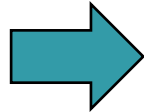
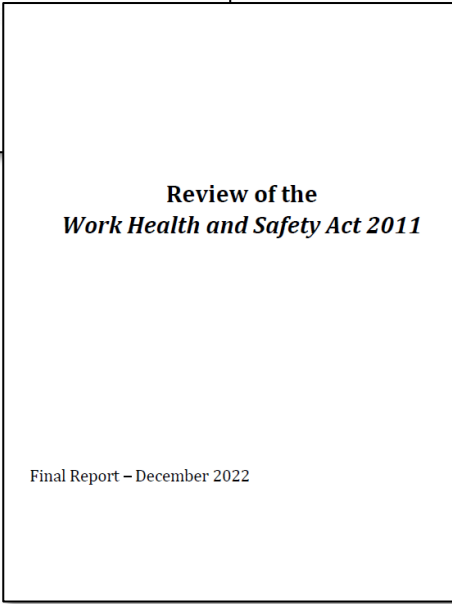
**WHSQ**

Workplace Health and Safety Queensland  
[worksafe.qld.gov.au](https://worksafe.qld.gov.au)



## Acknowledgement of Country

We respectfully acknowledge the Traditional Custodians of the land on which we meet today. We also pay our respects to Elders past and present and extend that respect to Aboriginal and Torres Strait Islander people.



# Work Health and Safety and Other Legislation Amendment Act 2024

Changes will commence in tranches.

## Key changes include...

28 March 2024	20 May 2024	29 July 2024	Yet to commence
<ul style="list-style-type: none"><li>• Clarifying the rail jurisdiction applies concurrently</li><li>• Introduces new prohibition on using insurance to cover penalties</li></ul>	<ul style="list-style-type: none"><li>• Worker representatives</li><li>• Entry permit holder powers</li><li>• Inspector powers to request interviews</li><li>• Regulator information sharing with other jurisdictions</li></ul>	<ul style="list-style-type: none"><li>• HSR powers (including cease work and PINs)</li><li>• HSR training, elections and remuneration</li><li>• New role for inspectors in issue and dispute resolution</li><li>• New jurisdiction for the QIRC</li><li>• Changes to suitable entities and relevant unions (worker representatives)</li></ul>	<ul style="list-style-type: none"><li>• High risk plant</li><li>• Enable regulator to give information in improvement, prohibition and non-disturbance notices to HSRs and entry permit holders</li></ul>

The information contained in this presentation covers key changes made under the WHSOLA Act. Please refer to the resources at the end of the presentation for further information.

# ***Work Health and Safety and Other Legislation Amendment Act 2024***

**Changes that commenced on 28 March 2024**

From **28 March 2024** ... it was clarified that the *Work Health and Safety Act 2011* and the *Rail Safety National Law (Queensland)* apply concurrently

## This means...

- WHSQ inspectors will make comprehensive enquiries in relation to safety complaints and incidents in the rail industry.
- The inspectorate will continue to engage with the Office of the National Rail Safety Regulator (ONRSR) to respond to safety complaints and incidents that occur in rail workplaces.

## Resources of interest...

- The national **Memorandum of Understanding** between the ONRSR and Workplace Safety Authorities 2018-2021.

# From 28 March 2024 ... a new prohibition on insurance arrangements covering penalties commenced

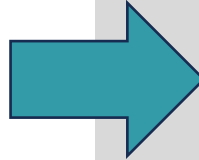
The *Work Health and Safety Act* and *Safety in Recreational Water Activities Act* prohibit:

- entering
- providing; or
- benefiting

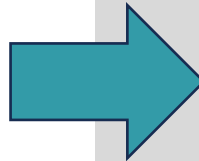
from an insurance or indemnity arrangement to pay a monetary penalty using an arrangement (i.e., a contract of insurance or other arrangement).

A maximum of 500 PU apply to each offence.

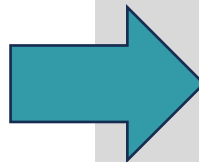
*Note that offences can apply to each officer of a body corporate.*



**By 28 September 2024 (6 months from assent) all persons must not: enter into or provide an arrangement that purports to cover penalties.**



**By 28 September 2025 (18 months from assent) all persons must not: take benefit of an arrangement that covers penalties.**



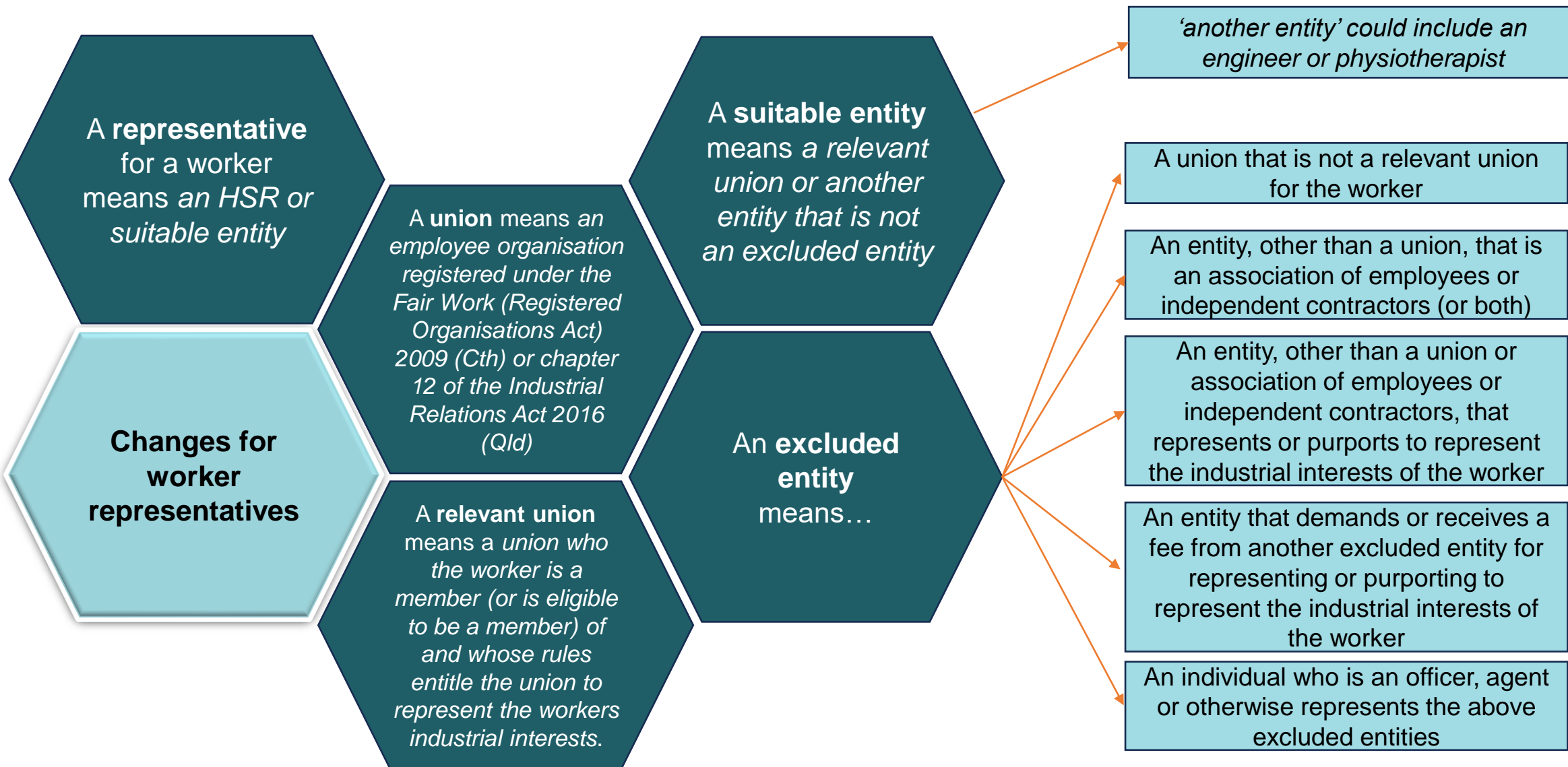
**The delay to the offences ensures that persons have sufficient notice to review their arrangements.**

# ***Work Health and Safety and Other Legislation Amendment Act 2024***

**Changes that commenced on 20 May 2024**



# From 20 May 2024 ... changes to worker representatives and suitable entities commenced



# From 20 May 2024 ... changes for worker representatives and issue resolution commenced

## Worker representatives

(matters where suitable entities and relevant unions can be involved)

### Suitable entities can...

- assist workers in election of HSR
- assist HSR (where requested)
- be party to an issue (where requested) under Part 5, Division 5 (e.g., election of HSRs, use of HSR powers, constitution of HSC).

### Relevant unions can...

- be party to a dispute under Part 5, Division 7A by notifying the industrial registrar in writing (if they are not already a party to the issue).

## Resolution of health and safety issues

A PCBU must allow all parties to the issue to enter and remain at the workplace for the purpose of attending discussions with a view to resolving the issue.

**NOTE: these changes are only for 20 May – further changes for HSRs came into effect on 29 July 2024 (expanding upon the changes made 20 May 2024).**

## Changes for EPHs

An EPH may enter and **remain** at a workplace

An EPH **notice of entry** is not invalid simply due to a formal irregularity, defect or error in name

Further **notice is not required** to access documents or conduct interviews where an EPH remains at a workplace

It is **not reasonable** to comply with a WHS requirement if it would unreasonably hinder or delay entry to a workplace

**Inspector power to request access to documents and answers to questions**

**The written notice must...**

- state that the notice is given under section 171(2A)
- state the purpose of entry to workplace to which the notice relates
- contain a statement to the effect that it is an offence to fail to comply with a requirement of the notice without reasonable excuse
- contain a statement about the effects of section 172 (self-incrimination) and 269 (legal professional privilege)
- if the notice requires the person to attend before an inspector – state that the person may attend with a legal practitioner or other representative.

**Where an inspector requests a person to attend and answer questions...**

- the inspector may request that the person attend in person at a particular place and time, or at a particular time by audio/audio-visual link
- a person may request to attend by audio/audio-visual link or in person and the inspector must agree where it is reasonable.

**Where an inspector (or another inspector) uses powers under section 171(2A) within 30 days of entering the workplace, the inspector must give a written notice to the person.**  
*The notice is issued or given in line with section 209.*

# From 20 May 2024 ... changes to regulator information sharing powers commenced

## Regulator information sharing

The Regulator (and a person authorised by the regulator):

- may share information with other persons, including corresponding regulators in other jurisdictions. This relates to both the WHS Act and SRWA Act.
- a head of power has been included in both acts to allow a regulation to prescribe a commonwealth law. Note that no commonwealth laws are yet prescribed.

A **corresponding WHS law** is reflected in the definition of corresponding regulator and includes a reference to Commonwealth laws.

A notice under section 155 (Power of regulator to obtain information):

- may be issued or given in the same way as section 209
- may be served on a person even though the person is outside the state; or the information, document, or evidence is outside the state or relates to a matter outside the state.

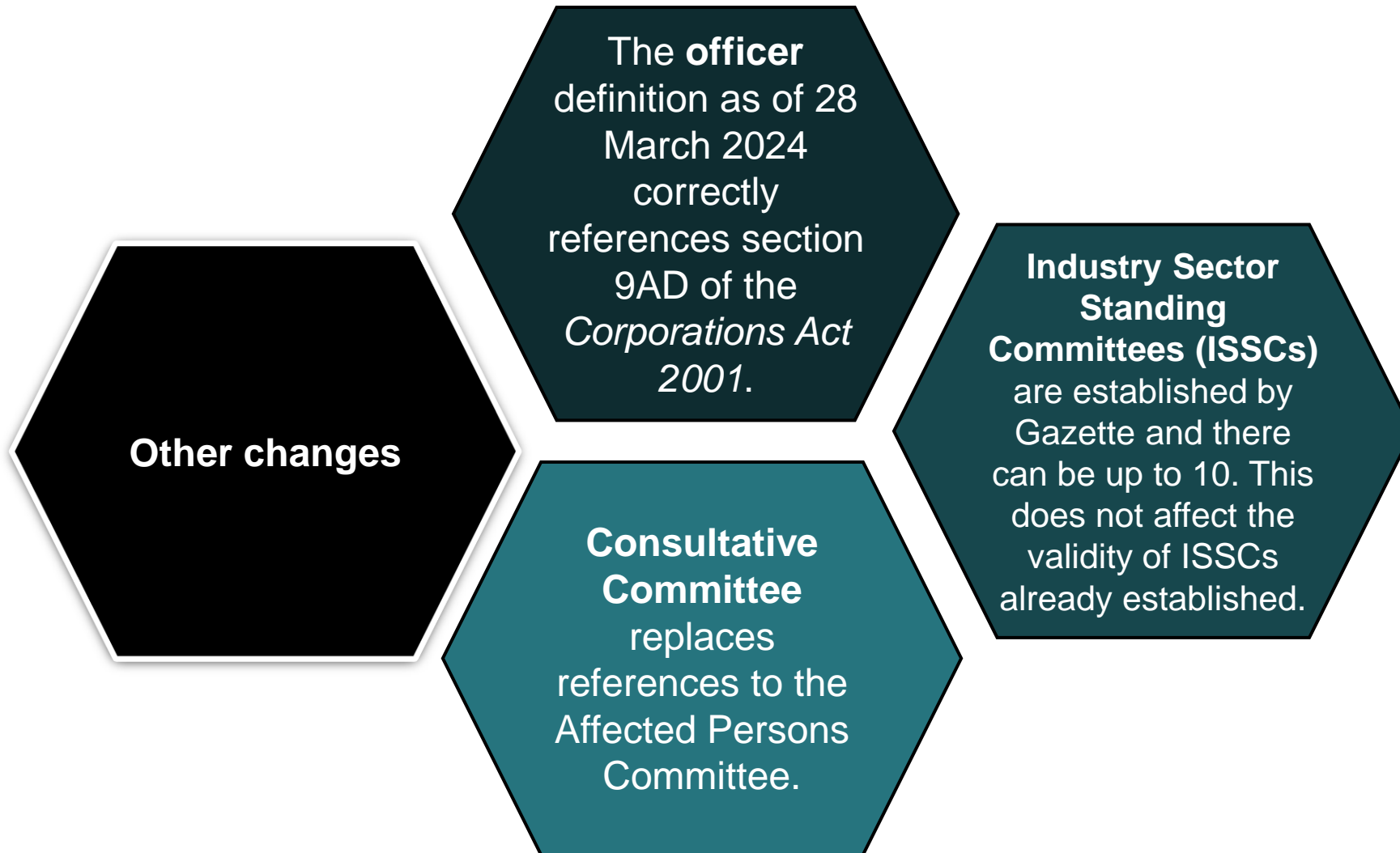
## Codes of Practice

No longer expire after 5 years. Instead, are required to be reviewed every 5 years.

## Prosecutions

- Timeframe for requesting a category 1 or 2 offence be brought extended from 12 months to 18 months after the act or omission.
- Where the WHSP receives a request for a prosecution and the investigation is not complete -
  - at least every 3 months (until the investigation is complete) the regulator must give a written update to the applicant about the investigation.

# Other changes that commenced on 20 May 2024



# ***Work Health and Safety and Other Legislation Amendment Act 2024***

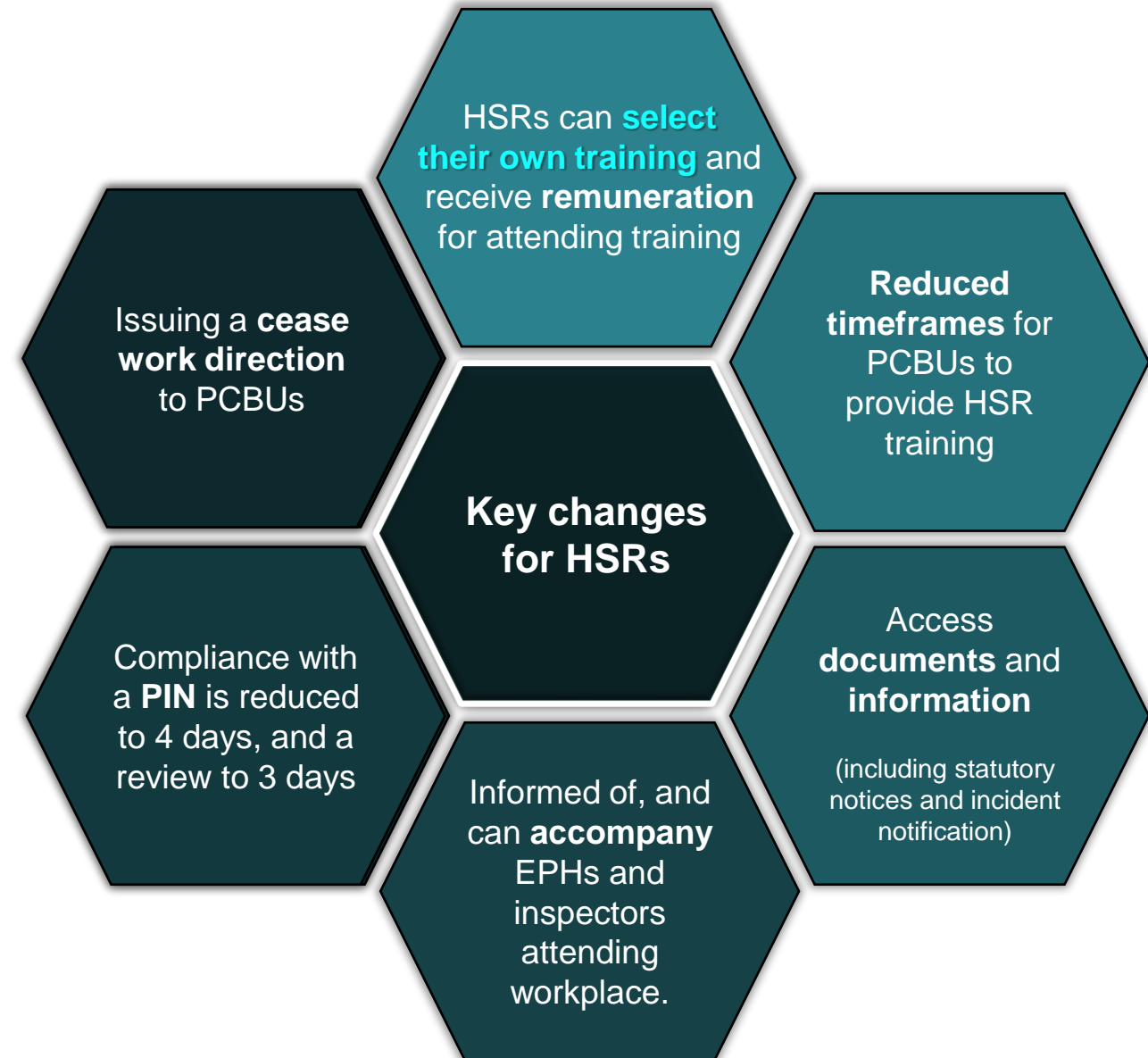
Changes that commenced on 29 July 2024

# From 29 July 2024... further changes to HSR powers and functions commenced



## Strengthening worker protection and representation

Changes are being made to strengthen and promote the role of HSRs, including clarifying powers they can exercise and functions they can perform at the workplace.





# From 29 July 2024... changes to PCBU obligations commenced

## Key changes in WHS Act 2011

**1 Consultation**

On request, PCBU must involve HSR in consultation.

If HSR involved, PCBU must carry out consultation at time & place agreed by parties.

**2 HSR elections**

PCBU must not **intentionally hinder, prevent or discourage** workers from certain acts, such as requesting election of an HSR.

**3 Notification to workers**

PCBU must, at certain times, notify workers in writing about certain matters relating to election of HSRs.

**4 Establishment of HSC**

On request by HSR or 5 or more workers, PCBU must **establish HSC as soon as practicable** (no later than 28 days).

## Key changes in WHS Regulation 2011

**1 Resources, facilities, assistance**

WHS Regulation prescribes the “**resources, facilities and assistance**” a PCBU must provide for an HSR.

**2 Audiometric testing\***

If worker uses PPE to protect from hearing loss, PCBU must provide audiometric testing within **3 months of worker commencing work**, and at least **once every 2 years**.

*\* OBLIGATION DOES NOT COME INTO EFFECT UNTIL 1 YEAR FROM REGULATION BEING MADE (comes into effect on 29 JULY 2025)*

# HSR Resources

## To learn more:

- Scan the QR code or type in: [www.worksafe.qld.gov.au/safety-and-prevention/creating-safe-work/safety-roles-and-duties/health-and-safety-representatives-and-committees](http://www.worksafe.qld.gov.au/safety-and-prevention/creating-safe-work/safety-roles-and-duties/health-and-safety-representatives-and-committees)



SCAN ME

A screenshot of a web browser displaying the WorkSafe Queensland website. The browser's address bar shows the URL: [www.worksafe.qld.gov.au/safety-and-prevention/creating-safe-work/safety-roles-and-duties/health-and-safety-representatives-and-committees](http://www.worksafe.qld.gov.au/safety-and-prevention/creating-safe-work/safety-roles-and-duties/health-and-safety-representatives-and-committees). The website header includes the Queensland Government logo, the text "WorkSafe.qld.gov.au", and navigation links for "About", "Contact", "Services", "News & events", a phone number "1300 362 128", a search bar, and a "Login" button. A main navigation menu contains "Safety & prevention", "Claims & insurance", "Rehabilitation & return to work", "Licensing & registrations", "Laws & compliance", "Your industry", and "Resources". The breadcrumb trail reads: "Home / Safety & prevention / Creating safe work / Safety roles and duties /". There are social media share icons for Facebook, LinkedIn, Email, and Print. The main heading is "Health and safety representatives and health and safety committees". Below the heading, the text begins: "Health and safety representatives (HSRs) and health and safety committees (HSC) provide the means to give workers a voice in health and". On the right side, there is a sidebar with a "Safety & prevention" section containing a table with two rows: "Consultation, representation and participation" with a "+" icon, and "Creating safe work" with a "-" icon.

# From 29 July 2024... changes to notices of dispute, PINs, and cease work directions commenced

## Notice of dispute

- Clarified the **effect of a notice of dispute on the involvement of inspector** for certain types of disputes.
- Clarified what a *WHS dispute* is for s 102AA of the WHS Act.
- Removed requirement that 24 hours must have passed (and issue remains unresolved) before a party to a dispute may ask regulator to appoint inspector.

## Provisional improvement notice

- Minimum timeframe to remedy a contravention (or likely contravention) of WHS Act reduced from **8 days to 4 days** (from the date of issue of PIN).
- HSR may change the remedy date on a PIN by **agreement** with the person to whom the notice was issued, or with the PCBU of the workplace.
- Reduced timeframe in which a person may ask regulator to appoint inspector to review a PIN, from **7 days to 3 days** (from the date of issue of PIN).

The image shows a form titled 'Form 88: Provisional improvement notice (PIN)' from Workplace Health and Safety Queensland. The form is for section 90(3) of the Work Health and Safety Act 2011. It includes fields for: 1. Health and safety representative (HSR) details (Name, For name, Address, Contact number, Work group represented). 2. PIN issued to: Name of duty holder, Address, State/territory, Postcode. 3. PIN given to (if the PIN is given to someone on behalf of the duty holder): Name, For name, Address, Contact number. 4. A statement: 'I have consulted with the duty holder prior to issuing this PIN (section 90(3)) of the Work Health and Safety Act 2011:' with checkboxes for 'Yes' and 'No'. 5. Details of contravention: Site location, Date, Time, and a section for 'Details of contravention' with checkboxes for 'I am contravening a provision or (contravention) will continue or be repeated, or the' and 'I have contravened a provision in circumstances that make it likely that the'. There are also checkboxes for 'Work Health and Safety Act 2011, section' and 'Work Health and Safety Regulation 2011, regulation'. A brief description of how the provision is being or has been contravened is required. A note at the bottom states: 'Note: The HSR may, but is not required to, specify measures, in accordance with section 90(3) of the Work Health and Safety Act 2011, that they believe should be taken to remedy or prevent the contravention or likely contravention or matters or activities causing the contravention or likely contravention.' The form is numbered 22 at the bottom right.

## Cease work notices / directions

- Generally, HSR must give written notice to PCBU for them to direct worker to cease work.
- HSR can direct a worker to cease work *without* consulting or notifying PCBU if risk is so serious and immediate or imminent that PCBU consultation would not be reasonable.
- WHS Act **amended to clarify**, if a HSR directs worker(s) to cease work, the HSR must, ASAP:
  - **give** a cease work notice to PCBU
  - **prominently display** cease work notice, and
  - **consult** with PCBU to resolve matter.
- A HSR direction to cease work is effective until withdrawn by the HSR, resolved with inspector assistance, inspector issues a prohibition notice, or QIRC makes a decision.
- New requirements on what must be included in a cease work notice.

## Streamlining issue and dispute resolution process

1

### Matters where inspector **makes a decision**

- work group determination matters (agreements and variations)
- HSC matters (constitution of committee)

#### Role of inspector

A party may request the regulator to appoint an inspector to assist resolve the matter.

Where an inspector reasonably believes no agreement will be reached within **7 days**, the inspector must decide the matter.

#### Review of decision / QIRC

There is **no internal review** of an inspector decision.

The **QIRC can review:**

- the decision and decide the matter,
- an inspector's decision to use (or not use) compliance powers.

2

### Matters where inspector can **assist in reaching a decision** (or matter can be directly referred to QIRC)

- access to information by HSR
- giving of a notice or information to HSR
- HSR request for a person assisting to access workplace
- a matter relating to HSR training
- a WHS issue to which Division 5 applies
- a cease work issue

#### Role of inspector

A party may request the regulator to appoint an inspector to assist resolve the matter. An inspector **does not make a decision**.

#### Review of decision / QIRC

A party may refer a matter directly to the QIRC (including without involving an inspector first).

# From 29 July 2024...changes to QIRC applications, decisions and jurisdiction commenced



## Jurisdiction

The QIRC now has jurisdiction for civil proceedings regarding engaging in or inducing discriminatory or coercive conduct instead of the Magistrates Court



## Reviewable decisions

The following are no longer reviewable decisions under Schedule 2A.

- decisions relating to failure to commence negotiations for work group determinations (s 54)
- decisions relating to HSCs (s 76).

*These matters are now generally 'WHS disputes' under s 102A and thus captured under part 5, div 7A of the WHS Act.*



## Who can apply for an order

Definition of “eligible person” (i.e. who may apply for an order (for WHS civil penalty proceedings) extended to include a suitable entity representing a worker, or an entity authorised to represent a worker.

Generally, a relevant union, EPH, or person affected by the contravention can apply to QIRC for an order.



## Orders on costs

The QIRC may order a person pay the costs of a *hearing*. The QIRC may not make any orders in relation to the costs of an *application* for a review. A person must bear their own costs in relation to an application.

*Note: r 70(1) of the Industrial Relations (Tribunals) Rules 2011 prescribes matters QIRC may have regard to on making decisions on costs.*

**DEFINITIONS**

	<p><b>Confidential commercial information</b></p> <p>Information about a trade secret, <u>or</u> financial information (or other information that has commercial value) that, if disclosed, will cause significant financial harm to a business or undertaking.</p>	<p><b>Health and safety committee matter</b> (for part 5, division 7A)</p> <p>Means the constitution of a health and safety committee under s 76.</p>	<p><b>Cease work notice</b> (for part 5)</p> <p>Means a written notice issued under s 85(1).</p>
<p><b>WHS matter</b> (for Part 5, division 7A)</p> <p>Amended to additionally include work group determination matters, work group variation matters, a HSC matter, the giving of a notice or information to a HSR, certain matters relating to training for a health and safety representative.</p>	<p><b>Work group determination matter</b> (for part 5, division 7A)</p> <p>Means the negotiation for a variation of an agreement concerning the determination of a work group under s 52(4).</p>	<p><b>Work group variation matter</b> (for part 5, division 7A)</p> <p>Means the negotiation for the determination of a work group under s 52(1).</p>	



# Other changes that commenced on 29 July 2024

## Discriminatory conduct

Discriminatory conduct (s 105) extended to include “treats a worker less favourably than other workers of the person”.

## Failure of negotiations

Clarifies what ‘failure’ means in respect of negotiations for determining a work group, and clarifies the role of inspector if appointed in instances of failure (s 54).

## Other changes

### Relevant union involvement: work group negotiation & agreement

A relevant union (for a worker who is proposed to form part of a work group) can, by notifying PCBU in writing, be a party to work group negotiation and agreement (s 52).

### Relevant union involvement: party to an issue

A relevant union for a worker affected by an issue can, by notifying PCBU in writing, be a party to an issue (s 80(1)).



## Transitional arrangements

Existing WHS Act provisions continue to apply for certain matters which commenced or were underway before 29 July 2024, such as provisions relating to:

- work group negotiations
- disputes relating to WHS issues
- directions regarding cease work notices
- provisional improvement notice timeframes
- proceedings for discriminatory or coercive conduct and WHS civil penalty provisions.

# ***Work Health and Safety and Other Legislation Amendment Act 2024***

## Remaining changes yet to commence

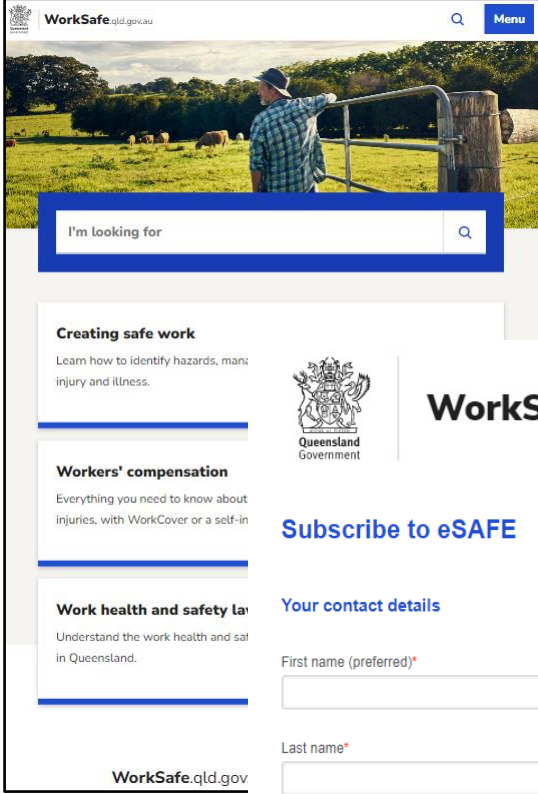
**Implementation dates for the following changes will be announced in due course:**

- *Enabling HSRs and EPHs to be able to request information in improvement, prohibition and non-disturbance notices from the regulator.*
- *Prescribing high risk plant for non-workplace areas by regulation and a consequential amendment to the Public Health Act 2005.*



## To learn more:

- Visit [worksafe.qld.gov.au](https://www.worksafe.qld.gov.au)
- View the *Work Health and Safety and Other Legislation Amendment Act 2024* on the Queensland Register of Legislation  
<https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2024-011>
- Subscribe to the [eSAFE newsletters](#) for updates
- Still have a question? Contact WHSQ Advisory Services on **1300 362 128**



The screenshot shows the WorkSafe.qld.gov.au website. At the top, there is a search bar with the text "I'm looking for" and a magnifying glass icon. Below the search bar, there are three main sections: "Creating safe work" (Learn how to identify hazards, manage risks, and prevent injury and illness), "Workers' compensation" (Everything you need to know about injuries, with WorkCover or a self-insurance), and "Work health and safety laws" (Understand the work health and safety laws in Queensland). To the right of these sections is the Queensland Government logo and the text "WorkSafe.qld.gov.au". Below the logo, there is a "Subscribe to eSAFE" button. At the bottom of the page, there is a "Your contact details" form with the following fields: "First name (preferred)\*", "Last name\*", "Company/Organisation\*", "Role\*" (a dropdown menu with "Select..." as the current selection), "Email (preferred)\*", and "State" (a dropdown menu with "Select..." as the current selection). The WorkSafe.qld.gov.au logo is also visible in the bottom left corner of the page.



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