

Comment – National Electrical and Communications Association

Comment

Please accept this brief submission on specific items from the QPC Interim Report. NECA would be very interested in having further discussions with the QPC about the experiences of Tier 1 & 2 members who provide electrical services to major building contractors and government driven projects.

National Electrical and Communications Association - Submission

Submission to the Queensland Productivity Commission in response to the Interim Report titled - 'OPPORTUNITIES TO IMPROVE PRODUCTIVITY OF THE CONSTRUCTION INDUSTRY'

August 2025

Introduction

The National Electrical and Communications Association (NECA) provide this submission in response to the invitation by the Queensland Productivity Commission (QPC) to provide additional information and feedback on specific recommendations and identified issues.

Overview

NECA is the peak body for Australia's electrical and communications industry, which employs 344,370 people and turns over more than \$82bn annually. NECA represents over 6,500 businesses performing works including the design, installation, and maintenance of electrical and electronic equipment in the construction, mining, air conditioning, refrigeration, manufacturing, communications, security, automation, and renewable energy sectors.

NECA has advocated on behalf of the electrotechnology industry for over 100 years and helps its members and industry operate in an efficient, safe, and regulatorily compliant manner. NECA represents the interests of electrical and communication businesses to all levels of government and in regulatory, legislative and industry development forums.

NECA members make an essential economic contribution – connecting businesses, homes, and infrastructure – encouraging investment, improving reliability and energy security, and delivering affordable, environmentally sustainable outcomes. The safety and reputation of the electrical industry is critical to tradespeople, consumers, and the community.

NECA also plays an integral role in the development of the next generation of Australia's electrical and communications tradespeople and contractors. Through its associated Group Training Organisations (GTOs) and Registered Training Organisations (RTOs), NECA offers employment and trade training to some over 2000 apprentices and tradespeople nationally.

Submission

From section 15.2 of the Interim Report

Request for information - WORKPLACE HEALTH AND SAFETY REGULATION

Data suggests that WHS outcomes for the construction industry have not improved over the last decade, despite significant policy effort and increased compliance costs on industry. The Commission is seeking further evidence from stakeholders to support or refute this.

In addition, the Commission is seeking information on:

- whether options in the reform direction are workable, and whether they introduce any significant health and safety risks*

The first item listed in Reform Direction 9, indicates a desire – to the extent possible - to ensure that “Queensland workplace health and safety laws reflect the National Model WHS Law.

NECA supports this initiative generally as businesses operating in multiple Australian jurisdictions should be able to do so without facing inconsistent compliance arrangements.

To this point NECA would like to bring to the attention of the QPC, the departure of the Queensland Work Health and Safety Act with respect to the application of Codes of Practice

Specifically, the Qld WHS Act includes an additional duty on businesses. Commencing on 1 July 2018

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.*

Queensland is the only jurisdiction to add this specific duty to the Act. (noting that NSW has passed a bill to introduce same which does not have a declared commencement date as yet)

This outcome misplaces and distorts the purpose of codes of practice and opens opportunities for their misuse or abuse.

The primary duty of care and additional high level WHS duties of a PCBU are well defined in Part 2 (Div's 2 and 3) of the Act with the WHS Regulation supplementing and adding specific duties in support of the primary duties or with respect to specific types of work and hazards.

Many of these duties require that the PCBU 'ensure, so far as reasonably practicable' specific requirements are met, some require that the PCBU 'must' observe or achieve a specific outcome.

Codes of practice are subsequently in place to inform PCBU's of the processes, actions and controls that they must or may adopt to meet their duties with respect to various activities that businesses may undertake. The codes of practice inform the decisions and consultations an employer is required (duty under s47) to undertake with their workers. They are also considered informative in court proceedings "in determining what is reasonably practicable in the circumstances to which the code relates." (per s275)

Importantly, every other duty defined in Part 2, Div 2's and 3 of the Act (sections 19-26) requires that a PCBU 'ensure, so far as reasonably practicable' specific high-level outcomes are met – eg "The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person."

By specifying a new duty on PCBU's in this Part of the act - that they 'must,... - comply with the code' creates the possibility for immediate accusations of a failure of a WHS duty based on the text of relatively minor, obscure, obsolete or redundant part of a Code of Practice. Indeed, a code may "incorporate any matter contained in a document formulated, issued or published by a person or body whether—

- (a) with or without modification, or
- (b) as in force at a particular time or from time to time." s274(3)

Conceptually, a failure to comply with a code of practice (or any obscure sub-part or incorporated document), in the absence of the failure of any other duty on behalf of a PCBU, or exposure of any person to a risk could be considered an offence (Cat 3).

Whereas every other offence charged under the act requires that a duty (identified in sections 19-26) is owed and that the person fails to comply with that duty so far as reasonably practicable.

In a practical sense, the definition of this new duty opens the door to mis-use of the codes to demand specific (and potentially expensive) actions of some PCBU's for purposes other than improving safety. This has been observed in the use of cl 163 of the WHS Regulation by some industrial bodies on construction sites to close those sites and/or require extensive/unnecessary additional works or staff training on the basis of minor, inconsequential, or obsolete non-compliances with AS/NZS 3012 in furtherance of industrial goals rather than managing safety risks.

Much of this happens outside of the view of the safety regulator or the courts but occasionally comes to the attention of the regulator when the PCBU decides to push back. Such mis-use poses a genuine threat to productivity with little/no effective improvement in safety outcomes.

Queensland has also been very active in creating numerous codes of practice for specific industries or hazards outside of the national model codes, further complicating the ability to have systems that are compliant across jurisdictions with the model WHS legislation and driving up expenses.

As such NECA recommends abolishing s26A of the Qld WHS Act and returning codes of practice to their correct context and placement in the WHS legal framework as guidance material.

- NECA supports the sixth point, indicating that WHS regulators are appropriately funded, resourced and supported to undertake their designated functions.
- NECA is encouraged by the proposal for 'quarterly forums as part of a recommended taskforce, between principal contractors, subcontractor groups, Industry associations and unions to review stoppage data, resolve recurring issues and update guidelines as needed.', however such a purpose may be better served and more effective by implementing an advisory council to the OIR and minister for this purpose.

From section 21.1 Request for information - UTILITY CONNECTIONS

Appropriate coordination and collaboration between local governments, utility providers and developers can ensure new dwellings are serviced by the timely and efficient provision of utility services.

The Commission is seeking further information on:

- *whether existing performance standards and metrics reported against by utility providers appropriately incentivise performance.*

Developers and their sub-contractors in Qld are often faced with lengthy and expensive delays on behalf of the electricity utilities in both the design and construction of infrastructure to supply their projects.

Their ability to undertake some of this work is on one hand supported by the existence of the Energy Queensland (EQL) Accredited Service Provider (ASP) scheme, and frustrated by the responsiveness of the supply authorities in processing approvals and the recent changes to the Energy Queensland EBA and policies associated with core work.

NECA suggests that connection processes with target timeframes and milestones would assist in providing certainty to developers and contractors in Qld.

Our recommendation would be for the Qld government to ensure that Energex and Ergon have policies in place to provide applicants for connection certainty about both the process and timeframes as applicable to their applications.

From section 22.2 Request for information - EXTENSION OF ENERGY QUEENSLAND'S ENTERPRISE BARGAINING AGREEMENT RATES OF PAY TO CONTRACTORS AND SUBCONTRACTORS

The Commission is seeking information on the impact of the requirements and feedback on stakeholder proposals.

NECA has examined the changes to the EQL EBA, definitions of 'core work', and associated EQL policies.

In simple terms NECA posits that Energy Queensland's actions in requiring EBA pay rates to apply and imposing payroll audits of ASPs for specific contestable works amounts to a 'Restrictive Trade Practice' under the Competition and Consumer Act (2010).

Reasoning :

1. The practice is prescribed by agreement between EQL and it's employee associations in Schedule 9 of the 2024 EBA where an ASP performs 'core work' as determined and published by EQL.
2. The authorisation of an ASP may be withdrawn by EQL at it's discretion for failure to comply with this requirement. (per EQL's ASP Rating terms)
3. Schedule 9 of the EBA is nominally for situations where EQL contract out direct control work to another party in which case it could reasonably taken to be a permitted matter in an EBA (per s172(1) of the Fair Work Act 2009)
4. However in situations whereby the contract for contestable services exists between a third and a fourth party, the Payroll audit agreement is not a permitted matter.
5. Being not a permitted matter, per s253 of the Fair Act 2009, the term has no effect and is not a legal basis for the imposition of conditions as they relate to the employment conditions and payroll records for contracts between a third and fourth parties.
6. The enforcement of the requirement to pay EBA rates and be subject to payroll audits, particularly under the threat of suspension or cancellation of accreditation, is conduct that that is contemplated by
 - 45DA Secondary boycotts for the purpose of causing substantial lessening of competition, and/or
 - 46 Misuse of market powerof the Competition and Consumer Act (2010)

In discussions with EQL it was indicated that for assets that are gifted to EQL as part of contestable works projects, there is a need to ensure that the standards of safety, design and construction are monitored and maintained. However, it is not clear how imposing EBA conditions is an effective instrument deliver those outcomes.

We therefore recommend that, in the interest of consumers, competition, and productivity in the construction sector.

1. That the relevant ministers direct EQL to cease the practice of payroll audits as they apply to contestable works,
2. Legislate to give consumers the right to choose their supplier of contestable electrical services. Similar to NSW -

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1995-094#sec.31>

To arrange NECA's further participation discuss any matter relating to the impact of energy network regulation on the electrotechnology industry, please contact NECA's Government Relations Manager, Patrick Murphy, at [REDACTED] or on [REDACTED]

Yours faithfully,

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Oliver Judd
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National Electrical and Communications Association (NECA)