

Form 73A – Notice of WHS dispute

Work Health and Safety Act 2011, section 102B



NOTICE is hereby given under section 102B of the *Work Health and Safety Act 2011* to deal with a dispute.

BETWEEN

Together Queensland, Industrial Union of Employees

v

State of Queensland (Queensland Corrective Services)

1. Particulars of party making application to deal with the dispute

Name:	Together Queensland, Industrial Union of Employees		
Phone number:		Fax number:	
Mobile number:			
Email address:			
Name of contact person:	Ashleigh Saunders		
Direct phone number of contact person:	0419 796 467	Mobile number:	
Email address of contact person:	Registry-List@together.org.au		

Workplace where dispute exists

1000 character limit. (Note: If more than 1000 characters are required please attach a schedule)

Capricornia Correctional Centre

WHS matter subject of the dispute

(must include sufficient detail) 1000 character limit. (Note: If more than 1000 characters are required please attach a schedule)


See attached Schedule

Is a decision made by an inspector to exercise, or not to exercise, compliance powers under part 10 to assist in resolving the dispute subject to review under part 12? YES NO

Particulars of the other party/parties to the dispute

Organisation:	State of Queensland (Queensland Corrective Services)		
Phone number:		Fax number:	
Email address:			
Name of contact person:	Rebecca Formosa		
Direct phone number of contact person:	(07) 3565 7884	Mobile number:	0447 685 448
Direct email address of contact person:	rebecca.formosa@corrections.qld.gov.au		

Signature of person notifying the dispute

Signature:	
Name:	Michael Thomas
Position/Capacity:	Assistant Branch Secretary
Date:	05 / 11 / 2021

SCHEDULE TO FORM 73A – NOTICE OF WHS DISPUTE

1. On Thursday 21 October 2021 a major incident broke out at the Capricornia Correctional Centre located on the Bruce Highway at North Rockhampton, where prisoners rioted continuously for a period of sixteen (16) hours. During this time, officers and employees were subjected to an immediate and imminent ongoing risk to their lives and personal health and safety, including both their physical and psychological safety. Significant damage to the Centre was also incurred.
2. Together and its members remain concerned that the lack of appropriate controls for the hazards and risks associated with the riot have not been rectified and that officers and employees remain at a serious risk of an immediate and imminent threat to their health and safety if a further prison riot were to occur.
3. Many of the health and safety issues have been raised on multiple occasions over the past eighteen months and in the lead up to the riot with no satisfactory resolution.
4. Together has previously sought the assistance of the WHS inspectorate over several of these and other WHS matters, resulting in the issuance of several compliance notices.
5. Since the riot, Together has sought ongoing meetings with senior management of the Centre and the Department but has received no satisfactory resolution to the ongoing issues.
6. On Monday 26 October 2021 Together asked the regulator to appoint an inspector to attend the workplace to assist in resolving the issue under Section 82(2) of the *Work Health and Safety Act 2011 (Qld)* (the '*WHS Act*').
7. The inspectorate has attended on site on October 28, 2021. Together is unaware if any compliance notices have been issued.
8. However, given the breadth, substance, and seriousness of the WHS matters that remain subject to dispute between the parties Together is seeking the assistance of the Queensland Industrial Relations Commission pursuant to Section 102B of the *WHS Act* to mediate, conciliate or arbitrate about the matters.
9. The specific WHS matters in dispute are outlined as follows:
 - (i) The PCBU has failed to ensure, so far as is reasonably practicable, the provision and maintenance of a work environment without risks to the health and safety of employees [*WHS Act s 19(3)(a)*].
 - There has been a replacement of an internal fence between maximum security and the residential compound (which had previously prevented any breach by high security prisoners in the general residential area) resulting in an inadequate fencing barrier between the two areas and creating a health and safety risk.
 - The replacement of this fence with an inadequate barrier allowed high security prisoners to access a landscaping shed within the residential compound and to gain access to pickaxes, hedge trimmers, whipper snippers and other dangerous tools and equipment, along with petrol.
 - High security prisoners were then able to arm themselves with dangerous weapons including making 'Molotov cocktails' which were used against correctional officers endangering their lives and safety during the event.
 - (ii) The PCBU has failed to ensure, so far as is reasonably practicable, the provision and maintenance of safe structures at the Centre [*WHS Act s 19(3)(b)*].
 - Vending machines were not adequately secured in the high security units and were able to be used as battering rams to break a fence. Prisoners were also able to use soft drink cans as missiles.

- There are limited hatches in cell doors throughout the Centre which allow officers to safely transfer food trays and medication into prisoner cells. The lack of these hatches in cells created significant risk to officers during the lockdown. This is also a high-risk activity particularly after a riot after prisoners have been in lockdown.
- (iii) The PCBU has failed to ensure, so far as is reasonably practicable, the provision and maintenance of safe systems of work [*WHS Act s 19(3)(c)*].
- The PCBU has failed in its duty to ensure, so far as is reasonably practicable, the maintenance of a safe layout of the workplace to allow persons to safely enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency [*WHS Reg s 40(a)*].
 - The PCBU has also failed in its duty to maintain and implement an emergency plan so that it remains effective, particularly having regard to the nature of the work and the nature of hazards at the Centre [*WHS Reg s 43*].
 - The Correctional Centre failed to have a safe system of work including an emergency and evacuation procedure for administration officers who are situated in the Bulk Store without supervision by a Correctional Officer.
 - During the riot administration officers were left alone with approximately ten (10) unsupervised prisoners who were escalating.
 - Specifically, there was no safety plan or exit strategy or a prisoner management system for when a significant event occurs.
 - Administration officers were directed by management to remain in the Bulk Store during the riot which is located just metres away from the residential compound (which had been breached by high security prisoners) to hand out water and uniforms to officers.
 - The administration officers locked themselves inside the store with chains and on advice by a Health and Safety Representative for their own personal safety exited through a back roller door to the gate house.
 - This however, created a further risk for correctional officers by limiting their retreat options on the ground.
- (iv) The PCBU has failed to ensure, so far as is reasonably practicable, the safe use, handling, and storage of gas substances [*WHS Act s 19(3)(d)*].
- A PCBU is required to manage risks to health and safety associated with using, handling, generating, or storing a hazardous chemical at a workplace under Part 3.1. This requires the PCBU to identify reasonably foreseeable hazards; to manage their risk by eliminating or minimising their risk so far as is reasonably practicable; to develop and apply control measures in accordance with the hierarchy of controls; and to monitor and review those control measures [*WHS Reg s 351*].
 - General requirements for using and handling a hazardous chemical, including personal protection requirements are outlined in the product safety data sheet which is a source authority for how to minimise the risk of exposure to the hazard.
 - During the event, and in similar events, officers are required to use and discharge MK9 tear gas as part of their tactical responses.
 - However, officers have not been provided with appropriate information, training or supervision about the safe use and handling of MK9. Nor have safe work

methods been applied for the use and handling of MK9 in accordance with the personal protection measures outlined in the manufacturer's safety data sheet to ensure the safe use of the substance.

- As a result, officers were exposed to MK9 as a hazardous chemical without sufficient personal protection. Among other things, officers have indicated they suffered burn marks on their skin after the riot from prolonged exposure to the gas.
 - Safety Data Sheet information on the use of MK9 Fogger indicates that users are to apply the following personal protections:
 - Use solvent or chemical resistant rubber gloves;
 - Use chemical-resistant goggles;
 - Use solvent-resistant type clothing with full jacket; and
 - Avoid absorption of product on clothing. If absorbed in clothing, remove and wash clothes at once.
 - Section 53 of the WHS Regulations also requires a PCBU to ensure that flammable substances such as gas bottles are kept at the lowest practicable quantity for the workplace.
 - Workshop 1 compound has more than 50 gas bottles which are not stored safely in cages or another form. This lack of appropriate storage of the gas bottles creates a further risk if prisoners were able to access them inappropriately.
 - Further, there is inappropriate storage of fuel in both the landscaping shed and the bulk store which is a continual potential ignition source.
- (v) The PCBU has failed to ensure, so far as is reasonably practicable, the provision of information, training, instruction, and supervision necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the Centre *[WHS Act s 19(3)(f)]*.
- The PCBU has failed in its duty to ensure that information, training, and instruction provided to a worker is suitable and adequate having regard to the nature of the work carried out by the workers, the nature of the risks associated with the work, and the control measures *[WHS Reg s 39]*.
 - There has been insufficient information, training, instruction, and supervision provided in the event of a prisoner riot in the form of an emergency plan and procedures for all officers and employees.
 - Not all officers have been trained or provided with instruction in the use of MK9 tear gas which was used as part of the tactical response to the riot. Officers have reported burn marks on their skin following the event because of residual gas exposure.
 - Administration officers have also not been trained in safe emergency procedures in the event of a riot.
 - There has been inadequate critical debrief of officers and employees who were present at the Centre during the riot.
- (vi) The PCBU has failed to ensure, so far as is reasonably practicable, the health and safety of workers by failing to monitor the health and the conditions of the workplace for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking *[WHS Act s 19(3)(g)]*.

- After the riot was under control, there was no debrief or support, including psychological support provided for officers and employees, even though some had been at work continuously for the sixteen and more hours of the event.
 - No alternate transport was offered. As a result of stress and fatigue, one officer was in a car accident on the way home.
 - No counselling was offered and has still not been offered, with many officers and employees fearful for their personal safety when resuming normal duties.
- (vii) The PCBU has failed in its duty to provide workers with appropriate and adequate personal protective equipment (PPE) which is a requirement to minimise risks to health and safety of workers at the workplace. The PPE that was provided in the instance of the riot was not suitable having regard to the nature of the work and the hazards associated with the work [*WHS Reg s 44*]. It also does not comply with the personal protections outlined in the MK9 gas safety data sheet.
- (viii) The PCBU has also failed to provide workers required to use and wear the PPE with appropriate information, training and instruction in the proper use and wearing of the PPE by failing to provide sufficient positive pressure approved self-contained breathing apparatus (SCBA) for all officers involved in the deploy of MK9 gas, appropriate clothing, body shields, or the MK9 gas itself [*WHS Reg s 44*].
- (ix) The PCBU has failed to comply with its duty to comply with an approved Code of Practice or demonstrate management of a hazard to at least an equivalent standard by not complying with the *Managing the work environment and facilities Code of Practice* to ensure walkways are free from obstructions at all time were storage of prisoner crates were left in officer stations and walkways and obstructing emergency exits [*WHS Act s 26A; Managing the work environment and facilities Code of Practice Section 2.1*].
- (x) The PCBU has failed to manage the ongoing psychological risks of officers and employees because of the sixteen-hour (16) riot and extended exposure to a serious, immediate and imminent risk for their lives and personal safety by failing to comply with their duties to provide a safe workplace, and not implementing appropriate controls throughout or after the riot to ensure their psychological safety [*WHS Act ss 17, 19*].