COMMISSION OF INQUIRY INTO THE CFMEU AND
MISCONDUCT IN THE CONSTRUCTION INDUSTRY

Statement of Andrea Anne Fox

I, **ANDREA ANNE FOX** of c/o Office of Industrial Relations (**OIR**), 1 William Street, Brisbane, in the State of Queensland, Executive Director, affirm as follows:

A Background

1. I am currently the Executive Director of Policy and Workplace Services at Workplace Health and Safety Queensland (**WHSQ**), a position which I have held since 2023. WHSQ is part of the OIR.

2. My duties as Executive Director include:

   a. oversight and supervision of a number of teams, being:

      i. Strategy and Advisory Services;

      ii. Work and Electrical Safety Policy (**Policy**);

      iii. Inspectorate Policy and Support;

      iv. Coronial and Enforceable Undertakings Unit;

      v. Board and Industry Committee Services; and

      vi. Public Sector Safety Unit.

   b. consultation and discussions with relevant stakeholders (employers/contractors, unions, peak bodies, other government departments) about proposed legislation and policies; and

   c. providing strategic policy advice to the Minister and the Regulator to support them in delivering work health and electrical safety leadership and solutions.

3. I have worked as a policy professional for over twenty years. Prior to my current role:

   a. I was Director of Work and Electrical Safety Policy at the OIR from 2017 until I was appointed as permanent Executive Director on 11 January 2024; and

   b. I was in the Department of the Premier & Cabinet from 2004 to 2016 in a variety of policy positions, culminating in Principal Policy Officer (Economic Policy).

4. I hold a Bachelor of Economics and Master of Social Science (Economics) from The University of Queensland.

B My overall experience with the CFMEU

5. I have mixed feelings about the CFMEU (**Union**). I believe that the Union has done important work in achieving better safety and conditions for its members over the years. I believe workers have a right to representation. I have spent over a decade building a specialisation in collaborative policy development skills, and I believe that when unions and employers get a say in how we regulate, they help generate better regulation and keep the Regulator accountable.

6. When I came to the OIR, I knew the construction unions were distrustful of government and could be difficult to deal with, but I did not expect it to be anywhere near as bad as it turned out to be (as I describe below). In my naivety, I thought that I would achieve a respectful working relationship with the Union because they would see that I was genuine about collaborative policy design with stakeholders, and motivated about achieving the work priorities I had been set by the OIR.

7. During my first few years in the OIR, I thought that the CFMEU was simply a stakeholder that did not properly understand how government works and that this led to them being frustrated with normal government processes and trying to participate in ways that were unproductive. For instance, trying to force me to change legislation is futile because a role like mine does not have that kind of decision-making power in government.

8. Further, as a public servant, my delivery of policy direction changes from government to government, but this does not mean that I am not personally and professionally committed to improving safety outcomes for workers. However, through my interactions with the CFMEU, I thought that the Union perceived a public servant performing their duties appropriately and ethically by executing the policy agenda of the government of the day to be fickle and untrustworthy.

9. Over time I came to suspect that the CFMEU's behaviours became driven less by confusion about government and more by an agenda to disrupt and delay policy processes, so as to support a narrative that the Regulator was ineffective and in order for the Union to be given greater control over policy and additional enforcement powers. This ultimately undermined, rather than promoted, better safety outcomes for their members. I describe some examples of this below.

10. After trying to build enduring consultative relationships with the Union, I also drew the conclusion that the Union was deliberately using aggression and intimidation to compel me and others to leave the Regulator, as we were not yielding to their pressure on our work. I include some examples of this below.

C CFMEU's attempts to intimidate OIR staff

C.1 Incident with Mr Ravbar on 30 January 2018

11. I had a frightening interaction with Michael Ravbar of the Union, which occurred at the Union's head office in Bowen Hills on 30 January 2018. This was my last visit to the Union office. (This incident was described in paragraphs 254 to 258 of the report entitled *"Violence in the Queensland CFMEU"* by Geoffrey Watson SC dated 17 June 2025. However, this incident occurred in 2018, not 2020 as stated in the report.)

12. At the time, I was the Director of Work and Electrical Safety Policy at the OIR. We had recently shepherded the *Work Health and Safety and Other Legislation Amendment Bill 2017* through Parliament, which contained a very large number of legislative changes that received Royal Assent on 23 October 2017.

13. I had gone to the Union head office with two colleagues from the OIR, Ben Christensen (Policy Manager) and Bradley Bick (Director of Workers' Compensation Policy). We were there to meet with Royce Kupsch of the Union about the Tower Crane Code of Practice. The Tower Crane Code of Practice is a statutory instrument under the *Work Health and Safety Act 2011* (**WHS Act**).

14. At the time, Mr Kupsch was a member of the Work Health and Safety Board (**Board**) and a member (and Chair for a term) of the Construction Industry Sector Standing Committee (**ISSC**). I had attended the Union's head office previously about two or three times for the OIR's ISSC meetings and to pre-brief with Mr Kupsch, as the Chair, on the proposed agenda.

15. The meeting on 30 January 2018 took place in a meeting room on the lower floor at the Union premises. Also present at the meeting were Mr Kupsch, Mr Christensen and Mr Bick. At the meeting, Mr Kupsch stated that the Union wanted certain elements from a previous Code of Practice to be included in the Tower Crane Code of Practice. Mr Kupsch spoke in his usual assertive manner delivering feedback on behalf of the Union. However, I did not consider his feedback to be unreasonable.

16. In response, I explained to Mr Kupsch the process for updating a Code of Practice, which involved multiple layers of approval by the Department and the Minister and consultation with others (including employer representatives and technical specialists inside the Department), as well as the timing involved in this process. It was not unusual for me to have to manage expectations on these matters.

17. Mr Kupsch was somewhat displeased with my explanation, but did not push back against it.

18. About 15 minutes into the meeting, Mr Ravbar knocked on the door and took Mr Kupsch out of the room. I had not previously met Mr Ravbar but recognised him from photographs. Mr Kupsch came back in and asked me to come with him outside of the room. I stepped out of the room and left my OIR colleagues in the meeting room. Mr Ravbar was waiting outside the room, and I was surprised when he and Mr Kupsch then directed me to a different room on a higher floor.

19. Once we arrived in the other room, I went to sit down at a table in the room, and behind me I heard the door close and click. I sat down at the table and turned around to find Mr Kupsch and Mr Ravbar standing facing me. They were positioned between me and the doorway.

20. Mr Ravbar immediately started to berate me angrily. He said words to the effect of:

    a. I saw you come in;

    b. the audacity (or gall) of you to come to this building;

    c. you are banned from working on this ever again;

    d. the Union refuses to work with you and this means no one will work with you;

    e. you are banned from attending any CFMEU building or site or meeting;

    f. we have been watching you;

    g. I know what you've done;

    h. I know who you are;

    i. people like you disgust me;

    j. I know what you did, but I'm not going to say it here; and

    k. you are not welcome here (ie Union head office) ever again.

21. Mr Ravbar then described how he would have liked to have me physically dragged downstairs and out of the building and thrown onto the street. He said he was doing me the courtesy of not embarrassing me in front of my colleagues but warned me that I would be physically thrown out in this way if I ever showed up again. During this tirade, Mr Ravbar did not refer to me by name.

22. Mr Ravbar's tone and demeanour were very menacing throughout this tirade. His voice started as a kind of hissing, low voice with gritted teeth, and then got louder and more enraged as he went on. He was never shouting at volume but his voice was raised. He was glaring at me and almost spitting at me. He was so angry that sometimes, he would start some sentences and then not finish them.

23. I was shocked because I had never met Mr Ravbar before and did not know what he was accusing me of, and because no issue had been raised with me in the meeting with Mr Kupsch.

24. I was so surprised that at first I thought Mr Ravbar had the wrong person and I expected that Mr Kupsch would intervene and correct the misapprehension, but he just stood there. I must have looked confused because I remember Mr Ravbar saying, *"I know what you did but I'm not going to say it here"*. Mr Kupsch did not speak through the entire encounter.

25. My mind was racing to try and work out what was happening with Mr Ravbar and also because I felt in danger.

26. I had always been cautious when dealing with Mr Kupsch. He was a big man and prone to aggression — in other meetings up to that point I had experienced him banging his fist on the table, jabbing his finger towards me, and using a raised voice — but I had also generally found him to be predictable. At that point, I would have described us as having a reasonable working relationship, though relationships with the Union had been strained during the passing of the Bill. But in that room with Mr Ravbar and Mr Kupsch, I was extremely worried. I thought Mr Ravbar might be about to completely lose control. He was full of rage and very unhinged.

27. I did not speak at all during Mr Ravbar's tirade. I stayed silent to de-escalate the situation, and I also stayed very still because I thought I needed to watch carefully for any sudden movement so I could be ready to duck as I was expecting that Mr Ravbar was about to physically assault me.

28. I concluded that this meeting was a trap in that the reason why Mr Ravbar and Mr Kupsch separated me from my colleagues was to ensure that there were no other witnesses to this event. I was very concerned that this was because Mr Ravbar intended to physically attack me.

29. It felt like he wanted me to cry or beg or confess to something. I was very frightened, and I just kept quiet.

30. Eventually Mr Ravbar went quiet and stared at me and then left the room, and Mr Kupsch took me out and back to the original meeting room. I do not recall Mr Kupsch saying anything or engaging with me in any way when taking me back.

31. I estimate that the whole episode, from leaving my colleagues to going to this meeting room and returning to my colleagues, went for about 10 minutes.

32. When I got back to the meeting room (ahead of Mr Kupsch), I said to my colleagues *"something's happened, we need to leave"*. A moment later, Mr Kupsch came into the room and said he would reschedule the meeting. We left the building without any issues.

33. We walked away from the building and around the corner because the building has a view onto the street and I did not want to be watched.

34. I then rang Dr Simon Blackwood, the Deputy Director-General (**DDG**) of the OIR at the time and told him briefly about the incident. He told me to get out of there immediately and come back to the office.

35. When I got back to the office, I briefed both Dr Blackwood and Paul Goldsbrough, Executive Director of Work Health and Safety Policy and Workers' Compensation (and my immediate supervisor), about this incident.

36. I deliberately did not make a formal complaint about the incident at that time. I had some difficulty processing it and felt embarrassed that I may be perceived as not having managed stakeholder engagement effectively and was worried about the effect of making such a complaint on my ability to do my job. I also did not want to cause any difficulties for the OIR given that the OIR was already under pressure from the CFMEU and scrutinised for it by other areas of government. In hindsight, I regret not making a formal complaint.

37. I recall Mr Goldsbrough was appalled and said words to the effect of: "*They're so out of control; if this got out it'd be on the front page of the Courier-Mail – doing this to a female public servant*." I felt supported by both Mr Goldsbrough and Dr Blackwood, but both were also focused on identifying what had caused such offence to Mr Ravbar.

38. A few days later, Mr Goldsbrough and Dr Blackwood told me that inquiries had been made and that no cause for Mr Ravbar's behaviour was uncovered. They said words to the effect of: "*Put it behind you, he's just crazy*."

39. At the time, I felt terrified to be on Mr Ravbar's radar. He has a reputation for being a very vengeful person.

40. On one occasion after the incident described above, when Mr Kupsch and I were left alone in a room following a meeting at an OIR premises, Mr Kupsch asked me what type of car I drove and who I was married to. These questions came out of the blue and made me uneasy given the experience I had had with Mr Ravbar (in the presence of Mr Kupsch) and the fact that I did not have a friendly personal relationship with Mr

Kupsch. I answered him because I needed to maintain a working relationship and did not want to offend him.

41. I obtained professional counselling about the incident with Mr Ravbar. I also spoke about the incident and its impact on me to my husband and some close friends.

42. Stakeholders can sometimes become angry about issues close to their heart and I have occasionally (approximately two or three times a year) encountered anger from stakeholders outside of the Union. While these stakeholders could rude and aggressive in the moment, they were not intimidating in this manner. Mr Ravbar's conduct was well beyond any normal 'angry stakeholder'.

43. When I commenced my role as Director with the OIR, Mr Kupsch was the Chair of the Construction ISSC. Chairing was shared between the Union and the employer representative on the ISSC across the years. Mr Kupsch liked to host the Construction ISSC meetings at the Union's building, though employer representatives also hosted certain other tripartite meetings (ie involving representatives of employers, unions and the regulator) at their premises. After the incident with Mr Ravbar, the OIR decided to have all Construction ISSC meetings at departmental premises, as I was a standing guest at those meetings. I never attended the Union's offices again, and given my safety concerns, nor did my staff. Although reluctant, Mr Kupsch accepted this change in location, which is something I believe he, as chair, would have refused to accommodate had he not been witness to what Mr Ravbar did to me.

44. I also warned all new female executive staff commencing at WHSQ not to meet with Mr Ravbar alone. I did not share details with them but indicated that an incident had occurred with me in the past.

C.2 Other examples of CFMEU aggression

45. During my time at the OIR, CFMEU aggression and disrespect became a routine experience for senior staff working with the Union. Staff, including myself (as a Director) and Executive Directors, were frequently berated by the Union in Board meetings and at the Construction ISSC.

46. While Mr Kupsch worked with me as a construction stakeholder on numerous collaborative policy projects completed over that time, he none the less singled me out for hostility in these public settings as a representative of Policy. Although Mr Kupsch would also sometimes be aggressive to me on the phone, I observed that Mr Kupsch's aggression was generally worst in front of an audience. I believe it was used both to punish me for not yielding to the Union's demands on policy matters, and to intimidate the OIR and other stakeholders in the room. On some occasions, I saw

employer representatives appear to be intimidated by Mr Kupsch's aggression and adopt his positions, contrary to their own interests.

47. Mr Kupsch was particularly relentless in attacking me in Board meetings, and much of his criticism amounted to claiming that Policy was unproductive and a roadblock to the government's legislative change.

48. Over the period from 2017 to 2024, the Policy team under my leadership delivered three legislative Bills, nine new Regulations, remade an additional Regulation, created five new codes, reviewed eleven codes, remade two codes, and updated twenty model codes, in addition to a plethora of other policy work. By any measure we have been and continue to be a very high performing policy team. I therefore considered Mr Kupsch's criticisms of Policy to be unjustified.

49. Despite this, I went to great lengths to appear composed during Mr Kupsch's tirades, as I felt that they would have gotten worse if the Union had sensed I was affected by them. However, the aggression took its toll on me. I found it incredibly stressful and it caused me significant anxiety and burnout.

50. Based on my conversations with Executive Directors and the Board at the time, accepting aggression was unfortunately viewed at the OIR as being 'open to feedback'. The CFMEU was by far the worst stakeholder with aggression towards staff, but I observed that OIR staff encountered aggression from a range of stakeholders, and there was a culture of accepting this at the OIR as part of the job. The perceived need to be accepting of all feedback is probably related to the fact that the WHSQ was the subject of frequent external reviews. In my observation, the OIR was deliberately not keeping its stakeholders at arm's length as it was consciously trying to be more accessible and responsive, in line with recommendations from reviews. This grew worse following the departure of Mr Goldsbrough and Dr Blackwood, who had long-term experience working with these stakeholders.

51. It is only in the last two years that I have become an Executive Director in Policy, and it coincides with a time when the Union has been put into administration. So, while I approach the leadership role in Policy differently to my predecessors , it is fair to say that I do not face the same kinds of pressures in leadership as those in the past did. Since becoming an Executive Director, I have introduced a Charter of Safety and Respect to cover stakeholder interaction for the staff of my directorate and a version of this has been picked up by the OIR for all staff.

52. However, I acknowledge that previously, as a Director, I gave construction matters disproportionate policy attention at the expense of other sectors with equivalent levels

of risk. It was necessary for me to do this to avoid CFMEU escalating matters in a way that would then demand even more time and attention, for example complaining to the Minister's office. While I considered this to be on the lower end of the scale of inappropriate influence by the Union, it none the less concerned me.

C.3 CFMEU targeting OIR officials

C.3.1 CFMEU's attempts to have Dr Blackwood removed

53. In my experience, Dr Blackwood — who was a long standing DDG of the OIR from April 2012 to January 2019 — was someone who genuinely cared about the industrial and health and safety rights of workers and about achieving productive and harmonious workplaces with their employers. He was an insightful leader to his staff and showed resilience in his interactions with the Union, including 'holding the line' under pressure. I had not always agreed with his decisions, but I had faith in his strategic direction.

54. When I started at the OIR, Mr Ravbar was already waging a campaign against Dr Blackwood. Mr Ravbar's targeting of Dr Blackwood included demonstrations naming him and saying *"he had blood on his hands"*, social media campaigns and what seemed to be regular angry phone calls to his office (which I was able to partially observe because Dr Blackwood's desk was not far from mine in an open plan office). When Dr Blackwood's employment was suddenly ended in January 2019, it gave all staff in the Regulator a sense that their employment was also vulnerable to CFMEU pressure.

C.3.2 CFMEU's attempts to have me removed

55. Dr Blackwood had told me that Mr Kupsch asked him numerous times to remove me from Policy. Dr Blackwood said that he had told Mr Kupsch that I was remaining in my job. He once said that Mr Kupsch sounded scared of Mr Ravbar.

56. Later, when a new permanent DDG, Craig Allen, was appointed in September 2019, Mr Kupsch and Mr Ravbar again attempted to have me removed from my job. I know this because Mr Allen mentioned this to me and reassured me that he had no intention of complying.

57. After the incident with Mr Ravbar I described above, Mr Kupsch would, on occasion, copy multiple people (including the DDG, other OIR executives, and Mr Ravbar) into his emails when complaining about me in my role. I took this to be an attempt to intimidate me into leaving my job or to prompt superiors to remove me from my job.

Attached to this statement and marked **AF-1** is an email from Mr Kupsch dated 3 September 2018 with the subject *"FW: Smoko room WHSQ agreed on - Construction*

Group - 31/8/18". In addition to me, this email was addressed to the DDG and the Minister's Chief of Staff, and copied to Mr Ravbar and Jade Ingham of the CFMEU.

Attached to this statement and marked **AF-2** is an email from Mr Kupsch dated 1 October 2019 with the subject *"Re: Feedback survey - Tilt up Precast"*. This email was copied to the DDG, Marc Dennett (then Executive Director of Workplace Health and Safety Compliance and Field Services), Helen Burgess (then Director of Construction Compliance and Field Services), Mr Bick (my then acting Executive Director), Catherine Rafferty (Policy Officer reporting to me), Stuart Davis (Engineer at the OIR), Mr Ravbar and Mr Ingham.

C.3.3 CFMEU targeting other OIR officials

58. Another technique used by the CFMEU to target OIR staff they did not like was to effectively declare them a persona non grata. This happened to numerous colleagues, including at various points in the past to each of the current OIR Executive of the Work Health and Safety Regulator — Sarina Wise, Johanna Sutherland, and me. Other senior OIR staff were also targeted in this way.

Attached to this statement and marked **AF-3** is a letter from Andrew Sutherland, CFMEU Division Branch Assistant Secretary, to Minister Grace Grace dated 21 July 2017. In that letter, Mr Sutherland stated: *"It is the position of this union moving forward that no official of this union* ***under any circumstance*** *will engage, acknowledge, or interact with Daryl Brooker for any purpose"* (original emphasis). Mr Brooker was then the Director of Construction Compliance and Field Services. Mr Brooker went on to take a secondment to another department. In 2018, Ms Burgess was appointed to the role of Director of Construction Compliance and Field Services.

Attached to this statement and marked **AF-4** is an email from Royce Kupsch dated 9 February 2022 with the subject *"Re: Tilt-up and Pre-cast - CFMMEU and OIR"*. In that email, Mr Kupsch stated: *"The CFMEU will not meet with Andrew Harris"*. Andrew Harris was then the Executive Director of Workplace Health and Safety Compliance and Field Services, replacing Mr Dennett.

D My concerns about regulatory capture of compliance activities at OIR

D.1 OIR adopting a CFMEU-friendly position for compliance activities, contrary to external legal advice

59. One example of the impact of the Union's pressure on the OIR is the decision made by the DDG Mr Allen, on the advice of Mr Dennett, in relation to the interpretation of s 81(3) of the WHS Act.

60. At the time, s 81(3) provided that, in respect of certain issues about work health and safety, *a "representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue"*. The Union had a practice of using s 81(3) as a channel of entry for CFMEU officials without showing federal right of entry permits, including for those who did not have entry permits. No other union was using this channel of entry.

61. Conflict arose where entry was purported to be made under s 81(3), but CFMEU officials then sought to exercise rights only available under Part 7 of the Act (dealing with right of entry to deal with suspected safety contraventions). Further, there was also concern by employers that CFMEU officials who lost their entry permits were using s 81(3) for entering their sites.

62. I understand that these were difficult situations for inspectors to navigate because it remained ambiguous how the legislation applied in these circumstances, and also, because this section does not have a penalty provision.

63. The Union subsequently lost a Federal Court decision on this matter in 2019 when legal action was commenced by the Australian Building and Construction Commission (*ABCC v CFMMEU (No 2)* [2019] FCA 1737). The Federal Court ruled that s 81(3) of the WHS Act conferred a "*State or Territory OHS right*" within the meaning of the *Fair Work Act 2009* (**FW Act**). This meant that s 494 of the FW Act, which provides that an *"official of an organisation must not exercise a State or Territory OHS right unless the official is a permit holder"*, applied to entry under s 81(3) of the WHS Act. Thus, CFMEU officials needed a federal right of entry permit to enter a site under s 81(3) of the WHS Act.

64. On 19 November 2019, Ms Burgess emailed Mr Dennett, stating that Mr Ravbar called her to advise that the CFMEU intends to, in effect, circumvent the Federal Court decision by terminating certain officials' employment with the CFMEU, and instead re-employing them under the Queensland state-registered union. I was copied into an email chain that included Ms Burgess' email. John Alizzi in my Policy team drafted a question for Crown Law to advise on Mr Ravbar's interpretation of the WHS Act and FW Act, and I shared the request for advice with Mr Bick. (Mr Alizzi's draft question is included as part of the same email chain.) However, Mr Bick paused further action on the Crown Law advice because Mr Dennett had already separately sought legal advice on the matter. I did not receive a copy of that advice at the time.

Attached to this statement and marked **AF-5** is an email chain dated 19 November 2019 with the subject *"FW: CFMEUQ and 81 (3)"*.

65. On the same day, 19 November 2019, Mr Alizzi prepared amendments to various documents referencing entry rights, including inspector guidance, the Memorandum of Understanding with the Queensland Police Service, and public facing information, to reflect the outcome of the Federal Court decision. I was instructed by Mr Bick to pause this work while Mr Allen met with the Union. However, it appears that there was a miscommunication and the revised version prepared by Mr Alizzi was, in fact, published on the OIR website.

Attached to this statement and marked **AF-6** is an email chain dated 19–26 November 2019 with the subject *"RE: Right of Entry – Updating resources in light of ABCC v CFMMEU"*.

Attached to this statement and marked **AF-7** is the 2019 version of the *"Issue resolution"* guidance document published by the OIR (**Guidance Document**).

66. I became aware that Mr Dennett had reached a view supporting Mr Ravbar's position when in early 2020 I was asked to have the Inspectorate Policy and Support team prepare inspectorate guidance on the issue. I was instructed that Mr Dennett was anticipating push back from inspectors on the position.

67. At that time, I was concerned and had a conversation with Mr Allen outlining my reasons for believing that the legislation and the Federal Court decision likely did not allow for this position by the Union. I came away thinking that I had convinced Mr Allen.

68. Mr Dennett became aware of my conversation with Mr Allen and challenged my view in a brief conversation with me. Mr Dennett told me that he had independent legal advice to inform his view and I backed down.

69. Eventually I was able to see a copy of the legal advice addressed to Mr Dennett from Andrew Herbert of counsel, dated 12 December 2019.

Attached to this statement and marked **AF-8** is Mr Herbert's advice dated 12 December 2019.

70. I was very concerned to see that the advice, while nuanced, appeared to contradict Mr Dennett's position and essentially support my own interpretation of the legislation and the Court's decision.

71. I verbally briefed Mr Allen and Mr Dennett to explain that the legal advice was being misunderstood. However, Mr Dennett told me that they were not persuaded by my arguments and that I needed to prepare inspectorate policy guidance as previously requested.

72. I was very concerned that the Regulator might be ignoring legal advice and so took the unusual step of having my Policy team draft a DDG briefing note to formally record the direction by the DDG, as well as the potential for that view to be challenged. Such briefings are done infrequently to support inspector guidance on new regulatory positions. This is because briefings are more typically reserved for instances where the Regulator has resolved a novel situation within the legislation and is documenting the matters considered and steps taken in reaching a decision. This preserves an account of the information known at the time and how it was treated in order for future decisions to be coherent with that direction.

73. This issue came to a head in the same week that my new Executive Director, Ms Jodie Deakes, commenced in her role. On her first day, I advised her of my concerns and asked her to defend my position. She had a conversation with Mr Dennett and Mr Allen but informed me that a conclusion had been reached contrary to my views. Given Ms Deakes was completely new to her role, I believe she would have found it difficult to understand the extent of my concerns.

Attached to this statement and marked **AF-9** is an email chain dated 6 February 2020 between me, Ms Deakes and Mr Dennett with the subject *"DDG Briefing note Section 81(3) entry and CFMEUQ plans"* and my draft DDG briefing note, which was attached to the first email in the chain.

74. The briefing note was later signed off by the DDG.

75. I do not recall seeing the formal instruction Mr Dennett, himself, subsequently delivered to the inspectorate, but I was aware the Regulator's new position was implemented.

76. On 10 February 2020, I received an email from Ms Deakes instructing me to amend the external-facing Issue Resolution fact sheet to reflect the Regulator's new position, in response to a request from Mr Dennett.

Attached to this statement and marked **AF-10** is an email chain dated 10 February 2020 with the subject *"RE: https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0011/109100/issue-resolution-factsheet.pdf"*.

77. The Inspectorate Policy and Support team attempted to update the inspector guidance in 2020 to reflect the DDG's new position, but it became a protracted exercise because the Union challenged the Federal Court decision and the work paused to see the outcome, and also because it was very difficult to secure Mr Dennett's finalisation of the changes. The new guidance was eventually approved by

Compliance and Field Services in 2022. This occurred under a new temporary Executive Director, Andrew Harris, who had replaced Mr Dennett after his departure.

Attached to this statement and marked **AF-11** is the 2022 version of the Guidance Document.

78. Since that time, further legislative changes were made in 2024 to Queensland's WHS Act to specify "*suitable entities",* as well as legislative changes being made in late 2023 to the FW Act.

Attached to this statement and marked **AF-12** is the current version of the Guidance Document as currently published on the OIR website.

D.2 Concerns in relation to Ms Helen Burgess

79. Soon after starting with the OIR, I learned to be wary around Ms Burgess. At that time, Ms Burgess was in the Construction Strategy Unit, and not initially in a managerial role.

80. Ms Burgess regularly attended Construction ISSC meetings with me. At these meetings I observed that she joined the Union in lengthy criticisms of the inspectorate and the OIR. (This was something I escalated as a grave concern to Mr Goldsbrough and Dr Blackwood. I also tried to get in front of Ms Burgess' attacks by ensuring that we had strong, informative reports on inspectorate activities ahead of ISSC meetings). I also observed Ms Burgess stay behind with the Union officials after a meeting, when the rest of the OIR staff were leaving (something I also escalated as a concern in the OIR).

81. After Ms Burgess was promoted to the role of Director of Construction Compliance and Field Services, I became even more cautious of her. I found her to lack an understanding of the impartiality and public accountability required of a Regulator. I attempted to keep a cordial relationship going with Ms Burgess, partly because I did not want her to have reason to undermine the OIR, and partly because I was aware (from what she told me) that she spoke with Mr Ravbar from time to time and, by then, I was fearful of her reporting on me to him.

82. I was sufficiently concerned about Ms Burgess' behaviour, further detailed below, to note my concerns with all supervisory positions above me, including all permanent and acting DDGs, all my Executive Directors, and also, Ms Burgess' own Executive Director, Mr Dennett. On one occasion I spoke to Mr Dennett about Ms Burgess and told him words to the effect that I did not feel comfortable with her being in meetings where we were trying to resolve sensitive regulatory positions because I was

concerned that she would share confidential information with the Union. He said words to the effect of: *"Don't try to cut another Director out of a meeting"*. He then complained to Ms Deakes about me raising this concern with him.

83. On one occasion, following television news coverage of Ms Burgess's compliance activities, I reached out to check on her welfare and took the opportunity to encourage her to leave the OIR for her own wellbeing.

84. I became aware over time that complaints had been made about Ms Burgess to the Crime and Corruption Commission of Queensland and I assumed this was how OIR was resolving concerns around Ms Burgess.

85. As I set out below, I was concerned that Ms Burgess could share confidential information with the Union, attempt to inappropriately influence the position of the WHSQ Regulator to favour the Union, and otherwise be hostile toward OIR staff in conjunction with the Union.

D.2.1 <u>Concerns about Ms Burgess leaking information to the CFMEU</u>

86. By way of example, I would sometimes find that Mr Kupsch would repeat information to me that should not have been within his knowledge, which I knew to be within the knowledge of Ms Burgess. This includes that internal meetings had been held and who attended, that Policy had briefed with a certain position and that the Compliance and Field Services leadership (Mr Dennett and Ms Burgess) had held another position, and even that Policy had obtained independent legal advice on a matter, and what the advice contained. I was concerned enough on one occasion to ask Mr Dennett directly if a piece of our legal advice was shared by someone in his directorate with the Union. Mr Dennett immediately dismissed the proposition. From memory, I think the legal advice was in relation to a series of questions around right of entry, including the operation of section 128 of the WHS Act, which were posed to a barrister in the preparation of inspector guidance in March 2021.

87. Further, Mr Kupsch once told me in an intimidatory tone that he heard secret recordings of me when I presented to the inspectorate at an internal forum on 7 June 2017. I do not have any knowledge of who in the OIR recorded me.

88. Additionally, Ms Burgess frequently requested information from me or my team on issues that were the subject of a current campaign or action being taken by the Union (though Ms Burgess usually did not disclose that this was the case). It may be that there was no wrongdoing by Ms Burgess here, and I tried to maintain impartiality and responsiveness towards her requests. But I was very cautious as I could see that the information she was requesting would benefit the Union, and she was ambiguous

about the circumstances around such requests. These requests were typically about the legislative requirements around activities on construction sites or around entry permit holder requirements and how she might apply that legislation with her inspectorate. I instructed my team to always alert me to any issue raised by Ms Burgess so we could be particularly careful with the response. Ms Burgess worked productively with the Policy area on numerous regulatory issues that stretched across the compliance, technical and policy arms of the Regulator, so it was important not to ever become too jaundiced in my view of her motivations. However, I frequently had some suspicion about her motives.

D.2.2 Concerns about Ms Burgess attempting to influence the OIR in favour of the Union

89. As an illustration of my concern about Ms Burgess attempting to influence the OIR in favour of the Union, on 8 June 2021, Ms Burgess sent an email to Benjamin Bailey, Manager — Inspectorate Policy and Support (**IPS**) and ex-inspector, who was my direct report. In that email, Ms Burgess stated that, based on advice from IPS, inspectors were refusing to write notices if the competent person who checks chains and slings on lifting gear has not had an eye test. Ms Burgess stated that *"External stakeholders have a different opinion"* and requested urgent advice on this issue to be provided that same morning.

90. This email (and subsequent emails in the chain) demonstrate a number of elements in working with Ms Burgess, including:

a. The Manager of my IPS team being contacted by Ms Burgess for information to potentially facilitate action for the Union. In this case, to issue notices in relation to lifting gear activities.

b. While Ms Burgess did not identify that it was the CFMEU that raised the issue with her, referring to them as *"External stakeholders",* Mr Bailey confirmed with inspectors that the CFMEU was driving this issue.

c. This email is also an example demonstrating how my staff would alert me to contact from Ms Burgess so we could be particularly cautious that we were not manipulated in our response.

d. It is also an example of what appears to be an attempt at regulatory overreach by Ms Burgess, who may have been seeking a way to escalate compliance activity against particular formwork subcontractors. My reasons for seeing this inquiry of Ms Burgess' to be regulatory overreach are detailed below.

Attached to this statement and marked **AF-13** is an email chain dated 8–10 June 2021 with the subject *"RE: Lifting gear in a jump form"*.

91. Jump form systems are used when formwork panels and multi-level work platforms are 'jumped up' on high rise builds as each floor of concrete is poured and finished. If such work is unable to progress it has enormous impact on work scheduling for construction. Additionally, when a subcontractor is issued a high number of compliance notices, this rightfully casts doubt on their safety record and disadvantages them with future contracting.

92. From her email, Ms Burgess was proposing that notices should be issued by inspectors in relation to section 4.4.3 of the Formwork Code of Practice 2016 (which is enforceable under s26A of the WHS Act). This section of the code relates to crane and load handling systems for lifting materials on to the deck during formwork erection. In this section of the code, reference is made to a number of Australian Standards that can be used for "*guidance*" on the use and inspection of chains, wire ropes and synthetic slings.

93. Ms Burgess' position was that because one of these Australian Standards refers to a visual acuity test in relation to having near and middle distance vision for the task, that the Regulator should be enforcing optometrists' tests every two years as a legislative requirement.

94. However, codes of practice are enforced on the basis that to achieve compliance with the management of hazards and risks, one can demonstrate that they have met an equivalent or higher level of safety through alternative paths, unless otherwise specified in the WHS Act and Regulations.

95. Further, in the specific case of the Formwork Code, visual acuity is not specified and the Australian Standards were referenced as guidance only. In my opinion, requiring a visual acuity test would have exceeded the authority of the WHS legislation. Formwork can be dangerous and it is important that doggers and riggers working with lifting hydraulics can visually assess the lifting gear to see that it is in good condition, however compliance action can only be taken to the extent that the legislation allows. If inquiries on site do not identify problems with eyesight for the tasks, it is particularly difficult to envision a successful pathway to hard compliance. However, if notices were issued, they may have stopped work on lifting at the relevant worksites for a period of time while the notices were reviewed or complied with by arranging optometrist testing.

96. Once Mr Bailey alerted me to the request, we both made discreet inquiries to other relevant areas of the OIR — Mr Bailey to the inspectors and myself to Stuart Davis and Aaron Holman (Chief Engineer) of the Engineering Unit, as well as Mr Christiansen from my Policy team in OIR. Collecting further information supported our policy analysis in reaching a view and also provided insight to the potential motivations of Ms Burgess. An email chain that formed part of this discussion includes signals from myself to Engineering and from Engineering back to me that we were suspicious of Ms Burgess, but also shows some of our genuine exploration of the issue in case we were mistaken.

Attached to this statement and marked **AF-14** is an email chain dated 8-9 of June 2021 with the subject *"RE: Lifting gear in a jump form"*.

97. This example demonstrates the way that areas that worked together across the Regulator to problem solve safety and improve regulatory responses, also worked together to contain potentially inappropriate activities by Ms Burgess.

D.2.3 <u>Concerns about Ms Burgess siding with the CFMEU over the OIR</u>

98. I often heard about Ms Burgess joining with the Union to be hostile towards particular inspectors. On multiple occasions, I observed her denigrating her own inspectors in meetings with the Union.

99. This behaviour was not limited to siding with the CFMEU over inspectors. On Friday, 12 March 2021, I attended a Construction ISSC meeting. The meeting was chaired by Melanie Dawson from Master Builders Queensland. Also in attendance were Ms Burgess, Johanna Sutherland (then a Director at the OIR and now an Executive Director) and Mr Kupsch, as well as other members of the ISSC. This meeting was one of my worst experiences with Mr Kupsch. Mr Kupsch spent about three quarters of the 2-hour meeting berating me personally, as well as the OIR more broadly. His personal attacks on me — which he delivered in an angry, raised voice — included words to the effect that:

a. we have had a gutful of you;

b. you are an insult to the workers;

c. you have achieved nothing;

d. it is alright for you in Policy sitting on your *"shiny bum"* but you are out of touch;

e. your lack of care for women is insulting.

100. It was difficult to respond to Mr Kupsch's attacks as he jumped from topic to topic, stating a host of falsehoods, and not pausing for reply. Towards the end of the meeting, I lost my temper and told Mr Kupsch forcefully that as a woman I was no longer prepared to be yelled at by a man, in my own workplace. Mr Kupsch then toned down his behaviour and we were able to have a somewhat productive discussion.

101. A central theme in the discussion was the construction unions' call for new legislation to require designated female toilets at every construction site.

102. During the meeting, as Mr Kupsch was berating me, I texted Ms Burgess asking what this was really about. I did so because the issues Mr Kupsch was raising suggested a lack of compliance with existing legislation rather than a legislative gap, and this was contrary to his argument for new legislation. Ms Burgess responded to the effect that Mr Kupsch was raising a real issue. I then started receiving further text messages from Ms Burgess ridiculing what I was saying to Mr Kupsch. From memory, I received approximately three such messages. In my opinion, from their content the messages were intended for someone else and were sent to me by mistake. I believe the messages were intended for Mr Dennett, because they referred to both me and Mr Kupsch in the third person and because Mr Dennett had an interest in the outcome of the meeting. I suspect that Ms Burgess was giving Mr Dennett a running commentary on the meeting. Eventually, I responded to Ms Burgess with a message to the effect that she is messaging me by mistake. (Unfortunately, I no longer have a copy of these messages as I have changed my work phone since that meeting, but at the time I shared the messages with my DDG, Mr Allen.)

103. After the meeting I wrote an email to Mr Allen to complain about the behaviour I was subjected to by both Mr Kupsch and Ms Burgess. Mr Allen replied reassuring me that he would take action on the matter.

Attached to this statement and marked **AF-15** is an email from me to Mr Allen dated 14 March 2021 and his response of the same date.

104. The next day, Ms Deakes provided me with Ms Burgess' version of events. In summary, Ms Burgess claimed that her messages were intended for me (and not someone else) and that she was not ridiculing me but rather, trying to support me.

Attached to this statement and marked **AF-16** is an email chain between Ms Burgess, Mr Dennett and Ms Deakes dated 15 March 2021, containing her version of events.

105. I reject Ms Burgess' version of events. Among other things:

a. Contrary to what Ms Burgess claims, I did not incite Mr Kupsch. He started berating me from the beginning of the meeting and I listened to him for the majority of the meeting. It was only towards the end of the meeting that, as set out above, I told Mr Kupsch that I was no longer prepared to be yelled at.

b. The messages were clearly not intended for me. From memory one of the messages stated something along the lines that *"he"* lost his patience with *"her"*. This was plainly referring to Mr Kupsch and me in the third person.

c. I was told by Mr Allen that Ms Sutherland (who witnessed the meeting) separately briefed both Mr Dennett and Mr Allen after the meeting to convey how appalled she was with Mr Kupsch's behaviour towards me, and that when Ms Burgess' version of events was put to her, she stated emphatically that it was false.

106. After Ms Deakes provided me with Ms Burgess' version of events, she proposed that we get a mediator to try to fix my relationship with Ms Burgess. I told Ms Deakes words to the effect: *"Ms Burgess is corrupt. And on top of that, she sets you and I up to be attacked by the CFMEU and she is ridiculing me, her own colleague while Mr Kupsch is going ballistic at me— and you think we should be in a mediation together?"* Ultimately, no mediation took place. I am not aware of any action being taken against Ms Burgess in respect to this incident.

107. I do not believe that Ms Deakes was trying to protect Ms Burgess. Rather, I believe Ms Deakes, as a member of the Executive, was trying to keep positive relationships across the Executive. However, this incident was among several where I saw that I was the subject of criticism by Mr Dennett and Ms Burgess to others in the Executive, including my superior. I was always careful in my communication with Mr Dennett and Ms Burgess because of this.

E The CMEP

108. In 2018, the OIR adopted a Compliance Management and Enforcement Policy (**CMEP**). It is an operational procedural document designed to promote consistency in operational activities. I understand that the CMEP was developed by senior members of the Compliance and Field Services directorate (including Mr Dennett) and the Electrical Safety Office directorate, together with representatives from the construction sector (including Mr Kupsch). The CMEP was not prepared by the Policy unit, nor was Policy asked to provide input.

F Final comment

109. I wish to finish my statement by noting that I am deeply committed to my craft as a policy specialist, driven by a belief that strong policy emerges from meaningful collaboration. I want the policy and legislative solutions that the OIR develops to be practical and grounded in evidence, and I want my policy analysis to be guided by curiosity and integrity. I am enormously motivated by the desire to improve systems that prevent harm. In spite of my experiences with the Union, I believe that when their internal problems are addressed they can make an important contribution to safety in the construction industry.

110. The contents of this statement are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.

111. I understand that a person who makes a false declaration in a statement commits an offence.

112. I make this solemn declaration/affirmation conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1967* (Qld).

AFFIRMED at Brisbane on 4 June 2026

Andrea Anne Fox

.....
Signature of deponent

BEFORE ME:

.....
Signature of witness

NATALIE KEYS
Principal Lawyer of Crown Law
Barrister in the State of Queensland

I am a special witness pursuant to s 12 of the *Oaths Act 1867* (Qld).

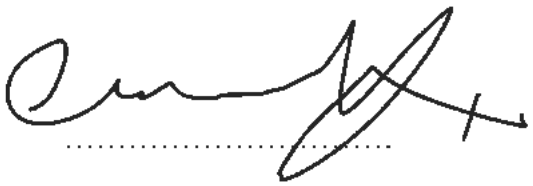
This declaration was made, signed and witnessed under Part 6A of the Oaths Act 1867 (Qld).

I understand the requirement for witnessing a document by audio visual link and have complied with those requirements.

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-1 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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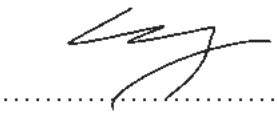
Andrea Fox



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Witness (Lawyer)

From: Royce Kupsch [redacted]
Sent: Monday, 3 September 2018 2:33 PM
To: Andrea Fox [redacted] Simon Blackwood [redacted]; Marc Dennett [redacted]; Helen Burgess [redacted]; Sharon Durham (Ministerial Chief of Staff) [redacted]
Cc: Michael Ravbar [redacted]; Jade Ingham [redacted]; jcollie [redacted]
Subject: FW: Smoko room WHSQ agreed on - Construction Group - 31/8/18

Andrea Fox,

I have just been informed by the director of construction that you have endorsed standards in relation to amenities that fall way short of the Work Health and Safety Regulations, Schedule 5a Part 3 (5). It is no wonder that the construction industry continues to suffer from your advice to inspectors giving inconsistent interpretation of the prescribed and easily read Regulations

I'm appalled that policy would endorse such a standard in 2018 in a modern construction work place where workers are forced to eat their lunch under a tent. I will remind you that if this was Hutchinson builders, Multi- Plex or any other tier one builder they would have priced and provided the appropriate amenities.

You are sending the construction industry backwards with this decision, this unravels hard fought gains that workers fought to maintain. The union movement got lunch rooms on construction sites and you overnight you have them sitting back in the environment exposed to all sorts of air borne debris..

If it's not ok moving forward how can it be ok now. How will workers today have lunch and keep dry during today's inclement weather.

I would ask you to review this disgraceful decision.

Royce Kupsch
Union President/Health and Safety Coordinator
QLD/NT Branch
Head Office 16 Campbell st, Bowen Hills QLD 4006
PH: [redacted] F: [redacted] E: quries@qld.cfmeu.asn.au
E: [redacted]
M: [redacted]

-----Original Message-----

From: Craig Davidson
Sent: Friday, August 31, 2018 11:03 AM
To: Royce Kupsch [redacted]
Subject: Smoko room WHSQ agreed on - Construction Group - 31/8/18

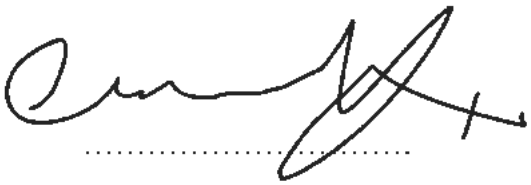
iAuditor - Smoko room WHSQ agreed on
Template: CFMEU Construction & General Qld/NT
Client: Construction Group
Date: 31/8/18 | Score: 2/211

Report created with iAuditor https://bnc.lt/q4Af/LRgOJ26Qiq

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-2 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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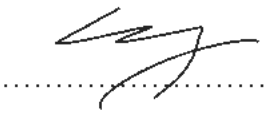
Andrea Fox



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Witness (Lawyer)

From: Royce Kupsch [redacted]
Sent: Tuesday, 1 October 2019 6:27 PM
To: Andrea Fox [redacted]
Cc: Catherine Rafferty [redacted]; Stuart Davis [redacted]; Bradley Bick [redacted]; Marc Dennett [redacted]; Helen Burgess [redacted]; [redacted]; Michael Ravbar [redacted]; Jade Ingham [redacted]
Subject: Re: Feedback survey - Tilt up Precast

Andrea,

You had better be kidding me , where has consultation been with the cfmeu about this survey

I think this is a dreadful decision to distribute a document that the cfmeu does not endorse or had any input in.

As you know there has been an enormous amount of pressure put on crane crews to stop using a secondary back up system when it was enforced by WHSQ...

With little or no work around, what response to your survey do you think you would get from crane crews, that's right a bosses response.

Why do you repeatedly put out these nonsense surveys to get the response that policy would like and bosses would enjoy ...

Totally disgusted with this garbage ..

You'd better give the DDG a heads up about how your department intends to expose workers this way.

The proposed survey has the potential to impact on the employment arrangements of those workers you intend to survey

A workers life was saved only a few months ago when a clutch failed. What further evidence do you need to support having a secondary back up system.

The cfmeu union represents the industrial interests of all workers with our callings, not just crane crews.

This survey should be immediately taken down from your web site if it hasn't been already from our previous conversation.

Why is health and safety a casualty of weak policy.

I'll take this up with Craig tomorrow..

Royce Kupsch
Union President/Health and Safety Coordinator
QLD/NT Branch

QLD/NT Branch
Head Office: 16 Campbell Street, BOWEN HILLS QLD 4006
Ph: [redacted] F: [redacted] E:queries@qld.cfmeu.asn.au
E: [redacted]
M: [redacted]

Regional Offices:
Darwin - Ph: [redacted]
Townsville - Ph: [redacted]

CLICK logo below to go to campaign website

On 1 Oct 2019, at 4:37 pm, Andrea Fox <[redacted]> wrote:

> Hello Royce
>
> RE. Tilt-Up and Precast Code of Practice Review
>
> As you know, this code is currently being reviewed by a steering group made up of industry representatives, engineering representatives, government representatives and yourself, as a worker representative.
>
> The steering group has been considering a number of changes, including amendments i) to require a safety discussion on wind speeds and ii) to provide additional specifications around back-up lifting. The Office of Industrial Relations is keen to supplement discussions in the steering group with feedback from those who directly use the code, such as crane operators and riggers etc. A brief survey for this purpose has been developed by Cath Rafferty in my team, together with Stuart Davis from Engineering.

I would be most grateful if you could please circulate the attached survey to contacts you have in the industry for their thoughts. We would hope to get their feedback by the end of October 2019 to myself – [redacted] and/or [redacted].

Many thanks

Andrea Fox

Director
Work and Electrical Safety Policy
Office of Industrial Relations

[redacted]

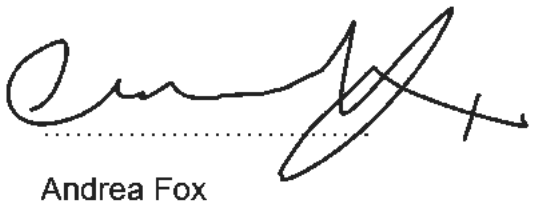
Floor 11, 1 William Street, BRISBANE QLD 4001

<Feedback sheet - Tiltup Precast COPv3.docx>

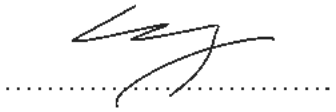
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-3 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

CFMEU

REGIONAL OFFICES
Darwin – Ph (08) 8981 5280
Townsville – Ph (07) 4766 8715

HEAD OFFI
16 Campbell St
Bowen Hills QLD 4
Ph (07) 3231 4
Fax (07) 3231 4
queries@qld.cfmeu.as

21 July 2017

Hon Grace Grace
Minister for Employment & Industrial Relations
Minister for Racing and Minister for Multicultural Affairs
1 William Street
BRISBANE QLD 4000

Email: [redacted]

Dear Minister

I write to you in regards to an incident involving two CFMEU officials Mark Bryers and Kurt Pauls who were obstructed from entering the Toowoomba Second Range Crossing project on Tuesday 4th July 2017. Mark and Kurt hold current, valid entry permits under s117 of the Act. By refusing them entry onto this site, s144 of the Act was contravened. As Mark and Kurt (the permit holders) were also requesting to inspect and/or make copies of documents directly relevant to the suspected contraventions stated on their entry notice, Nexus Delivery (the PCBU) also obstructed them from exercising their rights under s118 of the Act contravening s145 of the Act.

Workplace Health and Safety Queensland (WHSQ), as the regulator, was contacted to attend the site to adjudicate over the issue. Inspector Jason Plath arrived on site approximately one hour later. Upon arrival on site, Mr. Plath undertook the process of assessing the steps that had been taken by the parties leading up to the right of entry dispute.

When it was reported to the CFMEU Workplace Health and Safety Co-ordinator Royce Kupsch that our officials were being obstructed by Nexus, Royce called Daryl Brooker and requested him to send investigators to this site (Toowoomba Second Range Crossing) to prosecute Nexus for obstruction. Mr. Brooker refused and told Royce he would send an inspector, to which Royce replied that the best practice review found that inspectors never had the appropriate skill set to undertake an investigation and that an investigator should be directed to the site instead. Daryl Brooker continued to disregard Royce's request and sent a construction inspector to investigate anyway, ultimately becoming a significant contributing factor to what has become the longest and most outrageously mismanaged Right of Entry dispute in the history of this union.

It is completely unacceptable that CFMEU officials were put in a situation where a rogue PCBU obstructed their right of entry to inspect safety concerns from workers on this project. Making matters even worse, the officials were further hindered by misguided inspectors who were under the direction of Daryl Brooker.

The Actions taken by Daryl Brooker in this case are just the latest in a long list that show his clear lack of understanding for the construction workplace and construction culture.

It is the position of this union moving forward that no official of this union ***under any circumstance*** will engage, acknowledge, or interact with Daryl Brooker for any purpose. We have a moral obligation to represent our members, and lawful rights as permit holders to do so.

04/07/2017 Day 1 Adjudication Jason Plath

A meeting of the parties was convened (Nexus representatives, Mark Bryers and Kurt Pauls as the permit holders, and WHSQ inspector Mark Plath). Mark Plath informed the parties that:

a) The entry notice given by the permit holders was both lawful, valid and compliant with the requirements of the Act.
b) The permit holders had a lawful right to enter the site to inspect the suspected contraventions stated on their entry notice.
c) That Nexus has a lawful obligation to comply with the notice, allowing the permit holders entry to inspect suspected contraventions stated on the notice.

Regardless of the regulators determination and advice, Nexus informed the parties that they were refusing their lawful requirement to allow the permit holders entry to site.

Around this time Inspector Steven Powny arrived on site to take statements from relevant people relating to investigating the obstruction of entry permit holders.

Kurt and Mark both complied with this process, providing statements to WHSQ Inspector Steven Powny, detailing the events of the day.

By this stage it was approximately 3.00pm and the permit holders left the site. I will note; at this point, the suspected contraventions relating to the entry were still live, still uninspected by the permit holders or by any inspector from WHSQ, and still potentially putting the health and safety of workers in those areas at risk.

5/7/2017 Day 2 adjudication Mark Norris

Mark Bryers and Kurt Pauls returned to site the following day to investigate the outstanding suspected contraventions from the previous dey's entry notice. Prior to entry, a second notice identical to the notice of the 4/7/2017 was issued. ***NOTE: there was no requirement on the permit holders to issue subsequent notices on the 5/7/17 as there was still a valid notice from the 4/7/17.***

Once again, Nexus obstructed the permit holders and once again, WHSQ as the regulator was requested to attend to adjudicate the dispute. Exactly the same notice was issued to Nexus, this notice was deemed lawful and compliant with the requirements of the Act (by Inspector Jason Plath) on the 4/7/2017 that was issued again on the 5/7/2017.

WHSQ Inspector Mark Norris was sent out to adjudicate the dispute, in the same capacity that Inspector Jason Plath had carried out the previous day (4/7/17), where it was established that:

a) The permit holders had arrived at site to exercise a workplace right.
b) The permit holders issued the PCBU with a lawful and valid entry notice, compliant with all requirements of the Act.
c) Nexus (PCBU) were advised of their obligations to comply with the valid entry notice (by inspector Jason Plath), and had rejected this advice from the regulator, refusing to allow the permit holders entry.

This being the case, I am at a loss as to why WHSQ inspector Mark Norris thought it appropriate to undermine the officials of this union whilst they were exercising a workplace right as permit holders when it had already been established the day prior that:

a) They had fulfilled all of their obligations under the Act.
b) Their entry notice met the requirements under the Act.
c) That Nexus had been advised as such by the regulator of their legal obligation to facilitate entry and had chosen to disregard the regulators ruling.

Jason Plath had advised all parties what their requirements and obligations were under the Act on 4th July 2017 yet the PCBU still refused the permit holders entry regardless of this advice.

Furthermore it raises questions as to why inspector Mark Norris at the request of the PCBU, asked the permit holders to alter their right of entry notices to include frivolous information which is not required under the Act (i.e. permit holders middle names, more detailed specifics of the areas where the suspected contraventions were that would have risked highlighting specific workers who had made the complaint etc).

I make the point that by this stage our officials had been attempting to gain access to site to inspect the reported contraventions for over a day and a half and were still being prevented from entering. WHSQ, who had also been present for the same period, had not bothered to enter the workplace to ensure the workers in those areas were safe. It is an absolute disgrace that inspectors from WHSQ could be under such poor directive, that the health and safety of workers is of such little relevance.

On the second day of being obstructed from exercising their right to enter Mark and Kurt made the decision at 2pm to enter relevant work areas to investigate the suspected contraventions. WHSQ inspector Mark Norris refused to accompany the permit holders on to site to exercise their rights, instead waited at the site office with the employer.

Upon entry numerous safety issues corresponding with the suspected contraventions listed on the entry notice were identified, confirming that the complaints received from workers on the project were both serious and bonafide **(iAudit safety report available).**

Refusing to acknowledge the permit holders right to enter the project, the PCBU (Nexus) called the police who attended site a short time later. The permit holders stated their legal right to enter the site, and their moral obligation to the health and safety of our members. The police, unsure of the rights of permit holders, called inspector Mark Norris for clarification on the matter, who then proceeded to once again misrepresent the intent of the Act, by informing the police that "he hadn't finished making his decision", therefore leaving the police no choice but to escort our officials off site.

This union condemns WHSQ for repeatedly risking the health and safety of our members and all workers on this project. I can assure everyone concerned that this union does not accept nor condone the WHSQ model of allowing and supporting employers to break laws that WHSQ are supposed to be the regulator of. Our officials that are permit holders have specific rights under the Act. We do not accept inspectors hindering our officials further due to incompetence and their inability to administer the law in a bipartisan, professional manner.

18/07/2017 obstruction – Permit holder Mark Bryers

CFMEU official & entry permit holder Mark Bryers attended the Nexus Toowoomba Second Range Crossing site to investigate reported suspected contraventions, signing in to the visitors book at 9.46am. Entry was permitted under s117 act, a lawful and compliant entry notice was issued to Nexus management a short time later.

Nexus representative Steve Ingham (industrial relations) took receipt of the notice and refused entry, stating words to the affect "I've called the department, you have to wait for them, they want to come on the safety walk with us" This raises one of two issues:

a) An agent of WHSQ (Jason Plath) has indeed instructed the PCBU to obstruct a permit holder exercising a right under the act for an extended period to facilitate their arrival, or

b) An agent of the PCBU (Steve Ingham) has again obstructed a permit holder whilst exercising a right under the act.

Inspector Jason Plath arrived at site around 11.00 am, entry was gained approximately 10 minutes later, almost one and a half hours after Mark first attempted exercising his right to enter site.

Upon inspection of the area stated on the notice (the Bioduct), where the suspected contraventions were located, a number of serious safety issues were identified. **(IAudit available)** The issues identified during the inspection at the Bioduct work area, were indeed breaches under the relevant sections listed on the s117 entry notice.

Action taken by the department

Inspector Jason Plath issued improvement notices to Nexus for a number of issues found upon inspection. However;

Note

Under s119 of the Act, as you should be well aware:

a) s119(2)(a) if to give a notice would defeat the purpose of the entry to the workplace.
b) s119(2)(b) if to give a notice would unreasonably delay the WHS entry permit holder in an urgent case.

This union requests an explanation as to how one of its inspectors (Mark Norris), under the direction of Daryl Brooker, arrived at the position where he saw fit to inform police officers that CFMEU officials (and entry permit holders) were on site illegally, when under s119 of the Act it clearly states the notice can be produced as soon as reasonably practicable after entering the workplace; and whether the department thinks this disgraceful behaviour by a department inspector is both in line with WHSQ values, and in the best interests of workers safety.

IN SUMMARY

The CFMEU requests the following of the regulator;

- Investigate and prosecute Nexus Delivery for two counts of obstruction under s144 of the Act, obstruction of Kurt Pauls and Mark Bryers whilst exercising their right to enter under s117 of the Act.
- Investigate and prosecute Nexus delivery for two counts of obstruction under s145 of the Act, obstruction of Kurt Pauls and Mark Bryers whilst exercising their right to enter, and whilst at the workplace view and/or make copies of any document relevant to the suspected contravention s118 of the Act.

- Investigate, discipline and educate relevant inspectors and/or officers of WHSQ responsible for inappropriately, unprofessionally and unduly delaying the lawful entry of permit holders to site, further risking the health and safety of workers at the workplace.
- Develop a functioning management structure within the department capable of developing and implementing targeted operating procedures for administering all sections of the Act at site level, ensuring adequate training is provided to all department inspectors.
- Discipline any agent of the inspectorate that choses to disregard their obligations as regulator, giving advice outside of that contained in the Act.
- Immediately counsel QPS to the rights of a permit entry holder to enter site under a suspected contravention of the Act.

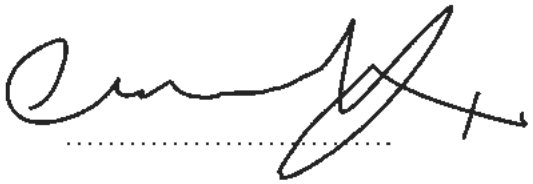
Yours sincerely

Andrew Sutherland
Divisional Branch Assistant Secretary

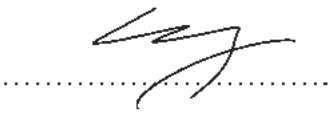
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-4 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

From: Royce Kupsch [redacted]
Sent: Wednesday, 9 February 2022 3:54 PM
To: Andrea Fox [redacted]
Cc: Aaron Holman [redacted]; Jodie Deakes [redacted]; Yasmin Cox [redacted]; Helen Burgess [redacted]; Catherine Rafferty [redacted]; Andrew Harris [redacted]
Subject: Re: Tilt-up and Pre-cast - CFMMEU and OIR

The CFMEU will not meet with Andrew Harris ...

Regards,

Royce Kupsch
Union President/Health and Safety Coordinator
QLD/NT Branch

QLD/NT Branch
Head Office: 16 Campbell Street, BOWEN HILLS QLD 4006
Ph: [redacted] F: [redacted] E:queries@qld.cfmeu.asn.au
E: [redacted]
M: [redacted]

Regional Offices:
Darwin - Ph: [redacted]
Townsville - Ph: [redacted]

CLICK logo below to go to campaign website

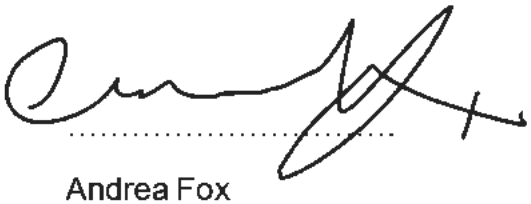
On 9 Feb 2022, at 3:20 pm, Andrea Fox [redacted] wrote:

Please confirm exact numbers attending given we need to manage COVID requirements in the room booking.

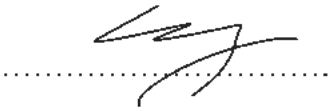
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-5 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

Outlook

FW: CFMEUQ and 81 (3)

From Andrea Fox [redacted]
Date Tue 2019-11-19 4:03 PM
To Bradley Bick [redacted]

1 attachment (30 MB)
ATT 1 - ABCC v CFMMEU.pdf;

Brad
I don't have suggested changes to this.. Do you?

If not, I can contact Crown Law or you? Whomever you prefer.. (Judgement attached in case you are wanting to send the question on to CL yourself). What kind of turn around time are we requiring for Craig?

Also, I haven't shown Marc this question yet, but were you aware that he is seeking advice from Andrew Herbert? Are we doubling up? Wanting a second opinion?

Cheers

Andrea Fox

Director
Work and Electrical Safety Policy
Office of Industrial Relations

[redacted]

Floor 11, 1 William Street, BRISBANE QLD 4001

Queensland
Government

From: John Alizzi [redacted]
Sent: Tuesday, 19 November 2019 3:48 PM
To: Andrea Fox [redacted]
Subject: RE: CFMEUQ and 81 (3)

Hi Andrea,

Please see an initial draft for Crown Law below. At this point I have 1 questions, as I can only understand the union strategy as resting on one particular part of the FW Act.

I think the easiest way to get across the query we are making is to provide some context first.

In the matter of *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Bruce Highway Caloundra to Sunshine Upgrade Case) (No 2)* [2019] FCA 1737 (**ABCC v CFMMEU**), the Federal Court of Australia held that in exercising a right of entry under section 81(3) of the *Work Health and Safety Act 2011* (Qld), a representative must hold and display a federal entry permit under the *Fair Work Act 2009* (Cth), by operation of sections 494-499.

The *Fair Work Act 2009*, section 494(1) provides that "An official of an organisation must not exercise a State or Territory OHS right unless the official is a permit holder" (underlines added).

Essentially, the decision in ABCC v CFMMEU turned on whether section 81(3) is a "State or Territory OHS right". The Federal Court found that it is, removing the respondent union's ability to assert (on this basis) that the exercise of section 81(3) did not trigger the *Fair Work Act 2009* requirements.

Despite the ruling of the Federal Court in ABCC v CFMMEU, it is understood that union representatives may attempt to exercise rights of entry under section 81(3) of the *Work Health and Safety Act 2011* without entry permits under the *Fair Work Act 2009*, based on an alternative course of action and legislative interpretation of another threshold question in section 494(1).

Specifically, by having union officials' employment contracts amended to remove explicit affiliation with the federal CFMMEU, it is supposed that affiliation only with the state CFMEU Qld and NT will mean that the FW Act requirements will not apply. The Office of Industrial Relations surmises that the intent is to place officials outside of the definition of "official of an organisation" in section 494(1).

In light of the above context, the Office of Industrial Relations seek Crown Law advice in answer to the following question:

1. Can a state union official who has no explicit affiliation to a federal union, by way of no reference or relationship to that federal union in their employment contract, be considered an "official of an organisation" within the meaning of section 494(1) of the *Fair Work Act 2009*?

Kind regards,
John Alizzi
Principal Policy Officer
Work and Electrical Safety Policy
Office of Industrial Relations
Floor 11, 1 William Street Qld 4000
GPO Box 149, Brisbane Qld 4001
Phone: [redacted]
Email: [redacted]

From: Andrea Fox [redacted]
Sent: Tuesday, 19 November 2019 11:13 AM

To: John Alizzi [redacted]
Cc: Bradley Bick [redacted]
Subject: RE: CFMEUQ and 81 (3)

Thanks John! We like having you on this topic. And wherever possible it is my strong preference to allow team members to 'own' topics and build up expertise and initiative in them.

From: John Alizzi [redacted]
Sent: Tuesday, 19 November 2019 10:44 AM
To: Andrea Fox [redacted]
Cc: Bradley Bick [redacted]
Subject: RE: CFMEUQ and 81 (3)

Hi Andrea,

Should be manageable once I get the A05 selection report out of the way. Working on finishing that today.

John

From: Andrea Fox [redacted]
Sent: Tuesday, 19 November 2019 10:41 AM
To: John Alizzi [redacted]
Cc: Bradley Bick [redacted]
Subject: FW: CFMEUQ and 81 (3)

John, this looks like the next part of the ROE project for us. I agree with Brad and there is a bit of analysis we did on this last year. Will work with you this afternoon on identifying the key questions.

(If you have a workload issue and need some prioritising work projects discussion, let me know).

Andrea

From: Bradley Bick [redacted]
Sent: Tuesday, 19 November 2019 10:39 AM
To: Marc Dennett [redacted]
Cc: Craig Allen [redacted] Andrea Fox [redacted]
Subject: Re: CFMEUQ and 81 (3)

We will look at Qld WHS act as I think to hold a Qld permit you need a FW one

Sent from my iPhone

> On 19 Nov 2019, at 9:26 am, Marc Dennett [redacted] wrote:
>
> Hi Craig
>
> For discussion below.
>
> No doubt will be raised in your meeting later in the week.
>
> Regards
>
> **Marc Dennett**
> Executive Director
> WHS Compliance and Field Services

Office of Industrial Relations

[redacted]
Level 1, 60 Wises Road, Maroochydore, QLD
PO Box 5177, Maroochydore BC, QLD, 4558

The most important reason for making your workplace safe,
is not at work at all. Work Safe. Home Safe.

Connect with us:
<image003.png>

From: Helen Burgess
Sent: Tuesday, November 19, 2019 6:41 AM
To: Marc Dennett [redacted]
Subject: CFMEUQ and 81 (3)

Hello Marc

Michael Ravbar called me yesterday to advise that the CFMEU intends to enter construction workplaces under section 81 (3) in the very near future. He advised that he is changing the employment contracts with some of his employees to remove them from the federal sphere and have them solely in the state jurisdiction. To do this he is taking them out of the CFMMEU federal organisation and only have them employed by the CFMEUQ.

Michael believes that in doing this those employees will be able to enter under section 81 (3) without needing a federal entry permit because they will be outside the jurisdiction of Fair Work Australia and the ABCC. He said that they will still hold a state issued entry permit.

I am asking permission to seek legal advice, as a matter of urgency, about how OIR will administer this when the CFMEU attempt to enter.

Thanks
Helen

<image005.png>
Helen Burgess
Director, Construction Compliance and Field Services
Office of Industrial Relations
_____
[redacted]
Level 11, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

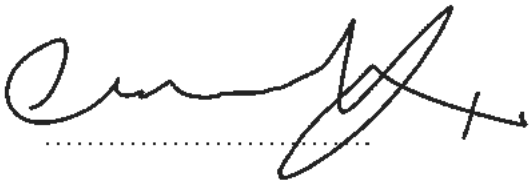
The most important reason for making your workplace safe, is not at work at all.
Work safe. Home safe.

Connect with us:
<image006.png>

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

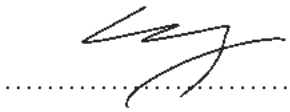
ANNEXURE SHEET

This is the document referred to as AF-6 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



.....

Andrea Fox



.....

Witness (Lawyer)

Outlook

RE: Right of Entry - Updating resources in light of ABCC v CFMMEU

From Andrea Fox [redacted]
Date Tue 2019-11-26 12:10 PM
To John Alizzi [redacted]
Cc Benjamin Bailey [redacted]

I haven't yet, no. Will seek an update.

From: John Alizzi [redacted]
Sent: Tuesday, 26 November 2019 11:28 AM
To: Andrea Fox [redacted]
Cc: Benjamin Bailey [redacted]
Subject: RE: Right of Entry - Updating resources in light of ABCC v CFMMEU

Hi Andrea,

Just wondering whether you received any feedback on Craig's meeting with the CFMMEU last week in relation to s81(3)?

Some documents prepared by WESP and IPS (listed below) are on hold depending on developments.
Kind regards,
John Alizzi
Principal Policy Officer
Work and Electrical Safety Policy
Office of Industrial Relations
Floor 11, 1 William Street Qld 4000
GPO Box 149, Brisbane Qld 4001
Phone: [redacted]
Email: [redacted]

From: Bradley Bick [redacted]
Sent: Tuesday, 19 November 2019 3:27 PM
To: John Alizzi [redacted] Marc Dennett [redacted]
Cc: Benjamin Bailey [redacted]; Rebekah Jensen [redacted]
Andrea Fox [redacted]
Subject: RE: Right of Entry - Updating resources in light of ABCC v CFMMEU

Thanks John – we might hold tight on these updates until Craig meets with the CFMMEU later this week.

In the meantime, I've discussed with Andrea drafting a question for Crown Law for my approval in relation to the proposed action by the CFMMEU under section 81(3).

Cheers
Brad

Bradley Bick | A/Executive Director | WHS Engagement and Policy Services
Office of Industrial Relations
Lvl 11, 1 William Street, Brisbane | GPO Box 69, Brisbane Qld 4001
[redacted]

From: John Alizzi [redacted]
Sent: Tuesday, 19 November 2019 2:12 PM
To: Bradley Bick [redacted] Marc Dennett [redacted]
Cc: Benjamin Bailey [redacted]; Rebekah Jensen [redacted]
Andrea Fox [redacted]
Subject: Right of Entry - Updating resources in light of ABCC v CFMMEU

Hi Brad and Marc,

Just sending a short email to update you both on Work and Electrical Safety Policy (WESP) and Inspectorate Policy and Support (IPS) actions following the Federal Court's decision in ABCC v CFMMEU on section 81(3).

We have:

- Updated the issue resolution factsheet on the Worksafe website [WESP]: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/109100/issue-resolution-fact-sheet.pdf/_recache
- Updated a MOU with QPS [WESP] – with Andrea for approval
- Updated advice for inspectors [IPS] – with Andrea for approval
- Updated operational procedure (resolving right of entry disputes) for inspectors [IPS] – with Andrea for approval

The updates make clear that in entering a site under under section 81(3) of the WHS Act to engage in discussions, representatives need to hold an entry permit under the *Fair Work Act 2009*, produce the entry permit if requested, and enter only during working hours. Also, if entry will involve inspecting an employee record, at least 24 hours' notice before entry must be given. These requirements are set out in section 494-499 of the Fair Work Act (State or Territory OHS Rights).

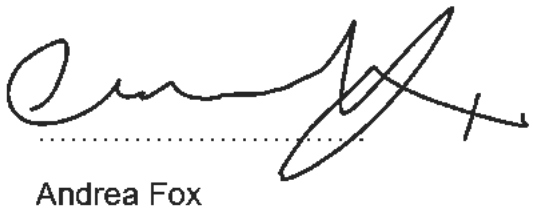
Kind regards,

John Alizzi
Principal Policy Officer
Work and Electrical Safety Policy
Office of Industrial Relations
Floor 11, 1 William Street Qld 4000
GPO Box 149, Brisbane Qld 4001
Phone: [redacted]
Email: [redacted]

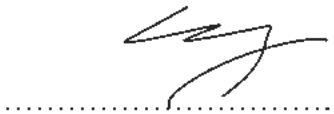
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-7 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

Issue resolution

The issue resolution provisions are located in Part 5 of the *Work Health and Safety Act 2011* (WHS Act) which aim at providing for fair and effective workplace representation, consultation, cooperation arrangements at the workplace level. An 'issue' is any matter about health and safety at the workplace that remains unresolved after it is discussed by parties to the issue.

The provisions outline how a health and safety issue can be resolved, with the aim of resolving issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that issues should be resolved 'once and for all' to the extent that is possible in the circumstances. The existence of an issue does not necessarily mean there is a dispute on the matter.

Who can be involved in issue resolution?

Parties in relation to an issue are limited to:

- persons conducting a business or undertaking (PCBUs) or their representative (or other PCBUs if the issue involves more than 1 business)
- health and safety representatives (HSRs) – where there are workers affected by the issue in a work group
- workers who are not in a work group that are affected by the issue – the worker/s or their representative (*'representative'* is defined in the WHS Act as *'HSR, a union representing the worker or any other person the worker authorises to represent them'*).

(Note: a PCBU must ensure, if they nominate a representative, that the person is not a HSR, has an appropriate level of seniority and is sufficiently competent to act as their representative).

Initial reporting and discussion of a health and safety matter

Where there is a health and safety matter, it is expected that parties will communicate, consult and cooperate to discuss the matter. For example, the initial reporting of a health and safety concern may involve:

- if they are in a work group, a worker raising the matter with the HSR, who should then raise the issue with the PCBU or their representative
- if there is no work group, a worker raising the matter directly with the PCBU or their representative (e.g. a supervisor)
- if there is no work group, a worker raising the matter with their representative, who should then raise the matter with the PCBU or their representative.

It is recommended that the outcome of the initial discussions be documented as a record of the matter being raised and discussed.

When do the issue resolution provisions apply?

Only where the matter remains unresolved through initial discussions does the matter become an 'issue' and the issue resolution process in the WHS Act and WHS Regulation will apply.

Where the matter is resolved during initial discussions and the parties are satisfied the agreement reflects resolution of the matter (e.g.

immediate action taken by the PCBU to install toeboards to prevent objects falling and hitting workers or other people below the work area, which is then observed by the HSR/representative of a party), the issue resolution process does not commence.

Resolving an issue

Only a party to an issue or a representative of a party can be involved in the issue resolution process.
Any party to the issue may commence the formal issue resolution procedure by telling each other party:
(a) that there is an issue to be resolved
(b) the nature and scope of the issue.

As soon as parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue using the issues resolution procedure.

Some workplaces will have developed an agreed issue resolution procedure with their workforce, which should be followed when resolving an issue. If a PCBU does not have a written agreed procedure for issue resolution, the WHS Act requires the default procedure in the WHS Regulation be used. If a PCBU's agreed procedure does not include a step specified in the default procedure in WHS Regulation, that step is automatically included in the agreed procedure.

Matters to be taken into account when considering an issue include:

- the degree and immediacy of risk to workers or other people affected by the issue
- the number and location of workers or other people affected by the issue
- what measures are required to resolve the issue (both temporary and permanent)
- who will be responsible for implementing the resolution of the issue
- an agreed timeframe for when measures to resolve the issue will be implemented.

What is the role of a representative in the issue resolution process?

A PCBU, worker or a HSR for a work group who is a party to an issue, may be assisted by a representative in resolving the issue (s. 81 WHS Act, s. 23(5) WHS Regulation).

The role of the representative is generally to provide advice to their party on the issue which is subject to the resolution process and to assist in the discussions with a view to resolving the issue.

A representative does not necessarily need to have health and safety expertise and could include people such as a designer of a piece of equipment at the workplace or a person with workplace consultation and negotiation skills.

Representatives of a party entering the workplace for the purpose of resolving the issue

Section 81(3) of the WHS Act entitles a representative of a party to enter the workplace for the purpose of attending discussions with a view to resolving the issue.

Entry by a representative of a party under this section can only occur once the issue resolution procedure has been enlivened (i.e. the matter is not resolved after discussions between the parties to the issue – see s. 81(1) WHS Act).

Entry is also conditional on the representative holding an entry permit under the *Fair Work Act 2009,* producing the entry permit for inspection if requested, and exercising the right only during working hours. In addition, if entry will involve inspecting or otherwise accessing an employee record, giving at least 24 hours' written notice of entry is required (see Fair Work Act ss. 494-499).

Issue resolution example

A worker identifies a problem with scaffolding and there is no HSR in their workplace and the worker does not feel comfortable raising the matter with their supervisor. Instead the worker raises the issue with their representative.

The representative notifies the PCBU of the issue but initial discussions fail to address the matter. The parties then commence the formal issue resolution procedure. The agreed issues resolution process is followed.

As the issue resolution provisions have been enlivened, in this context, it would be reasonable for discussions between the parties to take place at the workplace where the scaffolding could be physically observed, so all parties can observe the scaffolding and come to a common understanding of the issue to be addressed.

Resolution

If the issue is resolved, the details of the issue and the resolution must be set out in writing if any party to the issue requests this.

A copy of the written agreement must be given to the parties to the issue. A copy of the agreement to the resolution of an issue may be forwarded by any of the parties to any union or employer organisation that represents the party.

If an issue remains unresolved, any party may ask Workplace Health and Safety Queensland to appoint an inspector to attend the workplace and assist in resolving the issue.

Such a request does not prevent a worker from ceasing unsafe work or an HSR from issuing a Provisional Improvement Notice (or PIN). In addition, the inspector may exercise any of his/her compliance powers under the WHS Act.

If an issue remains unresolved at least 24 hours after the regulator has been asked to appoint an inspector to assist in resolving the issue, the issue can be referred to the Queensland Industrial Relations Commission (QIRC) for resolution (see section 102B of the WHS Act).

In dealing with a dispute, the QIRC may:

- consider the matter by means of mediation, conciliation or arbitration and make any order it considers appropriate for the prompt settlement of the dispute;
- review a decision made by an inspector to use their compliance powers to assist in resolving the dispute (i.e. if an inspector issues an improvement notice to assist with resolving a dispute, the QIRC can review the inspectors decision and confirm, vary or set aside the inspectors decision); and
- decide not to deal with a dispute, and order costs, if they consider the matter to be frivolous, vexatious, misconceived or lacking substance.

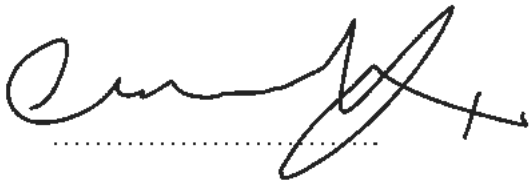
Further information

For more information visit www.worksafe.qld.gov.au or call 1300 362 128.

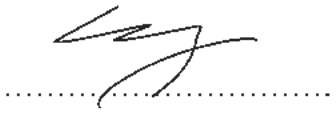
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-8 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

ANDREW HERBERT
Barrister at Law LL.B.

ABN: 93 586 986 723

[redacted]
Tel:
Secretary:
Mobile:
Facsimile:
Email:

Mr Marc Dennett
Executive Director
WHS Compliance and Field Services
Office of Industrial Relations
Level 1, 60 Wises Road, Maroochydore, QLD
PO Box 5177, Maroochydore BC, QLD, 4558

Dear Mr Dennett,

Re: WHS Entry Permits

I thank you for your email dated 27 November, in which you requested that I advise in relation to an issue which has arisen concerning WHS entry permits under the *Work Health and Safety Act* and the *Fair Work Act,* following the recent decision of the Federal Court of Australia in *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (No 2) [2019] FCA 173* ("the ABCC case").

Briefly stated, the in the ABCC case Federal Court decided that a right of entry conferred by section 81(3) of the *Work Health and Safety Act 2011* was a "*State or Territory OHS right*" within the meaning of that expression as set out in section 494 (1) of the *Fair Work Act 2009*. Accordingly, the prohibition in section 494 (1) of the *Fair Work Act*, to the effect that an official of an organisation was precluded from exercising a State or Territory OHS right, unless the official is a permit holder, applied in the case of an attempted workplace entry which purported to rely upon section 81 (3) of the *Work Health and Safety Act.*

I am instructed that there are a number of CFMMEU employees (who are by that fact taken to be "officials" of that union) who are not permit holders within the meaning of section 494 of the *Fair Work Act,* and who are therefore precluded from entering premises in reliance upon section 81 (3) of the *Work Health and Safety Act*. I am further instructed that it has recently been suggested by the CFMMEU that it is proposed that the relevant officials who are presently employed by the CFMMEU will have their employment arrangements altered in a manner in which they will terminate their employment with the CFMMEU and instead commence employment with the Queensland State-

registered union known as the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland ("CFMEU").

It appears that it is suggested that because such individuals will no longer be officials of the CFMMEU then they will not be subject to the prohibition in section 494 (1) set out above, which prohibition is restricted to officials of "organisations". An "organisation" is defined under the Fair Work Act as being "an organisation registered under the *Fair Work Act (Registered Organisations) Act.* I have searched the list of organisations registered under that Act, and they do not include the CFMEU although they do include the CFMMEU.

I have been agreed requested to advise as to whether the change in employment status from the CFMMEU to the CFMEU is likely to enable the presently prohibited officials of the CFMMEU to resume seeking entry to worksites under section 81 (3) of the WHS Act.

I have undertaken some research in relation to the existence and finances of the CFMEU, and it is apparent that at least the Construction and General Division of that union collects no membership fees and has no employees at present. However, it does appear to be an organisation registered under the *Industrial Relations Act 2016 (QLD*) and is therefore an incorporated entity capable of employing persons and officials if it sees fit. It also appears to have some assets, and would be capable of paying the wages of any employees, or would be able to be put in sufficient funds by affiliated organisations in order to do so.

It therefore appears that the State-registered CFMEU is a body capable of employing officials if they were to effectively resign from the CFMMEU, so that if the foreshadowed intention is carried into effect, section 494 (1) of the Fair Work Act would not apply to an employed official of the CFMEU, as they would no longer be officials of an "organisation" as defined in the *Fair Work Act*. To that extent therefore, the fact that such person is not a permit holder within the meaning of the *Fair Work Act*, would no longer be relevant to whether that person may gain access to worksites under section 81(3) of the WHS Act.

This conclusion is, of course, subject to whether the person in question has actually terminated their employment with the CFMMEU in order to take up employment with the CFMEU, however this would be a matter of fact to be determined if this foreshadowed activity does occur.

Despite this however, the removal of the prohibition set out in section 494 (1) of the *Fair Work Act* does not automatically confer a right of entry upon the relevant official. It still remains necessary for

the person in question to fulfil one of the qualifications set out in section 81(3) in order for that person to enter premises for the extremely limited purposes set out in the WHS Act for such entry.

Section 81 (3) provides for entry by a "*representative of a party to an issue*". Schedule 5 to the WHS act provides the following definition of "representative":

***"representative**, in relation to a worker, means—*

(a) the health and safety representative for the worker; or

(b) a union representing the worker; or

(c) any other person the worker authorises to represent him or her."

A hypothetical employee of the CFMEU is not a health and safety representative for the worker, and, in my view, unlike the CFMMEU the CFMEU is not a union representing the worker, unless the worker in question is employed under a Queensland State award or certified agreement.

Following the enactment of the *WorkChoices Act* and the *Fair Work Act,* the law in relation to industrial representation of unions has changed dramatically, so that an organisation that is not registered under the *Registered Organisations Act,* such as the CFMEU, has no statutory right of industrial representation of employees covered by the *Fair Work Act.*

If the words set out in subparagraph (b) are intended to refer to a union which has the right to represent the industrial interests of the employees in question, then I am of the view that the CFMEU is not such a union, and cannot qualify as a "representative" in relation to the workers on a federally regulated worksite within the meaning of section 81(3) of the WHS Act. This is not an issue which arose whilst the CFMMEU was seeking to take advantage of this provision, as they are plainly a union with the right to represent the industrial interests of the relevant employees.

It would appear that if the reference to a union representing the workers, is a reference to a union having the right to represent the industrial interests of a worker, the matter would be generally settled by establishing whether the union was bound by the industrial instruments that applied to the employee at the particular worksite, and it can be comfortably assumed that such a union will not be the CFMEU on a non-State government or local government site.

Assuming this to be so, the CFMEU cannot be appointed as a representative and it will then be necessary for the relevant official to qualify for entry under section 81 (3) in the capacity of "any other person the worker authorises to represent him or her."

Whilst it is always possible for a worker to authorise a particular natural person to represent them, it is a question of fact as to whether the *prima facie* appointment of a person who is also an official of a union actually constitutes an appointment of that individual, or whether the appointee is in truth the union by which they are employed.

In *TechNip Oceania Pty Ltd v W Tracy (2011) FWAFB 6551,* a Full Bench of Fair Work Australia was required to consider whether an individual, who was an official of the MUA, and who had been purportedly appointed personally as a bargaining representative for certain employees, had actually been appointed in his own right, or whether his purported appointment was actually the appointment of the MUA. The appointment of the MUA as a bargaining representative would have been improper and invalid, as the MUA was not entitled to represent the industrial interests of the employees concerned. The Fair Work Act committed the appointment of an individual, and the question before the Full Bench was whether an individual had actually been appointed or whether it was a device to in validly appoint the union as a bargaining representative.

At paragraph [26] the Full Bench said:-

"We have outlined the documentary evidence earlier. That material is bristling with indications that, in his dealings with the appellant, Mr Tracy was acting as an official of the MUA. Although the emails are all written in the first person, the signature block, address, contact details and use of the union logo, all strongly suggest that Mr Tracy was acting in his capacity of Assistant Secretary of the MUA's Western Australian Branch. The newsletter and log of claims also contain unmistakable indications that Mr Tracy's advocacy for ROV operators was inextricably linked to the MUA. It is a fair inference from the material that at the relevant times Mr Tracey was operating from the MUA's premises and using the MUA's resources. The terms of the application under section 229, which have not so far been referred to, point in the same direction. While on its face the application is made by Mr Tracy as an individual, and there is no reference to the MUA or to Mr Tracey's union office, the address and contact details are those of the MUA. When taken with the other documentary material the only conclusion available is that in making the application Mr Tracey was not acting in a personal capacity but in the capacity of an MUA official."

As a consequence of this conclusion, the Full Bench ruled that the application for bargaining orders based upon Mr Tracey's representation was invalid, as the MUA, for which it was found he was acting, was not itself capable of representing the industrial interests of the relevant employees and the purported personal appointment of Mr Tracy did not remedy that problem.

Whilst the facts of that matter and the applicable legislation are different from the present case, this decision is in my view authority for the proposition that if an employee of a union purports to act in

their private capacity as a representative of workers in circumstances where there is significant evidence that the actions of that person are not personal representation, but are in truth the actions of a union, then the fact that the representation purports to be by an individual does not necessarily preclude a conclusion that the representation is actually by the union that employs and supports the union official who has been appointed as a representative.

In my view, it is strongly arguable that the inclusion of an entitlement to have only a union that represents the relevant employees as a representative for these purposes, provides a clear legislative indication that it is intended that the capacity of employees to appoint a representative that is a union, is limited to the appointment of a union that can and does represent their industrial interests. It would be a very strange outcome if a union that was not eligible to be appointed in its own right as a representative could be appointed by putting up an employee or official to be appointed as the proxy of the prohibited union, in circumstances where it can be demonstrated that the appointee is not appointed as an individual, but by seeking and accepting appointment, they are acting for and on behalf of a union which is not itself entitled to be appointed.

If such circumstances can be demonstrated to exist, then I consider that it will be strongly arguable that the ability to appoint a particular kind of union excludes the possibility of appointing another kind of union as a representative, and certainly precludes the possibility of a disguised appointment of a union which does not qualify under section 81(3) and the definition of "representative" in schedule 5.

In summary therefore, I am of the opinion that the prohibition in section 494 (1) of the Fair Work Act can be evaded by lawfully and effectively transferring the employment of a relevant official from the CFMMEU to the CFMEU.

However I am also of the view that it is strongly arguable that the words used in subparagraph (b) the definition of "representative" in schedule 5 to the WHS Act are intended to refer to a union which has the right to industrially represent the relevant employees, and further I am of the view that the CFMEU will not be such a union in the event that the awards and industrial instruments applicable to the employees are Federal awards and instruments.

If I am correct about the above conclusion, then it appears that if an official of the CFMEU, which cannot itself directly enter into the site, was to attempt to utilise section 81(3) based on a purported authorisation in their own right to act as a representative of the employees, it may well be that, subject to the available evidence, an inference is open to the effect that the individual is not in truth appointed as a representative in their own right, but is actually appointed in their capacity as an official of the CFMEU.

As mentioned, if the CFMEU itself cannot be appointed as a representative, it would appear to be clear that a person acting in their capacity as a representative of the CFMEU also cannot be a representative, if the authority in *Technip Oceania* is followed.

I trust these observations are of assistance. Please contact me immediately if I might assist any further in relation to these matters.

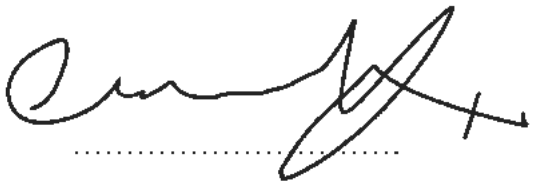
With compliments

ANDREW HERBERT
12 December 2019

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-9 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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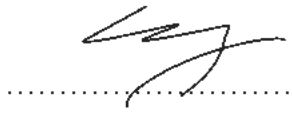
Andrea Fox



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Witness (Lawyer)

From: Andrea Fox
Sent: Thursday, 6 February 2020 1:01 PM
To: Jodie Deakes [redacted]; Marc Dennett [redacted]
Cc: John Alizzi [redacted]
Subject: DDG - Briefing note - Section 81(3) entry and CFMEUQ plans

Jodie and Marc

Please see attached a draft DDG BN to confirm a formal record of the regulator's position on 81(3) for your comment. If no changes we can progress formally for Jodie's endorsement.

Cheers

Andrea Fox

Director
Work and Electrical Safety Policy
Office of Industrial Relations

[redacted]

Floor 11, 1 William Street, BRISBANE QLD 4001

CRAIG ALLEN, DEPUTY DIRECTOR-GENERAL,
OFFICE OF INDUSTRIAL RELATIONS

SUBJECT

Regulator position on right of entry under section 81(3) / CFMEUQ intention

RECOMMENDATION

Note the information in this brief concerning your interpretation position as Regulator of section 81(3), and the implications for the CFMEUQ

Approve distributing advice to operational areas in line with this interpretation of section 81(3).

KEY ISSUES

Section 81(3) interaction with federal laws: the ABCC v CFMMEU case

1. The recent Federal Court decision in *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Bruce Highway Caloundra to Sunshine Upgrade Case) (No 2)* [2019] FCA 1737 (the decision) clarified certain entry requirements for union officials under section 81(3) of the WHS Act, particularly due to the interaction of state and federal laws.
2. In summary, the Federal Court found section 81(3) is a "state or territory occupational health and safety (OHS) right" for the purposes of the *Fair Work Act 2009* (FW Act), and an official must hold a permit under the FW Act to enter workplace under section 81(3).
3. This conclusion is due to the operation of section 494(1) of the FW Act, which provides: "An official of an organisation must not exercise a State or Territory OHS right unless the official is a permit holder." The definition of "organisation" in the FW Act, section 12, refers to "an organisation registered under the Registered Organisations Act". As the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) is an "organisation" as defined by the FW Act, the permit requirement applies to its officials.

CFMEUQ planned action regarding section 81(3)

4. The Office of Industrial Relations (OIR) understands that among unions, only the CFMMEU currently utilises section 81(3) for the purpose of entering a workplace. Other unions enter under section 117 (Entry to inquire into suspected contraventions) or 121 (Entry to consult and advise workers), which require state WHS Entry Permits. Other construction unions are understood to have instructed their officials not to enter under section 81(3).
5. The CFMMEU has informed OIR that it proposes to terminate certain officials' employment and instead employ them under the Queensland state-registered Construction, Forestry, Mining and Energy Union (CFMEUQ). This course of action is in response to the recent Federal Court decision, as the proposal would bring those officials outside of the definition of "organisation" in the the FW Act, and therefore the section 494(1) requirement to hold a FW Act permit would not apply.
6. While this approach potentially circumvents the requirements of the FW Act, it is open to question whether the CFMEUQ officials meet a threshold requirement to exercise the right of entry under section 81(3) of the WHS Act.

7. The WHS Act, section 81(3) provides that "A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue" (underline added). The WHS Act, Schedule 5 (Dictionary), defines "representative" as:
   (a) the health and safety representative for the worker; or
   (b) a union representing the worker; or
   (c) any other person the worker authorises to represent him or her.

8. It is understood that the CFMEUQ views their officials as falling within the definition of sub-paragraph (c).

Regulator's position and potential challenges

9. It is noted that the Deputy Director-General's position is that a CFMEUQ official could be a "representative" under (c). On this basis, the Regulator's view is that CFMEUQ officials may enter under section 81(3) without a FW Act permit, if a worker so authorises. OIR seeks the DDG's approval to distribute advice to operational areas in line with this approach to section 81(3).

10. OIR notes that this approach may be subject to challenge on the basis that union officials can only enter under sub-paragraph (b), and that as the CFMEUQ is not registered under the *Fair Work (Registered Organisations Act) 2009* it has no statutory rights of representation.

11. Accordingly, a court may take the view that an attempt to enter under sub-paragraph (c) is limited to those who are not union officials (or health and safety representatives), and that the idea of union officials acting in their personal capacity as representatives under (c) may be contradicted by the evidence that they are union officials. OIR notes legal advice received raised this as a possibility for the Court.

BACKGROUND

12. On 23 October 2019, Justice Collier delivered the decision finding in favour of the ABCC, and against CFMMEU and other respondents (seven union officials).

13. The decision stemmed from a dispute where over several consecutive days in mid-April 2018, CFMMEU officials attempted to enter a worksite (the Bruce Highway upgrade) pursuant to section 81(3) of the WHS Act. Workers acting on behalf of the joint venture Bruce Highway upgrade project communicated that the union officials were required to produce FW Act entry permits in order to gain entry. Section 497 of the FW Act provides "a permit holder must not exercise a state or territory OHS right unless the permit holder produces his or her entry permit for inspection when requested …".

14. The union officials refused to produce their entry permits but entered the worksite. It is understood the union officials hold federal permits but refused to produce them on principle.

Prepared by:	Endorsed by:	Endorsed
Andrea Fox Director Work and Electrical Safety Policy Tel: [redacted]	Brad Bick A/Executive Director WHS Engagement and Policy Services Tel: [redacted]	Brad Bick A/Executiv WHS Enga Tel: [redacted]
Date:	Date:	Date:

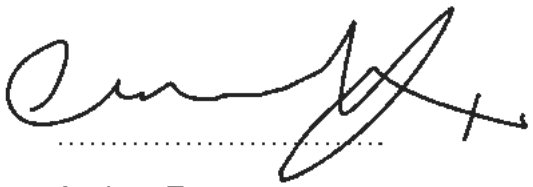
Recommendation Approved:.....

Date: ....

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-10 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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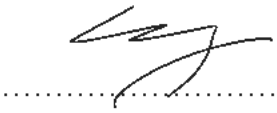
Andrea Fox



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Witness (Lawyer)

AF-10

Outlook

RE: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/109100/issue-resolution-fact-sheet.pdf

From George Buxton [redacted]
Date Mon 2020-02-10 11:01 AM
To Jodie Deakes [redacted] Andrea Fox [redacted]
Cc Natasha Carstens [redacted] Elsje Chiapello [redacted]

1 attachment (959 KB)
issue-resolution fact sheet FEB 2018.docx;

Andrea I've attached the word doc for tracking the required changes

Regards

George Buxton
Director, Awareness and Engagement
Office of Industrial Relations
[redacted]
Queensland Government
Level 12, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

From: Jodie Deakes [redacted]
Sent: Monday, 10 February 2020 10:06 AM
To: Andrea Fox [redacted]; George Buxton [redacted]
Cc: Natasha Carstens [redacted]
Subject: FW: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/109100/issue-resolution-fact-sheet.pdf

Andrea,
Please see attached request from Marc. I am assuming your team would revise and update in consultation with George's team.
Let me know if I have this wrong.
Thanks

Jodie Deakes
Executive Director
WHS Engagement and Policy Services
Office of Industrial Relations
[redacted]

From: Marc Dennett [redacted]
Sent: Monday, 10 February 2020 9:31 AM
To: Jodie Deakes [redacted]
Cc: Craig Allen [redacted] Helen Burgess [redacted]

Subject: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/109100/issue-resolution-fact-sheet.pdf

Hi Jodie

I have attached the above document which is on the external facing website – the fact sheet makes mention of requiring a fair work permit on page 2 under Representatives of a party entering the workplaces for the purpose of resolving the issue. It was updated in November 2019 following the Federal court decision.

I think given our position now on this we will need to update to reflect that only union organisers covered by the fair work act will be required to produce permits if asked.

Can policy please update.

Thanks

Marc Dennett
Executive Director
WHS Compliance and Field Services
Office of Industrial Relations

[redacted]
Level 1, 60 Wises Road, Maroochydore, QLD
PO Box 5177, Maroochydore BC, QLD, 4558

The most important reason for making your workplace safe, is not at work at all. Work Safe. Home Safe.

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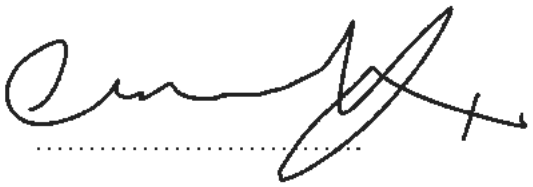
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-11 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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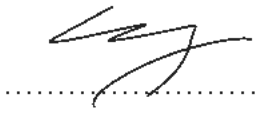
Andrea Fox



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Witness (Lawyer)

Issue resolution

Work Health and Safety Act 2011, Part 5, Division 5

Purpose

To provide guidance for Office of Industrial Relations (OIR) officers when attending a workplace to assist parties resolve a work health and safety issue (WHS issue).

This procedure specifically addresses issue resolution processes under sections 80 - 82 of the *Work Health and Safety Act 2011* (WHS Act) and sections 22 and 23 of the *Work Health and Safety Regulation 2011* (WHS Regulation).

Policy Statement

It is OIR's expectation that:

- all requests for issue resolution assistance are treated urgently. Inspectors have only 24 hours to assist in resolving an issue between the parties before the issue can be referred to the Queensland Industrial Relations Commission (QIRC) for resolution, under section 102B WHS Act
- inspectors will document the outcome of their workplace attendance in their official inspector notebook and CISr,
- construction inspectors will complete an inspection report for all union related interactions.
- inspectors must follow the Compliance Monitoring and Enforcement Policy (CMEP) if using compliance and enforcement powers while at a workplace for issue resolution purposes

Note: Any decision to use, or not use, compliance powers to assist in resolving an issue can be considered by the QIRC. The QIRC can confirm, vary, or set aside the decision.

Refer to the definition for procedures table for any commonly used terms used in this procedure.

Context and legislative application

The WHS Act places a duty on all parties to a work health and safety issue to make reasonable efforts to resolve the issue, using an agreed issue resolution procedure (s 81(2) WHS Act). For information on agreed procedures, refer to Appendix A – What is an agreed procedure?

Section 80(1) WHS Act defines 'parties' to an issue as:

- the PCBU or the person's representative;
- if the issue involves more than one business or undertaking, each PCBU or their respective representative;

- if worker(s) affected by the issue are in a 'work group' (see part 5, division 3 WHS Act), the health and safety representative (HSR) for that 'work group' or his/her representative; and
- if there is no 'work group', the worker(s) affected by the issue or their representative.

The PCBU must ensure their representative (if any) is not a HSR, has an 'appropriate level of seniority', and is 'sufficiently competent' to act as the PCBU's representative (s 80(2) WHS Act).

In determining whether a PCBU's representative has an appropriate level of seniority, an inspector should consider whether the representative has the authority to make or readily facilitate the necessary decisions to resolve WHS issues at the workplace. For example, is the representative a senior officer of the PCBU with authority to make decisions on behalf of the PCBU?

In determining whether a PCBU's representative is 'sufficiently competent', an inspector should consider whether the representative has a general knowledge and understanding (whether obtained through WHS training, general management training, work experience or mentoring programs) of:

- the WHS Act and the WHS Regulation
- the PCBU duties under the WHS Act and WHS Regulation
- the PCBU's approach to managing WHS issues
- the concept of 'reasonably practicable'
- the role and functions of HSRs and WHS entry permit holders
- the role of inspectors
- the process of issue resolution
- workplace operations
- communication, consultation and negotiation skills, and
- WHS risk management processes, with an ability to:
  - identify appropriate risk control measures available to the PCBU; and
  - obtain access (internally or outside the PCBU) to expert technical information/advice.

If parties do not resolve an issue by discussion, they must make reasonable efforts to achieve a timely, final, and effective resolution of the issue, in accordance with the relevant agreed procedure (see s 81 of the WHS Act).

If the workplace does not have an agreed procedure, the default procedure for issue resolution prescribed in sections 22 and 23 of the WHS Regulation **must** be used by the parties. The PCBU must ensure the agreed procedure is set out in writing and is communicated to all workers to whom the agreed procedure applies. An inspector is empowered to take enforcement action if a PCBU contravenes section 22(3) of the WHS Regulation.

Note: There is no obligation on the parties to have an agreed procedure for issue resolution. The parties can use the default procedure prescribed in the WHS Regulation. However, if an agreed procedure is being contemplated, the PCBU must ensure that affected workers and their HSR(s), (if any) are consulted about the development and content of the procedure (see s 47 - s 49 WHS Act).

A representative of any party to the WHS issue may enter the workplace to attend discussions to try to resolve the issue (s 81(3) of the WHS Act). **For situations where a PCBU is refusing entry to a representative (e.g. a union official) of a party to the issue**, see Appendix B - Entry of a representative to a party under s 81(3) WHS Act.

Inspector may be requested to attend the workplace

A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving an issue (s 82(2) WHS Act).

Note: Section 82(3) of the WHS Act provides that a request made to the regulator under section 82(2) does not prevent a worker from exercising the right under section 84 to cease work, or a HSR from issuing a provisional improvement notice under section 90 of the WHS Act.

Where an issue requires escalation, parties must request the assistance of an inspector before the matter can be considered by the QIRC. However, if the issue remains unresolved at least 24 hours after requesting assistance, parties to the issue can refer the matter to the QIRC for resolution under Division 7A WHS Act (s 102A – s 102G). This can be done without OIR undertaking an internal review and does not require the matter to be classified as a reviewable decision.

When attending the workplace to assist with resolving the issue, an inspector may exercise any of their compliance powers under the WHS Act.

Operational Procedure

Assessment Services (AS)

The AS officer who receives a request for issue resolution assistance must ensure all relevant information is collected and appropriately recorded in accordance with the Events Management Procedure.

If the request relates to a PCBU refusing entry to a representative of a party to the issue, refer to Appendix B - Entry of a representative to a party under s 81(3) WHS Act.

If a request for assistance is made to an inspector, line manager, director, or other employee of OIR rather than through AS, the person receiving the request should email the request to AS at WHSQ.AAA@oir.qld.gov.au.

The following additional information must be obtained for these requests:

- confirmation that reasonable efforts have been made to resolve the matter by discussion and use of an agreed issue resolution procedure
- if there is no agreed procedure at the relevant workplace, whether the issue resolution procedure prescribed in section 23 of the WHS Regulation has been used by the parties

If the person requesting assistance advises that reasonable efforts have not been made to resolve the issue, inspectors should:

- advise the parties to do so, as referral of the issue to the regulator is only allowed if an issue has not been resolved after reasonable efforts have been made to achieve resolution
- provide the parties with any necessary guidance or advice on how they can attempt to resolve the issue

- advise the parties that, if their attempt does not result in the issue being resolved, any parties to the issue may again approach the regulator with a request for assistance to resolve the issue.

When all required information is available in the validation area of AAAWi (triage database), the officer should complete the validation process, select 'statutory response' and then 'regional response'. Upload the request into CISr and notify the corresponding region via phone.

A request for assistance relating to issue resolution should be actioned as soon as possible to enable inspectors to respond.

Construction Industry - Triaging

For issues raised in relation to the construction industry, the triage of enquiries or complaints may also be done by the Director rather than through AS.

If the request relates to a PCBU refusing entry to a representative of a party to the issue, refer to Appendix B - Entry of a representative to a party under s 81(3) WHS Act.

Duty Manager

For out-of-hours requests, immediately make enquiries about the request and determine if the issue requires an urgent out-of-hours response.

If the issue requires an urgent response, the duty manager should follow the same process as that used by AS. The duty manager should:

- ensure that reasonable efforts have been made to resolve the matter by discussion and use of an agreed issue resolution procedure (or, if there is no agreed procedure at the relevant workplace, the issue resolution procedure prescribed in section 23 of the WHS Regulation).

If the client advises that reasonable efforts have not been made to resolve the issue:

- advise the parties to do so, as referral of the issue to the regulator is only allowed if an issue has not been resolved after reasonable efforts have been made to achieve resolution;
- provide the parties with any necessary guidance or advice on how they can attempt to resolve the issue;
- advise the parties that, if their attempt does not result in the issue being resolved, they may approach the regulator again with a request for assistance to resolve the issue.

However, where a party's representative is refused entry to the workplace by the PCBU for discussions to resolve the issue, refer to Appendix B - Entry of a representative to a party under s 81(3) WHS Act.

If there is no longer a need for an inspector to attend the workplace, inform the parties an inspector will not attend the workplace, and ensure the outcome is appropriately recorded by the duty manager and in CISr.

Should an inspector be required to attend the workplace to assist with an urgent out-of-hours response, the duty manager must contact an officer who holds a regulator delegation for section 82 WHS Act (delegated officer) for them to appoint an inspector to assist in resolving the matter, and advise AS of the out-of-hours action taken. (see WHS and SRWA Regulator's Delegation Schedule for the list of delegations).

Regulator (or delegated officer)

Upon receiving a request for assistance, the regulator or delegated officer may appoint an inspector to make relevant enquiries (see WHS and SRWA Regulator's Delegation Schedule for the list of delegated officers). In deciding to appoint an inspector the regulator or delegated officer must consider:

- the risks posed to workers or others on site, and
- the need to resolve the issue **urgently.**

Line Manager

Note: In some circumstances, the line manager will be an officer who holds a section 82 delegation.

Allocate an assessment on CISr to the inspector. Assign a supporting inspector to attend the workplace to assist the primary inspector. Ensure the inspectors understand their role when requested to assist resolve an issue and be available if they require assistance during the response.

After the inspectors have attended the workplace, discuss their response with them to ensure the issue has been appropriately managed.

Provide clear instructions to the inspectors regarding administrative requirements that need to follow a response. This will include recording the outcome in their official inspector notebook and CISr.

Where an inspection report is required, review the report before providing it to the parties to the issue.

Record all information in accordance with Events Management procedure.

Inspector

Preliminary assessment of request to assist resolve an issue

An inspector may make preliminary inquiries before attending the workplace. Preliminary assessment of the request should be completed as soon as possible, and no later than 24 hours after the request is received.

The inspector may contact the parties and confirm that reasonable efforts have been made to resolve the matter by discussion, and that an agreed issue resolution procedure has been used (or, if there is no agreed procedure, the default issue resolution procedure prescribed in s 23 of the WHS Regulation).

The inspector must record the details and outcomes in their inspector notebook and in CISr.

Attend the workplace

Attend the workplace as soon as possible.

Note: On attending a workplace to assist in resolving a work health and safety issue, the inspector may exercise any of the inspector's compliance powers under the WHS Act in relation to the workplace.

Joint meetings with the parties should be held to inquire into the WHS issue to reach a quick resolution. However, in some circumstances it may be preferable to hold meetings with each party separately.

Ask the HSR or the representative of the party if the issue has been raised with the PCBU. If it has, record the PCBU's response.

If the issue has not been raised with the PCBU, then bring the parties together with the PCBU to raise the issue.

Obtain the views of each party on how the issue should be resolved and gather any other information required to help understand the issues.

If the issues cannot be resolved immediately, it is then treated as being unresolved.

Note: Division 5, Part 5 WHS Act (Issue Resolution) does **not** require a representative of a party to reveal the identity of a worker who raises an issue with the representative.

Resolving the issue

Inspectors should provide all parties with advice and guidance relating to the issue. Where inspectors identify non-compliance with the WHS Act, they must exercise their compliance powers under the WHS Act in accordance the CMEP.

Unresolved issue

If the issue cannot be resolved, inspectors should advise all parties that they can apply to the QIRC under Division 7A, Part 5 of the WHS Act to resolve the issue.

Further inquiries

If an inspector needs to make further inquiries outside of the workplace before they can assist, they should advise the relevant parties.

Examples of when further inquiries outside the workplace may be required:

- checking whether the information supplied to the inspector is correct
- seeking advice from the inspector's line manager
- researching the issue, including seeking technical advice.

Refer to Appendix C – Issue Resolution Scenarios for more information on dealing with specific request for assistance regarding issue resolution.

Recording Information

The inspector must make detailed notes in their official inspector notebook and update CISr to record the interaction. The inspector must record any information provided or obtained and complete an inspection report in the following circumstances:

- where directed by their line manager
- where the inspector attended the site in response to union activity.

Appendices

Appendix A – What is an agreed procedure?
Appendix B - Entry of a representative to a party under s 81(3) WHS Act
Appendix C – Issue Resolution Scenarios

Appendix A – What is an agreed procedure?

An issue resolution procedure should aim to facilitate a timely and effective resolution of a health and safety issue and must be consistent with the WHS Act. For example, it cannot remove the power of a HSR to issue a PIN or remove any other power that the WHS Act gives them.

An **agreed procedure** is one which is genuinely agreed upon between the PCBU and the majority of workers, including any HSRs. The procedure must not be imposed by one party or the other, or arise out of a flawed process for reaching agreement, for example:

- where only a select group of workers participated and agreed with the PCBU; or
- where agreement is reached through an unrepresentative process, (i.e. where not all HSRs or other worker(s) representatives (as relevant) were able to participate in the agreement process).

If the PCBU or a majority of workers have concerns about the agreed procedure, they are entitled to withdraw their agreement. If a new procedure is not developed to replace this, then the default procedure in section 23 WHS Regulation applies.

An agreed procedure should:

- outline a process of steps for resolving issues and not set out what the outcome would be in specified circumstances;
- be able to be used to resolve issues and not be limited to stating that workers should raise issues with their supervisor or HSR;
- relate to health and safety issues rather than rely on a procedure which exists solely for other purposes, such as a grievance or complaint procedure, unless such a procedure is agreed to be utilised for health and safety issues;

and include:

- each person's role when resolving WHS issues, including managers, supervisors, HSRs and workers;
- timeframes and opportunities for the parties to meet to resolve the issue; and
- how to communicate the outcome of the process to workers.

Note: While Health and Safety Committees (HSCs) (if any exist at the workplace) have their place (e.g. to assist in developing the agreed issue resolution procedure), they may not be suitable avenues for resolving specific WHS issues. This is because issue resolution may be delayed if the HSC meets infrequently, or the affected workers may not be members of the HSC.

Procedural steps could include:

- discussing and agreeing what the actual issue is
- nominating and discussing a range of options for resolving the issue
- discussing which of the range of options may be the best one to resolve the issue
- considering suitable interim, short-term solutions to the issue if the preferred option will take some time to implement

Note: Section 22 of the WHS Regulation provides the minimum requirements for an agreed procedure for issue resolution at the workplace are that the procedure:

- includes the steps specified in s 23 WHS Regulation (for the default procedure);
- is set out in writing; and
- is communicated to all workers to whom the agreed procedure applies.

Communication about an agreed procedure may, for example, be achieved by providing information about it in briefing sessions. Written procedures could be emailed to all workers and/or posted on a noticeboard at the workplace or on the internal website of the workplace. If there are workers who do not speak or read English, details of the agreed procedure should be provided and posted in relevant languages, to ensure the content is accessible to all workers. Where there are workers who have limited literacy skills, including English speakers, the procedures should be explained to them verbally.

Section 81(2) WHS Act provides that the default procedure set out in the WHS Regulation applies if there is no agreed procedure. The default procedure is set out in section 23 WHS Regulation. It provides as follows:

- Any party to the issue may commence the procedure by telling each other party:
    a) that there is an issue to be resolved; and
    b) the nature and scope of the issue.
- As soon as parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.
- The parties must have regard to all relevant matters including the following:
    - the degree and immediacy of risk to workers or other persons involved in the issue;
    - the number and location of workers and other persons affected by the issue;
    - the measures (both temporary and permanent) that must be implemented to resolve the issue; and
    - who will be responsible for implementing the resolution measures.
- A party may, in resolving the issue, be assisted or represented by a person nominated by the party.
- If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.

Note: Under the WHS Act, ***parties*** to an issue include not only a PCBU, a worker and a HSR, but also representatives of these persons (see s 80 of the WHS Act).

- If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.
- A copy of the written agreement must be provided to:
    a) all parties to the issue; and
    b) if requested, to the HSC for the workplace.

For the avoidance of doubt, nothing in this procedure prevents a worker from bringing a WHS issue to the attention of the worker's HSR.

Appendix B – Entry of a party's representative under section 81(3) WHS Act

Workers may choose a person to represent them to attend discussions at the workplace with a view to resolve the issue (s 81(3) WHS Act). This representative then falls under the definition of a *party to the issue* (s 80(1)(c), (d) WHS Act).

Who can be a party's representative?

A representative can be any person, including a union official, acting on behalf of a HSR of the work group affected by the issue, or of a worker who is not in a work group but is affected by the issue.

Where an issue is raised, the parties to the issue must make reasonable efforts to achieve a timely, final and effective resolution. For the purpose of resolving the issue, a representative to a party has the right to enter the workplace for the purpose of discussing the issue.

Representative prevented from entering the workplace:

Where an inspector is requested to attend a workplace because a representative has not been allowed to enter, it is important to understand that this is to make inquiries into whether the PCBU is contravening s 81(3) by refusing entry to the representative. The inspector must make inquiries to identify what the WHS issue is, who are the parties to the issue and whether the person is eligible to be a representative of a party to the issue. The inspector must then advise the PCBU whether they believe the representative has a right to enter. The inspector must then enter the workplace and address the WHS issue and if requested, assist in resolving the issue.

Where inspectors identify non-compliance with the WHS Act or Regulation, they must exercise their compliance powers under the WHS Act in accordance the CMEP.

Entry of the representative to the workplace:

If an inspector advises the PCBU that the representative is eligible to enter, and the representative chooses to exercise that right, then any attempt to enter the workplace made by the representative is still made under s 81(3). Inspectors do not take representatives into the workplace under s 166 of the Act as assistants.

If the PCBU still refuses entry and calls for the assistance of police, the inspector must explain to the police whether they believe that the representative is eligible to enter under s 81(3).

Determining eligibility

Where the representative is a union official, they might need to meet certain obligations under other legislation before, or upon, entering the workplace (e.g. showing relevant permits). While such obligations are not imposed by section 81 of the WHS Act, entry by a union official under section 81(3) could be affected by the operation of other legislation. Factors to consider include:

- whether the union is registered under federal legislation or the Industrial Relations Act 2016 (Qld) (IR Act)
- whether a union official holds a federal entry permit under the Fair Work Act 2009 (Cth) (FW Act) or a State industrial authority under the IR Act

- whether the employer (e.g. PCBU), workers, or occupiers are regulated by Commonwealth legislation (e.g. constitutional corporation – indicated by Pty Ltd in its company name) - see section 494(2) FW Act.

Union official holds a federal entry permit under the FW Act

A union official who holds a federal entry permit (permit holder) must not exercise a *State or Territory OHS right*[1] unless the permit holder produces their entry permit for inspection when requested to do so by the occupier of the premises or an affected employer (s 497 FW Act). A right is a *State or Territory OHS right* when it meets **both** the following criteria under section 494(2) FW Act:

- the right is conferred by State or Territory OHS law, e.g. the Work Health and Safety Act 2011 (Qld); and
- one of the scenarios outlined in section 494(2)(a) to (g) are met, i.e. there must be some nexus with the Commonwealth, e.g. a constitutional corporation

Unless, both these limbs of section 494(2) exist, the right sought to be exercised cannot be classified as a *State or Territory OHS rig*ht. For example, a right might be conferred by Queensland law (e.g. s 81(3) WHS Act), but it will not be a *State or Territory OHS right* unless one of the scenarios in s 494(2) FW Act are met.

Entering a workplace under section 81(3) of the WHS Act has been held by the Full Court of the Federal Court to be an exercise of a State or Territory OHS right.[2]

Scenario: A HSR has asked their union representative from the CFMMEU to attend discussions at the workplace with the PCBU to resolve a WHS issue. If requested by the PCBU, the union representative must produce their federal entry permit as the CFMMEU is registered under the FW Act and it is a requirement under the FW Act that their federal permit is produced before exercising a State or Territory OHS right.

Note: There may be rare circumstances where the Fair Work Act is not relevant as the conditions of s 494(2)(a-g) of the FW Act are not met, for example: the relevant PCBU is a sole trader or a partnership. In such circumstances the representative would not have to produce their federal permit.

Union official does not hold a federal entry permit

Where a union official does not hold a federal entry permit (perhaps because their union is not registered under federal legislation), then they do not need to comply with the requirement to produce their federal entry permit under section 497 FW Act.

It is the position of the regulator that where unions are not registered under the FW Act, their officials may still be 'a representative of a party to an issue', and therefore, 'may enter the workplace for the purpose of attending discussions with a view to resolving the issue'. If the requirements of section 80 and section 81(1) WHS Act have been met, then a party's representative can enter the workplace to hold discussions to resolve the issue.

Scenario: A HSR has asked their union representative from the CFMEU(Qld) to attend discussions at the workplace with the PCBU to resolve a WHS issue. As the CFMEU(Qld) is not a federally registered union, the FW Act does not apply, and the union representative can enter the workplace to attend discussions as a representative of a party to the issue to resolve the issue.

[1] *Fair Work Act 2009* (Cth), section 494(2) – definition of *State or Territory OHS right*
[2] *CFMMEU v ABCC (The Bruce Highway Caloundra to Sunshine Upgrade Case)* [2020] FCAFC 203

Appendix C – Issue Resolution Scenarios

The following table provides information on how to deal with a range of scenarios relating to issue resolution that may be received by the regulator. The response to these issues may involve attending the workplace, or response by other means.		
1.	**Guidance is sought on what should be included in an agreed procedure.**	Section 22 of the WHS Regulation sets out minimum requirements for an agreed procedure for issue resolution at the workplace. A PCBU at a workplace must ensure the agreed procedure for issue resolution at the workplace includes steps specified in s 23 of the WHS Regulation, is set out in writing, and is communicated to all workers to whom the agreed procedure applies. If there is no agreed procedure, the default procedure for issue resolution prescribed in s 23 of the WHS Regulation **must** be used by the parties. Provide guidance as per Appendix A – What is an agreed procedure?
2.	**There is an issue (dispute) at the workplace over whether there should be an agreed procedure or whether the default procedure in the WHS Regulation should apply.**	Inform the parties there is no legal obligation to have an agreed procedure; however, the default procedure applies if there is no agreed procedure (as per s 23 of the WHS Regulation). Advise the parties to consider developing an agreed procedure as it may be tailored to meet the specific circumstances/needs of the workplace (and better facilitate issue resolution) than a default procedure. Advise the parties that the steps in the default procedure are taken to be terms of the agreed procedure if not explicitly included. Provide guidance as per Appendix A – What is an agreed procedure?
3.	**There is a query about whether the purported agreed procedure is actually an agreed procedure in accordance with the WHS Act.**	Review the purported agreed procedure against the information included in this procedure. Advise the party of your opinion. If you believe the purported agreed procedure is not an agreed procedure in accordance with the WHS Act, advise the party the default procedure would apply until, or unless a valid agreed procedure is developed. Provide guidance to the relevant parties on how their existing procedure can be improved as per Appendix A – What is an agreed procedure?
4.	**There is an allegation that the relevant agreed or default procedure was not followed.**	While s 81(2) of the WHS Act provides that the parties **must** make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed or default procedure, there is no penalty provision attached to this section. A contravention of s 81(2) cannot be the subject of prosecution.

		However, if your inquiries lead you to identify the parties did not make reasonable attempts to resolve the issue in accordance with the agreed procedure (if any) or the default procedure, an improvement notice may be issued requiring the PCBU to follow the relevant procedure to attempt to resolve the issue under s 22(3) of the WHS Regulation. Additionally, the inspector may inquire into the substantive work health and safety issue and exercise relevant powers.
5.	**There is an allegation (or the inspector's observation) that the PCBU's representative is NOT of an appropriate level of seniority or is not sufficiently competent.**	While s 80 (2) of the WHS Act provides that the PCBU's representative **must** have an appropriate level of seniority and is sufficiently competent, there is no penalty provision attached to this section. A contravention of s 80(2) cannot be the subject of prosecution. However, the inspector may inquire into the substantive work health and safety issue and exercise relevant powers.
6.	**There is an issue (dispute) at the workplace over whether a representative of a party to the issue (dispute) is entitled to enter the workplace to discuss the issue.**	Where s 80(1)(c) or (d) has been satisfied and there is a WHS matter s 81(1) then, to make a reasonable effort to resolve the issue in accordance with s 81(2), s 81(3) of the WHS Act entitles a representative of a party to enter the workplace for the purpose of attending discussions with a view to resolving the issue. Refer to: Appendix B - Entry of a representative to a party under s 81(3) WHS Act.
7.	**A worker has raised a WHS matter with a union official who is the workers representative under s 80(1)(d) of the WHS Act. The representative has provided the PCBU with details of the matter, however the PCBU won't allow entry to the representative under s81(3) unless the representative reveals the name of the worker.**	There is no requirement under Division 5, Part 5 (Issue Resolution) for a representative of a party to reveal the name of workers that they represent. However, the inspector may make inquiries with the representative to verify that the official is a representative of the worker who has raised the matter, and that details of the matter have been raised with the PCBU. Again, in order to make a reasonable effort to resolve the issue in accordance with s81(2), the representative must be allowed to enter the workplace for the purpose of attending discussions with a view to resolving the issue. Refer to: Appendix B - Entry of a representative to a party under s 81(3) WHS Act.

Document Approval

Andrew Harris
Executive Director
WHS Compliance and Field Services
Office of Industrial Relations

Date: 25/10/2022

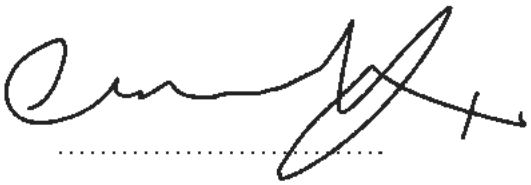
Document History

Creation date:	01/01/2012 (initial creation date)
Last updated:	21/10/2022 (date forwarded to ED for approval)
Current date of effect:	24/10/2022 (date of approval by ED)

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-12 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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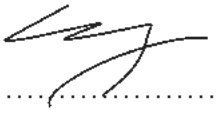
Andrea Fox



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Witness (Lawyer)

Issue resolution

The issue resolution provisions are located in Part 5 of the *Work Health and Safety Act 2011* (WHS Act) which aim to provide fair and effective workplace representation, consultation, and cooperation arrangements at the workplace level.

An 'issue' is any matter about health and safety at the workplace that remains unresolved after it is discussed by parties to the issue.

The provisions outline how a health and safety issue can be resolved, with the aim of resolving issues as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue. The intention is that issues should be resolved 'once and for all' to the extent that is possible in the circumstances. The existence of an issue does not necessarily mean there is a dispute on the matter.

Who can be involved in issue resolution?

Parties in relation to an issue are limited to:

- persons conducting a business or undertaking (PCBUs) or their representative (or other PCBUs if the issue involves more than one business)
- health and safety representatives (HSRs) or a *suitable entity* representing the HSR – where there are workers affected by the issue in a work group
- workers who are in a work group for which an HSR has not been elected that are affected by the issue – the worker/s or a *suitable entity* representing the worker/s
- workers who are not in a work group that are affected by the issue – the worker/s or their representative ('*representative*', in relation to a worker, is defined in the WHS Act as being an HSR or a *suitable entity* that has been authorised by the worker to represent them)
- a *relevant union* for a worker affected by the issue if the union notifies the PCBU in writing that they want to be a party to the issue.

(Note: a PCBU must ensure, if they nominate a representative, that the person is not an HSR, has an appropriate level of seniority and is sufficiently competent to act as their representative).

Initial reporting and discussion of a health and safety matter

Where there is a health and safety issue, it is expected that parties will communicate, consult and cooperate to discuss the matter. For example, the initial reporting of a health and safety concern may involve:

- if they are in a work group, a worker raising the matter with the HSR, who should then raise the issue with the PCBU or their representative
- if there is no work group, a worker raising the matter directly with the PCBU or their representative (e.g. a supervisor)
- if there is no work group, a worker raising the matter with their representative, who should then raise the matter with the PCBU or their representative.

It is recommended that the outcome of the initial discussions be documented as a record of the matter being raised and discussed.

When do the issue resolution provisions apply?

Only where the matter remains unresolved through initial discussions does the matter become an 'issue' and the issue resolution process in the WHS Act and *Work Health and Safety Regulation 2011* (WHS Regulation) will apply.

Where the matter is resolved during initial discussions and the parties are satisfied the agreement reflects resolution of the matter (e.g., immediate action taken by the PCBU to install toeboards to prevent objects falling and hitting workers or other people below the work area, which is then observed by the HSR/representative of a party), the issue resolution process does not commence.

Resolving an issue

Only a party to an issue, as outlined above in *'Who can be involved in issue resolution?',* can be involved in the issue resolution process.

Any party to the issue may commence the formal issue resolution procedure by telling each other party:

(a) that there is an issue to be resolved

(b) the nature and scope of the issue.

As soon as parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue using the issues resolution procedure.

Some workplaces will have developed an agreed issue resolution procedure with their workforce, which should be followed when resolving an issue. If a PCBU does not have a written agreed procedure for issue resolution, the WHS Act requires the default procedure in the WHS Regulation be used. If a PCBU's agreed procedure does not include a step specified in the default procedure in the WHS Regulation, that step is automatically included in the agreed procedure.

Matters to be taken into account when considering an issue include:

- the degree and immediacy of risk to workers or other people affected by the issue
- the number and location of workers or other people affected by the issue
- what measures are required to resolve the issue (both temporary and permanent)
- who will be responsible for implementing the resolution of the issue
- an agreed timeframe for when measures to resolve the issue will be implemented.

What is the role of a representative in the issue resolution process?

A PCBU, worker or an HSR for a work group who is a party to an issue, may only be assisted by an eligible representative in resolving the issue (s. 80 WHS Act, s. 23(5) WHS Regulation). More information about the representatives who may assist is also outlined above in *'Who can be involved in issue resolution?'.*

The role of the representative is generally to provide advice to their party on the issue which is subject to the resolution process and to assist in the discussions with a view to resolving the issue.

A representative does not necessarily need to have health and safety expertise and may include people such as a designer of a piece of equipment at the workplace or an engineer.

Representatives of a party entering the workplace for the purpose of resolving the issue

Section 81(3) of the WHS Act entitles a party to the issue (including a representative of a party) to enter and remain at the workplace for the purpose of attending discussions with a view to resolving the issue.

Entry by a representative of a party can only occur once the issue resolution procedure has been enlivened (i.e. the matter is not resolved after discussions between the parties to the issue – see s. 81(1) WHS Act).

Recent changes to the *Fair Work Act 2009* (Cth) mean it is no longer a requirement for a union official to hold a federal entry permit before entering a workplace to assist a health and safety representative. However, they may have to meet obligations under other legislation before, or upon entering the workplace (see *Fair Work Act 2009* ss. 499-504).

Issue resolution example

A worker identifies a problem with scaffolding and there is no HSR in their workplace and the worker does not feel comfortable raising the matter with their supervisor. Instead, the worker raises the issue with their representative.

The representative notifies the PCBU of the issue, but initial discussions fail to address the matter. The parties then commence the formal issue resolution procedure. The agreed issues resolution process is followed.

As the issue resolution provisions have been enlivened, in this context, it would be reasonable for discussions between the parties to take place at the workplace where the scaffolding could be physically observed, so all parties can observe the scaffolding and come to a common understanding of the issue to be addressed.

Resolution

If the issue is resolved, the details of the issue and the resolution must be set out in writing if any party to the issue requests this.

A copy of the written agreement must be given to the parties to the issue. A copy of the agreement to the resolution of an issue may be forwarded by any of the parties to any union or employer organisation that represents the party.

If an issue remains unresolved, any party to the issue may ask Workplace Health and Safety Queensland to appoint an inspector to attend the workplace and assist in resolving the issue.

Such a request does not prevent a worker from ceasing unsafe work or an HSR from issuing a Provisional Improvement Notice (or PIN). In addition, the inspector may exercise any of his/her compliance powers under the WHS Act.

Any party to the issue can also refer the issue to the Queensland Industrial Relations Commission (QIRC) for resolution (see s. 102B WHS Act).

In dealing with a dispute, the QIRC may:

- consider the matter by means of mediation, conciliation or arbitration and make any order it considers appropriate for the prompt settlement of the dispute;
- review a decision made by an inspector to use their compliance powers to assist in resolving the dispute (i.e. if an inspector issues an improvement notice to assist with resolving a dispute, the QIRC can review the inspector's decision and confirm, vary or set aside the inspectors decision); and
- decide not to deal with a dispute, and order costs, if they consider the matter to be frivolous, vexatious, misconceived or lacking substance.

Key definitions

A ***suitable entity***, for representing or assisting a worker or HSR, means:

i. a relevant union for the worker; OR

ii. another entity that is authorised by the worker or representative to represent or assist the worker or representative; AND

iii. cannot be an *excluded entity* for representing or assisting the worker or representative.

A ***relevant union*** for a worker (whether the worker is an HSR or another worker) is a union of which the worker is a member or is eligible to be a member, and whose rules entitle the union to represent the worker's industrial interests. Unions must be employee organisations registered under the *Fair Work (Registered Organisations) Act 2009* (Cwlth) or the *Industrial Relations Act 2016*.

An ***excluded entity*** for representing or assisting a worker or HSR for a worker is an excluded body that is:

i. an entity, other than a union, that is an association of employees or independent contractors, or both;

ii. an entity, other than a union or an association mentioned in subparagraph (i), that represents, or purports to represent, the industrial interests of the worker or representative;

iii. an entity that demands or receives a fee from another excluded body, for representing, or purporting to represent, the industrial interests of the worker or representative;

iv. a union that is not a relevant union for the worker.

An ***excluded entity*** is also an individual who is an officer or employee of an excluded body, acts as an agent of an excluded body or is otherwise representing or purporting to represent an excluded body.

Thanks
Helen

Helen Burgess
Director, Construction Compliance and Field Services
Office of Industrial Relations
P [redacted]
Level 11, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

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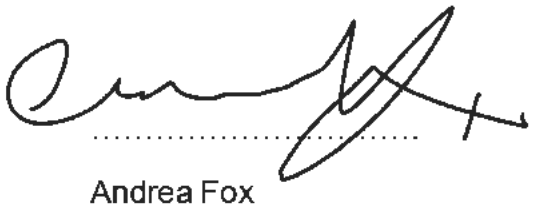
ANNEXURE SHEET

This is the document referred to as AF-13 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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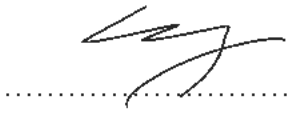
Andrea Fox



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Witness (Lawyer)

From: Helen Burgess [redacted]
Sent: Thursday, 10 June 2021 3:47 PM
To: Andrea Fox [redacted]; Marc Dennett [redacted]
Cc: Nicky Sherwood [redacted]; Benjamin Bailey [redacted]
Subject: RE: Lifting gear in a jump form

Hello Andrea

For clarity, I am not asking the inspectors to do anything.

The situation is there is lifting gear being used to suspend shutters in a form work jump, the Form Work Code of Practice calls up four Australian Standards in relation to inspecting the lifting gear used in formwork. Those Australian Standards require the competent person who checks the lifting gear to have a visual acuity test on their eyes. The workers who are performing the checks on the lifting gear have not had the visual acuity test.

The inspectors believe that IPS have advised inspectors they cannot issue a notice on the PC for failing to comply with the Formwork COP in relation to this situation.

I am asking, has IPS previously advised this? If not, what is IPS's advice on this matter.

I would be most gratefully if I could have this advice today.

Thanks
Helen

Helen Burgess
Director, Construction Compliance and Field Services
Office of Industrial Relations

[redacted]
Level 11, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

-----Original Message-----
From: Andrea Fox [redacted]
Sent: Tuesday, 8 June 2021 4:23 PM
To: Helen Burgess [redacted] Marc Dennett [redacted]
Cc: Nicky Sherwood [redacted]; Benjamin Bailey [redacted]
Subject: RE: Lifting gear in a jump form

Hi Helen and Marc
Are you wanting to issue notices for people not having had the eye test?

I'm a little confused about what you're asking the inspectors to do and their concerns.

Andrea

-----Original Message-----
From: Benjamin Bailey [redacted]
Sent: Tuesday, 8 June 2021 9:51 AM
To: Helen Burgess [redacted]
Cc: Nicky Sherwood [redacted] Andrea Fox [redacted]
Subject: Re: Lifting gear in a jump form

Not that I'm aware of. We regularly refer to the affect of s26A and how to apply it.

If a PCBU doesn't follow the code or cannot demonstrate an alternative that is equal or better than an improvement notice can be issued.

Benjamin Bailey
Manager
Inspectorate Policy and Support
Office Industrial Relations

[redacted]

> On 8 Jun 2021, at 9:46 am, Helen Burgess [redacted] wrote:
>
> No, did you provide advice about COPs generally where it was said COP caunot have a notice written?
>
> Helen Burgess
> Director, Construction Compliance and Field Services Office of
> Industrial Relations
>
> ---
> ---
> -
> [redacted]
> Level 11, 1 William Street, Brisbane QLD 4000 GPO Box 69, Brisbane QLD
> 4001
>
>
>
> The most important reason for making your workplace safe, is not at work at all.
> Work safe. Home safe.
>
> Connect with us:
>
>
> -----Original Message-----
> From: Benjamin Bailey [redacted]
> Sent: Tuesday, 8 June 2021 8:40 AM
> To: Helen Burgess [redacted]
> Subject: Re: Lifting gear in a jump form
>
> I don't recall giving previous advice on a visual acuity test. Have a our got a copy of this or can you shed any further light on this?
>

> Benjamin Bailey
> Manager
> Inspectorate Policy and Support
> Office Industrial Relations
>
> [redacted]
>
>> On 8 Jun 2021, at 8:05 am, Helen Burgess [redacted] wrote:
>>
>> Hello Ben
>>
>> Inspectors are advising me they will not write a notice if the competent person who checks chains and slings has not had a visual acuity test because IPS advised they cannot do it.
>>
>> External stakeholders have a different opinion because the Formwork COP calls up the Australian Standard and the Australian Standard requires the test.
>>
>> The Work Health and Safety Act 2011 26A Duty of persons conducting business or undertaking—codes of practice requires the PCBU to comply with the COP or do equivalent to or higher than the COP.
>>
>> As a matter of urgency, would you please provide me with advice on this, this morning.
>>
>> Thanks
>> Helen
>>
>>
>>
>> https://wcq-search.squiz.cloud/s/redirect?collection=wcq-meta&url=htt
>> p
>> s%3A%2F%2Fwww.worksafe.qld.gov.au%2F__data%2Fassets%2Fpdf_file%2F0019
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>> 2F15823%2Fformwork-cop-2016.pdf&auth=MblmYe0pq%2FoHlhZK6H%2FKJNQ&profi
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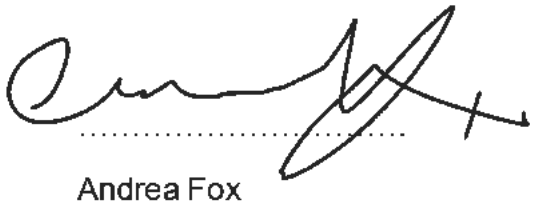
>>
>>
>> Formwork Code of Practice 2016
>>
>>
>> 4.4.3 Lifting gear
>>
>>
>>
>> Guidance on the use and inspection of chains, wire ropes and synthetic slings is provided in the following publications:
>>
>>
>>
>> • • AS2759 – Steel wire rope - Use, operation and maintenance.
>>
>> • • AS3775.2 – Chain slings for lifting purposes – Grade T – Care and use.
>>
>> • • AS4497 – Roundslings – Synthetic fibre.
>>
>> • • AS1353.2 – Flat synthetic-webbing slings – Care and use.
>>
>>
>>
>> Non-positive lifting gear such as plate clamps and suction devices are not to be used.

>>
>>
>> AS3775.2 Chain Slings for lifting purposes
>>
>> [cid:image002.png@01D75C3C.EAB6F150]
>>
>>
>>
>>
>>
>> 26A Duty of persons conducting business or undertaking—codes of
>> practice A person conducting a business or undertaking must, if the
>> Minister approves a code of practice for the purposes of this Act
>> (a) comply with the code; or
>> (b) manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.
>>
>> Thanks
>> Helen
>>
>> [cid:image004.png@01D75C3C.EAB6F150]Helen Burgess Director,
>> Construction Compliance and Field Services Office of Industrial
>> Relations
>> ----------
>> -
>> ----------
>> -
>> -
>> [redacted]
>> Level 11, 1 William Street, Brisbane QLD 4000 GPO Box 69, Brisbane
>> QLD
>> 4001
>>
>> [6140_Compliance and Field Services Email Signature]
>>
>> The most important reason for making your workplace safe, is not at work at all.
>> Work safe. Home safe.
>>
>> Connect with us:
>> [Connect with us on Facebook, Twitter, LinkedIn, YouTube, and
>> RSS]<https://www.worksafe.qld.gov.au/connect-with-us>
>> <Chains Slings Grade T & V Extract.pdf> <image003.png> <image002.png>
>> <image004.png> <image006.jpg> <image008.png>

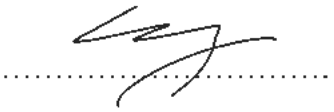
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-14 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



Andrea Fox



Witness (Lawyer)

From: Andrea Fox
Sent: Wednesday, 9 June 2021 8:23 AM
To: Ben Christiansen; Benjamin Bailey
Subject: RE: Lifting gear in a jump form

Completely agr

From: Ben Christiansen
Sent: Wednesday, 9 June 2021 8:23 AM
To: Andrea Fox ; Benjamin Bailey
Subject: RE: Lifting gear in a jump form

I still don't understand how a notice could be issued based on that wording of the Formwork Code. It doesn't specify anything about visual acuity tests in the code itself, and merely referencing the Australian Standard as another resource surely doesn't make everything within that Standard the minimum standard that we enforce?

Ben Christiansen
Manager, Work and Electrical Safety Policy
Office of Industrial Relations
[redacted]
Level 11, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

From: Andrea Fox[redacted]
Sent: Wednesday, 9 June 2021 7:53 AM
To: Ben Christiansen[redacted]; Benjamin Bailey[redacted]
Subject: FW: Lifting gear in a jump form

This provides more background.

From: Stuart Davis[redacted]
Sent: Wednesday, 9 June 2021 7:13 AM
To: Aaron Holman[redacted]; Andrea Fox[redacted]
Subject: RE: Lifting gear in a jump form

Hello Andrea

I've previously had discussions with inspectors on this issue but not recently. I have always maintained that the person inspecting the lifting or rigging gear needs to hold a dogging or rigging HRWL. But my opinion is that is the PCBU could have alternatives to having a dogger or rigger completing an eye test by an optometrist. The benchmarks are basically stated in section 4.5 below. I know it says an eye test by a competent person but I don't personally see how you could issue a notice if the PCBU demonstrates to the inspector that the dogger or rigger can read the fine printed indicated at the distance with one or both eyes – potentially within a period much less than 2 years.

Regards

Stuart Davis
Chief Adviser (Construction Engineering)
Engineering Unit
Workplace Health and Safety Queensland

Office of Industrial Relations

[redacted]

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Work Safe. Home Safe.

The most important reason for making your workplace safe, is not at work at all.
Work safe. Home safe.
For more information visit www.worksafe.qld.gov.au or telephone 1300 369 915.

From: Aaron Holman [redacted]
Sent: Wednesday, 9 June 2021 5:20 AM
To: Andrea Fox [redacted] Stuart Davis [redacted]
Subject: Re: Lifting gear in a jump form

I received a call from Helen yesterday afternoon about the issue of lifting gear on jump form. She indicated an issue was occurring with inspectors not issuing notices regarding the above. From memory, the question was around whether Crane CoPs would apply to the lifting gear and the visual acuity test. I let her know that unless the lifting gear was being used with a crane, the formwork code would apply, but I didn't address the visual acuity test or any other specific details.

It was not driven by Engineering.

From: Andrea Fox [redacted]
Sent: 08 June 2021 16:19
To: Stuart Davis [redacted] Aaron Holman [redacted]
Subject: FW: Lifting gear in a jump form

Stuart and Aaron
VERY quietly, I checked with IPS and they haven't issued this advice, just wondering where this is coming from and what is driving it and if Engineering is aware of any background?

Thanks
Andrea

From: Helen Burgess [redacted]
Sent: Tuesday, 8 June 2021 8:05 AM
To: Benjamin Bailey [redacted]
Cc: Andrea Fox [redacted] Marc Dennett [redacted]
Subject: Lifting gear in a jump form
Importance: High

Hello Ben

Inspectors are advising me they will not write a notice if the competent person who checks chains and slings has not had a visual acuity test because IPS advised they cannot do it.

External stakeholders have a different opinion because the Formwork COP calls up the Australian Standard and the Australian Standard requires the test.

The Work Health and Safety Act 2011 26A Duty of persons conducting business or undertaking—codes of practice requires the PCBU to comply with the COP or do equivalent to or higher than the COP.

As a matter of urgency, would you please provide me with advice on this, this morning.

Thanks
Helen

https://wcq-search.squiz.cloud/s/redirect?collection=wcq-meta&url=https%3A%2F%2Fwww.worksafe.qld.gov.au%2F__data%2Fassets%2Fpdf_file%2F0019%2F15823%2Fformwork-cop-2016.pdf&auth=MblmYe0pq%2FoHhZK6H%2FKJNQ&profile=_default&rank=14&query=%21padrenull

Formwork Code of Practice 2016

4.4.3 Lifting gear

Guidance on the use and inspection of chains, wire ropes and synthetic slings is provided in the following publications:

- *AS2759 – Steel wire rope - Use, operation and maintenance.*
- *AS3775.2 – Chain slings for lifting purposes – Grade T – Care and use.*
- *AS4497 – Roundslings – Synthetic fibre.*
- *AS1353.2 – Flat synthetic-webbing slings – Care and use.*

Non-positive lifting gear such as plate clamps and suction devices are not to be used.

AS3775.2 Chain Slings for lifting purposes

4.5 Visual acuity

The competent person shall have satisfactory near and medium rang
acuity of a competent person shall be tested periodically, with a m
2 years between each test, by an optometrist or suitably trained pe
person shall be able to demonstrate clear near vision. Near vision acuity
permit reading a minimum of Times Roman 4.5 points vertical hei
300 mm with one or both eyes, either corrected or uncorrected.

NOTE: AS 3978 gives guidance on visual acuity for visual inspections.

26A Duty of persons conducting business or undertaking—codes of practice

A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act

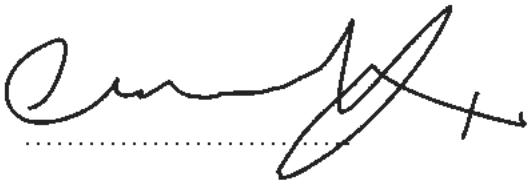
(a) comply with the code; or

(b) manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-15 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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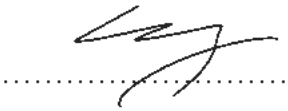
Andrea Fox



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Witness (Lawyer)

From: Craig Allen [redacted]
Sent: Sunday, 14 March 2021 12:29 PM
To: Andrea Fox [redacted]>
Subject: Re: Friday

Thanks for sharing this information Andrea. Jodie and I did talk on Friday. On the first issue even though you felt you had worked through that it is unacceptable that you are put in that position in the first place particularly in the light of recent events. I have pushed back with Ravbar on this and will continue to do so. You and the policy team have my total support and Jodie and I will have a further discussion tomorrow. The second matter is more troubling as you say and it will be something that as an organisation I intend to take on as if we can't be defending each other we are going to get nowhere. I have called Marc on Helen's behaviour previously but there is also a bigger organisational risk in not having a unified approach. I am really sorry that you were put in this position on Friday and we can discuss further when we are both in the office. Take care and try to enjoy the rest of the weekend.
Regards
Craig

Craig Allen
Deputy Director-General
Office of Industrial Relations
[redacted]
Sent from my IPhone

On 14 Mar 2021, at 10:23 am, Andrea Fox [redacted] wrote:

Craig

I wanted to write about the events that happened to me on Friday as I know Jodie has raised them with you in terms of the distress I experienced (and I appreciate that), but I wanted to clarify the nature of that distress for me and the graver risks it speaks to for the organisation.

In essence, I attended the Construction ISSC on Friday and, as has happened before, Royce Kupsch was very hostile about 'policy and legislative matters'. Early in the meeting he spent about ten minutes belittling 'policy' - (during the two hour meeting I estimate about ¾ of it was spent by Royce voicing anger about 'policy') - before I made the decision to interject and demand that he be more respectful to me and my work. I told him I was no longer going to tolerate, as a woman, being yelled at by a man in my workplace.

I'd like to acknowledge that Royce subsequently toned down his behaviour and that he then managed to have a discussion about legislative matters, which while still volatile was done without personalising it against me. I would also like to acknowledge that Melanie Dawson, the Chair, provided support for the stance I took, and told Royce he needed to manage his frustration better. She also contacted me after the meeting to apologise as Chair for not stopping the tirades against me, and to lend her support to me in confronting disrespectful behaviour towards women in these forums.

Had it ended there, I would have counted the interaction as a success in terms of establishing important boundaries for behaviour in these forums. I have worked with Royce for more than four years and while he is adversarial in nature, I have rarely taken his behaviour personally and have, over the years, more often than not been able to have a productive working relationship with him. This has included working through difficult negotiations in the co-design of policies, being contacted by him for assistance in understanding various legislation or finding relevant policy information, and on numerous occasions, being told by him that he respects my intellect and professionalism.

However, the meeting went on to highlight a big concern I hold for the organisation.

The first observation I will make is that Royce comes to meetings with me at the moment 'furious about policy'. It leads me to wonder how he became so provoked when a huge amount of legislative and policy work has been achieved in recent years to protect workers, and more particularly, construction workers. (For example, industrial manslaughter laws (ahead of everyone else in the country, bar the ACT), HSR legislation being amended *twice* and one of those specifically for construction workers, the development of the country's first silica code of practice, the first regulator in the country to commit to developing a silica code for construction workers, the prioritisation of the review of construction codes ahead of all other industry codes, the development of a solar farm code of practice which included the construction phase, commencing a review of the Electrical Safety Act, right of entry amendments to the ES Act, the introduction and revoking of s141(A), MOUs negotiated with QPS and QBCC with respect to construction issues, changes to LDB asbestos regulator position etc etc).

While I understand that Royce's attack on policy/legislation is very often tactical, I also suspect some of it is caused by operational areas, specifically Marc and Helen, deliberately using the amorphous term 'policy' as a hold-all for intractable operational issues. By focusing the problem onto the legislation or policy position of the department, operational activities are released from further tension, but I am then backed into a corner. As you know, legislative change cannot and should not occur on a whim, policy positions need to be defendable and not turned on a dime. When my Executive Director and I hold this line we then become positioned as obstructionist or deaf to the urgency of problems.

This was demonstrated in the discussion that followed in the ISSC on female toilets on construction sites. From the discussion it was clear that women in construction don't like using filthy toilets and nor do they appreciate finding toilets without sanitary bins or toilet paper. Royce, apparently out of the goodness of his heart, is championing the cause of women and so led the charge. Both of these issues are already covered by the legislation, and appear to me to be about compliance and enforcement. But the room, led by Royce and aided by Helen, focused the discussion on legislative change – ie. legislate that every worksite needs a 'female toilet' and never mind the fact that no other jurisdiction does this and that on house construction sites there are only ever a handful of workers on site and a portaloo. While I tried to re-orientate the discussion back to workplace expectations and enforcement, including specifically inviting Helen Burgess to comment on the matter from the inspectorate experience, demands were firmly returned to me as the instrument of legislative change. This becomes a problem when the ISSC then tries to record an action item for 'policy to look into changing the legislation', something that is destined to be fruitless and which only contributes to the myth that policy is a 'blocker', and all because the operational Director could not work collaboratively with me to refocus the discussion.

The second observation I will share is that I began receiving text messages from Helen during this discussion that I believe she sent to me by mistake and which were really part of a conversation she was having with Marc Dennett (for reasons I can expand upon, if requested), who was not in the meeting. These messages indicated to me that a parallel conversation was happening ridiculing me while I was trying to manage a very angry and misdirected discussion in the ISSC. This speaks further to the problem with the operational area.

I do not intend to raise an HR complaint on this as I am quite certain that Helen and Marc will deny the conversation and HR would not have the power to retrieve deleted texts from their phones, and to be honest, I think pursuing the matter will only exacerbate the hostility towards 'policy'. I like Marc and I understand that he has an extremely difficult job - I think all the Executive jobs, including yours, are very nearly impossible. I work sincerely to support the Executive in those roles by not only producing high quality policy advice to assist your decisions, but also by defending the Executive, its decisions and the organisation to stakeholders. I have personally reached out to both Marc and Helen when I saw them suffering over the years to check that they were ok. I am, therefore, naturally very disappointed to learn I am sport for them when being berated by Royce. While I am accepting that not everyone needs to like me, I am appalled that a leader in the department might participate in and endorse scorn towards me as I do my job – particularly when it sometimes contributes to actual aggression from Royce to me. I will move past that on a personal level, but I am not sure it will be possible to move past it professionally for much longer.

I can't help but feel that the deliberate undermining of 'policy' by Marc and Helen to their teams and significant union stakeholders risks serious consequences for the organisation. I suspect the contempt Royce often shows to Jodie Deakes is an outcome of this and could eventually make it very difficult for her to be effective in her role. Losing her would be very significant to the organisation. From the perspective of my own role, pitting 'policy' as the enemy makes it very challenging for me in doing my job, when I then need to manoeuvre sensitive policy and legislative change through stakeholder consultation. I also suspect that it damages the credibility of the Regulator, as surely the conclusion to be drawn is that this role is either crippled by ineffectual policy responses or at the mercy of the over-reach of suppressive 'policy' individuals. And I further believe it leads to the potential for pressure to gain momentum that comes to rest on the Minister for legislative change which then lacks evidence or coherent advice, something I am supposed to be guarding her against as one of the policy teams servicing her.

In raising all this with you, I am hopeful of two things. The first is that you will understand that while Royce is a difficult stakeholder to work with in these forums, he is not particularly the cause of my distress on Friday and I am confident of our working relationship going forward. (Noting that I believe disrespectful behaviour, if not managed, presents a risk to the organisation as I think times are changing with social expectations and eventually someone will have an experience with him that they raise as a formal complaint). The second is that I think the 'cultural problem' that has manifested between the operational area and the central office/policy area is significant and poses risks for the effectiveness of the organisation going far beyond how it affects me on a personal level.

I appreciate that what I am raising are difficult problems to work with. I don't expect miracles overnight and I am not in the business of making trouble. I remain loyal to the organisation and the Executive, including Marc, but I want to be treated with professional respect and courtesy as I go about my job and I want to work for a united and mutually supportive organisation.

Regards

Andrea Fox

Director
Work and Electrical Safety Policy

Office of Industrial Relations

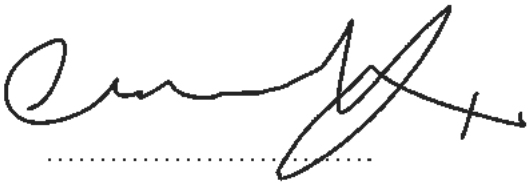
[redacted]

Floor 11, 1 William Street, BRISBANE QLD 4001

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as AF-16 in the statement of Andrea Fox affirmed at Brisbane on 4 June 2026.



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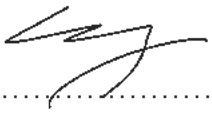
Andrea Fox



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Witness (Lawyer)

From: Jodie Deakes
Sent: Monday, 15 March 2021 3:50 PM
To: Marc Dennett
Subject: RE: ISSC interaction

Will do.

Jodie Deakes
Executive Director
WHS Engagement and Policy Services
Office of Industrial Relations
[redacted]

From: Marc Dennett [redacted]
Sent: Monday, 15 March 2021 3:44 PM
To: Jodie Deakes [redacted]
Subject: RE: ISSC interaction

Yes that's fine.

Please let me know if you thing a facilitated conversation or a discussion between the two would assist in acknowledging and moving the working relationship forward.

Regards

Marc Dennett
Executive Director
WHS Compliance and Field Services
Office of Industrial Relations

[redacted]
Level 1, 60 Wises Road, Maroochydore, QLD
PO Box 5177, Maroochydore BC, QLD, 4558

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Connect with us:

From: Jodie Deakes [redacted]
Sent: Monday, 15 March 2021 3:32 PM
To: Marc Dennett [redacted]
Subject: RE: ISSC interaction

Thanks Marc.

Would it be OK to share with Andrea?

Jodie Deakes
Executive Director
WHS Engagement and Policy Services
Office of Industrial Relations
[redacted]

From: Marc Dennett [redacted]
Sent: Monday, 15 March 2021 10:58 AM
To: Jodie Deakes [redacted]
Subject: FW: ISSC interaction

Hi Jodie

This is Helen's response in terms of her version of events in relation to the interaction on Friday.

I have also had a conversation with Jo Sutherland which happy to discuss when you have an opportunity today.

Regards
Marc

From: Helen Burgess [redacted]
Sent: Monday, 15 March 2021 9:49 AM
To: Marc Dennett [redacted]
Subject: ISSC

Hello Marc

During the ISSC last Friday Royce raised concerns about the lack of female toilets provided for females on construction sites and that is was an issue that had been going on for a long time. Royce's concern was that females are regularly expected to use male toilets which are usually very dirty and there are regularly no sanitary bins provided. The Plumbers Union and the ETU agreed that it was an issue and needed to be dealt with. Andrea responded to Royce in a manner that was indifferent to the issue to the point where she sent me a text message asking "what is this really about?". I responded immediately saying "it is a real issue. There are often no toilets and often no bins". Royce expressed anger at the department for not having done enough to correct the issue over the years and said it was a policy position that needed to be corrected. Andrea expressed anger at Royce and stated that it had been International Women's Day during the week and that he needed to take notice that women were not going to continue being bullied by men and continued to express her anger. Royce's response was to express his anger that Andrea would take the conversation down that path. He was particularly angry that Andrea raised the women's rights position when the conversation was about him raising concerns for women on construction sites. Royce and Andrea continued with the exchange.

Robbie Gould and Chris Lynch raised concerns that toilets were regularly very dirty on construction sites and women should be more adequately provided for. Melanie Dawson expressed that OIR should provide guidance about what clean toilets look like and when you do and don't need to provide a sanitary bin. Nicky McMillan explained she had

been in construction for a long time and was used to using dirty toilets but raised concerns for younger women who may not have the confidence to raise concerns on a construction site if they were not comfortable about the toilets.

Royce and Andrea continued to have a heated discussion. Andrea stated that if this was an issue then what needed to be provided for transgender people who did not feel comfortable using either gender toilet. At this Royce put his hands to his head and rubbed his face and the discussions continued.

I have been in meetings with Andrea many times over several years and I have never seen her respond like this before, I was concerned she may have had other issues going on and may not be conscious of the path the conversation had now taken.

In an attempt to make light of the situation and hopefully redirect her train of thought and remind her there were others in the meeting I sent her a text message trying to support her to a better place. In my haste I did not notice that "He" had turned in to "she" until after I had sent it. I immediately corrected the misspelling. The second text was in reference to you bringing up transgender, as in Andrea. It was an attempt to lighten the situation for her. Andrea was angry and believes I intended to send the message to someone else. I didn't which I told her but Andrea did not respond.

Melanie and I had looked at each other on a number of occasions throughout this discussion and I had shaken my head a few times hoping Melanie would wrap up the discussion and move on to something else. In a bid to wrap up the conversation I advised inspectors regularly issue notices about inadequate and or unhygienic toilets including sanitary bins. I also advised I did not think it appropriate to check if a sanitary bin needed to be provided, if a female toilet is provided a bin should automatically also be provided in that toilet. I advised that I was aware of an incident in the last few months where male construction workers had been tasked with asking two female workers if in fact they were still at a time of life where they needed the sanitary bins to be provided. I advised I did not think this was appropriate for either the men to have to ask these questions or the women to be asked.

Even after this Royce and Andrea continued their discussion. Melanie looked at me and said should we wrap this up and move on and I said yes. Melanie moved to the next item.

After I left the meeting I called you to debrief about the meeting and I included the interaction I had had with Andrea and that I thought she was angry at me.

I do not know what else I could have done to make Andrea feel supported. There was little opportunity to interject in the conversation and when there was I did.

I sent the text messages to Andrea trying to support her. In hindsight I can see how the text messages may have inflamed how Andrea was feeling especially given the grammatical errors which lead to the taken inferences. For this I apologise as it was not my intention.

Thanks
Helen

Helen Burgess
Director, Construction Compliance and Field Services
Office of Industrial Relations
[redacted]
Level 11, 1 William Street, Brisbane QLD 4000
GPO Box 69, Brisbane QLD 4001

The most important reason for making your workplace safe, is not at work at all. Work safe. Home safe.

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