



Matter No:

WHS / 2024 / 270

Form 73A – Notice of WHS dispute

INDUSTRIAL REGISTRAR

21 NOV 2024



Work Health and Safety Act 2011, s 102B

Information

- Use this form to notify of a WHS dispute.
- Once filed, this notice must be **immediately** served on all other parties to the dispute.
- **This Notice will be published on the QIRC website pursuant to s 102B(3) of the Work Health and Safety Act 2011.**
- If a relevant union for a worker affected by the WHS matter not already named as a party wish to participate in the resolution of the dispute, they may notify the Industrial Registrar in writing.
- Please read this form carefully and complete all relevant sections.
- Documents which are longer than 30 pages in length must be provided to the Industrial Registry in hard copy before it will be accepted for filing.
- For further information on please refer to the website www.qirc.qld.gov.au or contact the Industrial Registry on 1300 592 987 or via email at qirc.registry@qirc.qld.gov.au.

Notification

Notice is hereby given of a dispute in accordance with s 102B of the *Work Health and Safety Act 2011*.

Has a *Form 74 – Application for WHS review* been filed in relation to the matter/s in dispute? No Yes [Matter No. WHS/___/___]

Notifier

Central Queensland Hospital and Health Service

AND

Respondent

Plumbers and Gasfitters Employees' Union Queensland

If there are more parties to the WHS dispute, please complete a **Form 1 – Parties List** and file it together with this form.

1. Particulars of the party notifying of the dispute

Name:	Central Queensland Hospital and Health Service		
Postal/Service address:	C/- MinterEllison Level 22, 1 Eagle St		
	Suburb/Town	Brisbane QLD	Postcode 4000
Phone number:	As below	Mobile number:	As below
Email address:	As below		
Name of contact person:	Deanna McMaster and Harriet Smith		
Direct phone number:	07 3119 6126	Mobile number:	0408586607 / 0468631242
Direct email address:	deanna.mcmaster@minterellison.com ; harriet.smith@minterellison.com		

2. Particulars of the other party to the dispute			
Name:	Plumbers and Gasfitters Employees' Union Queensland		
Postal/Service address:	Level 2, 11 Lang Parade		
	Suburb/Town	Milton QLD	Postcode 4064
Phone number:	As below	Mobile number:	
Email address:	As below		
Name of contact person:	Christopher McJannett		
Direct phone number:	07 3844 8433	Mobile number:	0473 566 498
Direct email address:	Chris@plumbersunionqld.com		

3. Workplace where dispute exists
Rockhampton Hospital and regional CQHHS facilities

4. WHS matter subject of the dispute	
This dispute (as defined in s 102A of the <i>Work Health and Safety Act 2011</i>) is in relation to: [Please pick one or more of the options below]	
<input checked="" type="checkbox"/>	A work group determination matter.
<input checked="" type="checkbox"/>	A work group variation matter.
<input type="checkbox"/>	Access to information by a health and safety representative under s 70(1)(c) of the Act.
<input type="checkbox"/>	The giving of a notice or information to a health and safety representative under s 70(1)(cb) or (cc) of the Act.
<input type="checkbox"/>	A request by a health and safety representative for a person assisting the representative to have access to the workplace under s 70(1)(g) of the Act.
<input type="checkbox"/>	A matter mentioned in s 72(2)(aa), (a) or (b), or s 72(4)(a), (b) or (c) of the Act relating to training for a health and safety representative.
<input type="checkbox"/>	A health and safety committee matter.
<input type="checkbox"/>	A matter about work health and safety that is an issue to which Part 5, Division 5 (Issue Resolution) of the Act applies.
<input type="checkbox"/>	An issue about cessation of work under Part 5, Division 6 (Right to cease or direct cessation of unsafe work) of the Act.
Does this dispute relate to any of the following decisions made by an Inspector?	
<input checked="" type="checkbox"/>	s 54(5) – Negotiations regarding an agreement
<input type="checkbox"/>	s 76(6B) – Regarding a health and safety committee

5. Compliance powers	
Has an inspector been appointed to assist the parties reach an agreement or resolve the dispute?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, was a decision made by an inspector to exercise, or not to exercise, compliance powers under Part 10 of the Act subject to review under Part 12 of the Act?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

6. Issues in dispute

Please outline the issues in dispute between the parties:

[Please note that any details you provide will be published as part of this Notice]

Please attach a schedule if more room required

See attached Schedule.

7. Briefly state the relevant industrial instrument/s affected (e.g. award, agreement, determination) OR the industry in which the dispute arose and/or type of work being undertaken by those in dispute

Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 8) 2022; Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016

8. Signature of the party notifying of the WHS dispute

Signature:	
Name:	Deanna McMaster, Partner, MinterEllison
Position/Capacity:	Solicitor for the Applicant
Date:	21/11/2024

Schedule

Background

Discussions regarding negotiation of Health and Safety Representative Structures

1. From 2 October 2024, the Applicant and Respondent have engaged in discussions regarding the Health and Safety Representative (**HSR**) structure within the Building Engineering Maintenance Service (**BEMS**) work group at Central Queensland Hospital and Health Services (**CQHHS**).
2. At the time the discussions commenced, the BEMS work group consisted of approximately 40 employees of CQHHS, broadly grouped as follows:
 - (a) Administrative roles;
 - (b) Trade roles led by Eden Kelliher, Trade Manager; and
 - (c) Trade roles led by Trent White, Trade Manager Engineering;
3. On 2 October 2024, Chris McJannet, Regional Organiser of the Plumbers and Gasfitters Employees' Union Queensland (**PGEU**) emailed a number of CQHHS workers seeking to be a party to the negotiations of the BEMS work group (**Initial Email**).
4. On the same date of 2 October 2024:
 - (a) Tineale Veve, Manager, Safety & Wellbeing of CQHHS responded to Mr McJannet, acknowledging the Initial Email and providing the Respondent with a CQHHS internal form for commencing the process for determination of the work group (**Form**). Ms Veve indicated that the 14 day negotiation timeline would commence at the time at which the Form was received by the appropriate officer of the Applicant. A copy of the Form is attached and marked **Attachment A**.
 - (b) Mr McJannet did not directly respond to this request, but instead asserted that written notice had been provided in accordance with the *Work Health and Safety Act 2011 (Qld)* (**Act**). A copy of the email chain between Ms Veve and Mr McJannet is attached and marked **Attachment B**.
 - (c) The Applicant separately sought and received email advice from Ben Dawson, Licensing and Advisory Services of the Office of Industrial Relations (**OIR**) (a copy of the email advice is attached and marked **Attachment C**). OIR relevantly advised that:
 - (i) A Person Conducting a Business or Undertaking (**PCBU**) retains final authority on the process for election of a HSR and determination of relevant work groups;
 - (ii) CQHHS would be compliant with the legislation if it instituted an internal process to form work groups and hold elections; and
 - (iii) The responsibility for negotiating and determining work groups lies with the PCBU and where the PCBU is not involved in the process initiated by a representative organisation, the PCBU may not be obligated to recognise the resulting work groups or nomination.
5. On 4 October 2024, a Consultative Forum was held by the Applicant, at which attendees included representatives of the Applicant and representatives of the Respondent. As recorded in the minutes of this meeting, there was an indication that the negotiations would proceed in a manner consistent with the Act in the absence of an agreed internal process.
6. On 15 October 2024, the Applicant requested and was granted by the Respondent an extension of the 14 day negotiation timeline until 18 October 2024, in accordance with section 52(5C) of the Act.
7. On 18 October 2024, Ross Miller, Director – Assets and Commercial Services of the Applicant confirmed that the negotiation process would need to be commenced by way of the Form and that election processes could not be undertaken prior to the finalisation of work group negotiations.
8. On the same date of 18 October 2024, PGEU submitted a request to Work Health and Safety Queensland (**WHSQ**) for appointment of an inspector to resolve the matter under section 54 of the

Act and alleging that the Applicant had taken steps to intentionally hinder the election and negotiation of the BEMS HSR structure.

9. On 21 October, Inspector Trevor Eldrige was appointed to provide assistance in the matter.

Decision of Work Health and Safety Queensland

10. On 25 October 2024, Inspector Eldrige issued a 'decision on work group agreement variation.' Inspector Eldrige made the following decisions:
- (a) the timeframe for which the Applicant had been required to finalise negotiations had commenced upon the Initial Email; and
 - (b) that it was appropriate to vary the work group agreement under section 54(5)(b)(i) of the Act to provide for:
 - (i) One (1) HSR for the entire BEMS group;
 - (ii) One (1) Deputy HSR for the team reporting to Eden Kelliher, Trade Manager Building at the time of the request;
 - (iii) One (1) Deputy HSR for the team reporting to Trent White, Trade Manager Engineering at the time of the request; and
 - (iv) One (1) Deputy HSR for the administrative team.

(Decision).

11. On 29 October 2024, on the advice of Inspector Eldridge, the Applicant submitted an application for internal review of the Decision to the OIR under section 54(2) of the Act (**Application for Internal Review**). The Application for Internal Review was acknowledged by the OIR on the same date.
12. On 12 November 2024, Mitchell Rogers, Team Leader, Review Unit of the OIR informed the Applicant that the decision was not able to be internally reviewed under section 54(2) of the Act.

Concerns with the purported decision of the Inspector

No exercise of power

13. Under section 54(3) of the Act, an Inspector appointed under section 54 of the Act must attempt to assist the parties to agree on the disputed matter.
14. Inspector Eldrige states in the Decision that he had spoken with the Applicant and Respondent by way of telephone and Microsoft Teams to gather further information in relation to the complaint.
15. Inspector Eldridge further states that, following his consideration of the material provided by the Applicant and Respondent, he made one further telephone call to each of the Applicant and the Respondent, of which neither were answered. Following Inspector Eldridge's attempted contact, he states that he received a telephone from the Respondents in which he gathered further information.
16. The Inspector did not attend Rockhampton Hospital where the BEMS work group is primarily located, nor did he exercise the power or carry out his role under section 54 of the Act, including to attempt to assist the parties to agree on matters as required by that section.
17. The Inspector therefore failed to properly exercise his power under section 54 of the Act.

No reasonable belief

18. Even if Inspector Eldridge had validly exercised his powers for the purposes of section 54 of the Act, as a precondition to making a work group determination, he was required to hold a reasonable belief that the parties were unlikely to reach an agreement on a matter mentioned in subsection 54(3) within 7 days after his appointment.

19. A reasonable belief requires the existence of facts which are sufficient to induce the belief in a reasonable person.¹ The objective circumstances sufficient to show the holding of a reason to believe something need to point more clearly to the subject matter of the belief than a positive feeling of actual apprehension, but need not establish the subject matter on the balance of probabilities. Belief is an inclination of the mind towards assenting to, rather than rejecting a proposition. The grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture.²
20. Having regard to the matters set out in 15, the Inspector failed to make the necessary enquiries in order to form a 'reasonable' belief. In particular, the Inspector had very limited engagement with the Applicant and its key representatives relevant to the discussions, many of whom were on leave for part or all of this period.
21. Further, the Inspector's belief that the parties were unlikely to reach agreement on the matter (i.e. the request to vary the work group) cannot be considered reasonable in circumstances where:
- (a) The Applicant had clearly and consistently communicated to the Respondent that it was prepared to engage in the negotiations, but required further information from the Respondent to enable it to properly engage in this process, which was requested via the Form;
 - (b) The Applicant had requested the information in the Form on the same date the request was made by the Respondent and had offered an alternative means of completing the Form, by way of support from BEMS management to facilitate this;
 - (c) The Applicant had advised that further online work group negotiations would be available at the end of the month, in the alternative, however the Applicant had stated that it was willing to proceed on an earlier basis if that was the preference of the Respondent.
22. On these bases, the view could not reasonably be held as the discussions and engagement between the Applicant and Respondent were ongoing at the time of the Decision.
23. Further, the Decision stated that the failure to finalise negotiations had been decided based on confirmation of the Inspector's view that the request to vary the workgroup triggered the commencement of the negotiation period and not '*on the completion of a form which is not required under legislation.*'
24. There is no dispute that the Act does not require the Form to be completed. Rather, the Form was a tool implemented by the Applicant to enable it to effectively facilitate work group negotiations in accordance with its obligations under the Act. The information requested in the Form is basic and directly relevant to the request that had been made by the Respondent. Accordingly, this was a reasonable internal process designed to support negotiations. The development and implementation of an internal process of this kind facilitate compliance was accepted in principle by OIR in its email advice to Ms Veve on 2 October 2024.
25. In light of the above, Inspector Eldridge could not have held reasonable belief that the Applicant had failed to finalise negotiations in making a decision under section 54 of the Act.

Matters to be taken into account not properly considered

26. Finally, the purported Decision did not properly take into account the required matters in Chapter 2, Division 1 of the *Work Health and Safety Regulation 2011 (Qld)* (**WHS Regulation**):
- (a) views of workers in relation to the variation/determination of work groups;
 - (b) the nature of any hazards at the workplace;
 - (c) the nature of any risks to health and safety at the workplace;
 - (d) the nature of each type of work carried out by the workers;
 - (e) the number and grouping of workers who carry out the same or similar types of work;

¹ *Lindores Construction Logistics Pty Ltd v The Regulator under the Work Health and Safety Act 2011* [2018] QIRC 61 at [16].

² *George v Rockett & Anor* (1990) 170 CLR 104 at 115-116.

- (f) the areas or places where each type of work is carried out;
 - (g) the extent to which any worker must move from place to place while at work;
 - (h) the diversity of workers and their work;
 - (i) the nature of the engagement of each worker, for example as an employee or as a contractor;
 - (j) the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or short-term;
 - (k) the times at which work is carried out;
 - (l) any arrangements at the workplace or workplaces relating to overtime or shift work.
27. There is little evidence that each of these matters were taken into account. At most, the Inspector indicated that his Decision was made for the reasons that:
- (a) the decision was made due to the failure to finalise negotiations;
 - (b) a single HSR would be able to represent all members of the team when supported by Deputy HSRs;
 - (c) taking into account the size of the work group, the nature of the work group and leave of workers, multiple deputy HSRs are considered appropriate;
 - (d) each of the teams are exposed to different hazards.
28. No detail or information is included in the Inspector's decision as to the different hazards teams were exposed to, the 'nature of the work group' or what 'leave' was considered.
29. Rather, the primary focus of the Inspector's decision appears to have been the failure to finalise negotiations by 18 October 2024. This alone cannot be considered evidence that those negotiations were unlikely to result in an agreement between the parties, particularly when balanced against the evidence in support of the Applicant's willingness to engage in those exact negotiations.

Issues in dispute

30. The Applicant submits the following issues are in dispute:
- (a) Whether the Applicant can require the Respondent to complete a form as part of an internal process to facilitate work group negotiations and elections; and
 - (b) Whether the Inspector's decision should be set aside and substituted with a new decision to appoint 1 HSR and 1 Deputy HSR for the BEMS work group.