

NECA response to CFMEU's legislative reform proposals



NECA ACT Chapter

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Contents

About NECA.....	3
Forward	4
Requirement to consult	5
Mandatory election and training of a HSR in commercial construction.....	6
Prescribed training and procedures for the formation of a HSC	7

About NECA

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry, which employs more than 145,000 workers and delivers an annual turnover in excess of \$23 billion. We represent approximately 4,000 electrical contracting businesses across Australia.

NECA represents the electrical and communications contracting industry across all states and territories. We aim to help our members and the wider industry to operate and manage their business more effectively and efficiently, whilst representing their interests to federal and state governments, regulators and principle industry bodies such as the Canberra Business Chamber, Australian Chamber of Commerce and Industry (ACCI) and Standards Australia.

Additionally, NECA maintains responsibility for the employment, training and skilling of more than 4,000 current and future electricians and contractors through our Group Training and Registered Training Organisations.

Forward

Thank you for the opportunity to comment on the prospective legislative reforms with respect to the ACT's work health and safety legislation.

NECA advocates that the current harmonised work health and safety laws regarding the establishment of workgroups, electing Health and Safety Representatives, and the formation and training of a health and safety committee are appropriate and do not require the amendments proposed by the CFMEU.

We therefore submit that the Committee should re-consider its in-principle support of the CFMEU proposals, given that our view aligns with the views of both the other representatives of peak industry associations, the MBA and HIA.

As a general principle, it is considered best practice that legislation should be harmonised across the states and territories. The CFMEU's proposed changes therefore represent a backward step and are likely to impose increased administrative and regulatory burdens on businesses in the ACT.

Whilst we are grateful for the opportunity to express our support for this critical piece of legislation, we also note the short timeframe in which to respond diminishes our ability to more comprehensively submit a response.

I would be happy to discuss further and can be contacted on telephone: 02 9439 8523 or email: suresh.manickam@neca.asn.au

Yours faithfully



Suresh Manickam
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National Electrical and Communications Association (NECA)

Requirement to consult

CFMEU proposal
Determination of a work group is a pre-requisite to the election of a Health and Safety Representative (HSR). A PCBU should be required to consult with each involved union in relation to the employees to be covered by the Work Group. This consultation will ensure that employees are properly represented in the negotiations for the work group, and that the PCBU does not railroad the process and the subsequent election of WHSR.
Comparable consultation obligations existed under the previous Occupational Health and Safety Act 1989 (ACT), at s 53(6), but were removed in the harmonised legislation.

NECA response

s52(1) *Work Health and Safety Act 2011* (ACT) provides for negotiation and agreement for the determination of Work Groups between the Person Conducting a Business or Undertaking (PCBU) and workers or their representative.

Furthermore, s52(5) *Work Health and Safety Act 2011* (ACT) already provides for penalties if the PCBU fails to include the workers representative in the negotiations, if requested. Does the CFMEU have any evidence that PCBUs “railroading” the process and the subsequent election of WHSR is an issue, and that it cannot be addressed under the existing legislation?

NECA therefore submits the proposed resolution by the CFMEU is already adequately covered in the ACT’s current health and safety legislation.

Moreover, the harmonisation of legislation across jurisdictions is a positive step – the CFMEU’s proposal is a retrograde step in this regard.

Mandatory election and training of a HSR in commercial construction

CFMEU proposal
The election and training of a HSR should be mandatory for organisations in commercial construction. The Act currently provides for the election of a HSR, however, it is not mandatory and must be requested first by a worker. A commercial construction project should be required to have a HSR who is elected by the workers on site, and who is also a worker, (and not a management representative).

NECA response

NECA does not support the CFMEU's proposal which is overly prescriptive in that it does not give workers the right to opt out of becoming Health and Safety Representatives (HSR) or not being represented on by one or more HSRs.

Provisions already exist under s50 of the *Work Health and Safety Act 2011* (ACT) for a worker to ask for the election of one or more HSR if they wish to do so.

NECA considers this appropriate.

HSRs can be valuable resources in supporting safety on construction sites; however, if workers do not wish to become HSRs or be represented on by one or more, they should not be compelled to do so.

Mandatory formation and prescribed procedures and training with respect to the formation HSCs

CFMEU proposal
<p>The formation of a Health and Safety Committee (HSC) should be mandatory for commercial construction sites. The Act currently prescribes for a HSC, however, it must be requested by a HSR or 5 or more workers before a committee can be formed.</p> <p>There is also no prescribed training for HSC members or prescribed procedure for the formation of the HSC. Mandatory prescribed training for HSC members is required to ensure effective consultation.</p> <p>A prescribed procedure regarding the formation of the HSC is necessary to ensure proper representation. The formation of the HSC should consist of representation from workers, (elected HSRs from each work group), and Management representation of no more than 50%.</p>

NECA response

NECA considers that the current legislation is appropriate as it provides for the formation of a Health and Safety Committee (HSC) where workers wish to form one.

However, workers should equally have the right to not form a HSC – the introduction of this element of coercion as proposed by the CFMEU would be a retrograde step.

NECA has no in principle objection to legislation setting out mandatory training requirements for HSC members.

However, this should only be done after a rigorous assessment has been conducted to establish:

- Firstly, the need for a prescriptive approach in relation to establishing minimum requirements; and
- The appropriate qualifications and / or experience required.

Unless there is specific compelling evidence that mandatory qualifications are required to deliver better outcomes, it might be better to leave the status quo in place.