Submission No 255

INQUIRY INTO WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025 AND THE PROVISIONS OF THE WORKERS COMPENSATION LEGISLATION AMENDMENT (REFORM AND MODERNISATION) BILL 2025

Organisation: Master Builders Association New South Wales

Date Received: 27 October 2025

Submission to the Public Accountability and Works Committee

Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025

24 October 2025

Master Builders Association
New South Wales

Master Builders Association
New South Wales

24 October 2025

Ms Abigail Boyd
Chair of the Public Accountability and Works Committee
NSW Legislative Council

By email: PAWC@parliament.nsw.gov.au

Dear Ms Boyd,

RE: Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025

Please see **attached** submissions to the Public Accountability and Works Committee regarding concerns raised by the Master Builders Association of NSW with respect to **Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025**.

We would be pleased to speak further to this submission if required. I can be contacted directly on .

Yours Sincerely,

Matthew Pollock
EXECUTIVE DIRECTOR

Attachments.

Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025

These submissions relate to the Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 (**Reform and Modernisation Bill**) tabled on 6 August 2025 and which became publicly available on 7 August 2025. Specifically, the Master Builders Association of NSW (**MBA**) wishes to raise a number of concerns with respect to various elements of the Reform and Modernisation Bill. The views contained in these submissions are further to letters we have written to the NSW Government in relation to the Reform and Modernisation Bill on 13 August and 1 September of this year (**attached**).

MBA agrees that there is a pressing need to stem the increased tide of psychological injury claims in the NSW workers compensation system. Earlier this year, the Premier acknowledged the significant problem presented by a 10 percent per year increase over the past five years in psycho-social or psychological claims. MBA's membership is primarily comprised of small to medium sized enterprises that can ill-afford the dramatic increase in premiums that proliferation of such claims has generated. However, the Reform and Modernisation Bill would make significant changes to the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) that would likely be detrimental to businesses in NSW and act as an unnecessary roadblock to the implementation of digital systems and the positive effects such systems may have across the workplace.

Section 21A - Duties of persons conducting businesses or undertakings involving digital work systems.

Proposed s. 21A(1) of the Reform and Modernisation Bill would introduce a new requirement that a person conducting a business or undertaking (**PCBU**) that uses a digital work system must ensure, so far as is reasonably practicable, that the allocation of work by or using the digital work system is without risks to the health and safety of any person. Proposed s. 21A(2) lists the following risks that a PCBU must consider:

1. *excessive or unreasonable workloads for workers at work in the business or undertaking;*

2. *the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking;*

3. *excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking;*

4. *discriminatory practices or decision-making in the conduct of the business or undertaking.*

The proposed reforms would arguably generate unhelpful overlap and complexity for companies seeking to utilise new or existing digital work systems. Existing laws already regulate all of the abovementioned matters, and the proposed reform unhelpfully duplicates regulation already provided under the following:

- *Work Health and Safety Act 2011* (NSW) – primary duty of care provided for under s. 19;

- *Workplace Surveillance Act 2005* (NSW) – deals with monitoring and surveillance at the workplace;

- *Anti-Discrimination Act 1977* (NSW) - prohibits discrimination, vilification, sexual harassment and victimisation;

- *Fair Work Act 2009* (Cth) – provides an extensive range of protections at the federal level against discriminatory and/or adverse action taken for prohibited reasons;

Commonwealth anti-discrimination laws already protect against discrimination on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in employment. Modern awards and enterprise agreements include mandatory consultation provisions where employers wish to introduce a major workplace change or changes to rosters or hours of work.

Digital work systems are ubiquitous throughout the construction industry in NSW and are in use for a wide variety of matters up to and including tendering on multi-billion-dollar projects. **MBA is very concerned about the changes proposed in Schedule 4 of the Reform and Modernisation Bill.** The proposed definition of 'digital work system' is excessively broad and will potentially cover systems in current use including CRM systems and even email rules. Should the proposed amendments be passed in their current form, companies may become subject to the increased cost of proactively evaluating their digital schedules and metrics and engaging in new risk assessment processes. For larger enterprises, this may involve utilising existing fatigue management processes. However, for smaller enterprises, conducting such reviews would likely need to factor in the cost of engaging IT expertise or safety specialists. Such outlay is likely beyond the reach of many enterprises.

An appropriate regulatory response to the growth of artificial intelligence and digital systems in the workplace should strike the correct balance to allow businesses to harness the benefit of such systems whilst safeguarding the health and safety of their workforces. In volume 4 of its 5-year productivity inquiry report in 2023, the Productivity Commission made the following comments that urged a balanced approach to such regulation:

> *"There are various policy options that can support the ethically responsible use of technology and data, ranging from information provision to regulation. Direct intervention and its potential benefits in improving confidence in emerging technology and data uses must be balanced against the potential costs incurred by businesses in complying with government requirements. A risk-based approach is appropriate to guide governments on where stronger activity is necessary, and provide clarity for businesses on where to focus their efforts on improving their ethics maturity."*
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> …
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> *"It is vital that government consults widely with industry and technical experts when designing and implementing policy responses to high-risk ethical issues. This is partly because the technical details of emerging uses of technology and data can be challenging for policymakers to grasp, and stakeholder engagement promotes mutual understanding and reduces the possibility of introducing ineffective policies or unnecessarily restrictive regulations."*

The NSW Government should hesitate before embarking upon legislative reforms aimed at constraining or limiting the use of digital work systems without further considering the significant impact such laws would likely have on business' capacity with respect to compliance.

Discriminatory practices or decision-making in the conduct of the business or undertaking

MBA notes that proposed s. 21A(2)(d) would introduce a new reference to a risk of 'discriminatory practices or decision-making in the conduct of the business or undertaking'. 'Discriminatory practice' is not defined as a term in the Reform and Modernisation Bill[1] and it is not immediately apparent how broad these terms are to be interpreted. This could potentially result in the unintended but dire consequence that the proposed law would enable construction unions to commence safety prosecutions against head contractors on the basis of discriminatory conduct simply for failing to choose a subcontractor that was union aligned, regardless of the actual reasons that the business has chosen a different subcontractor.

[1] Discriminatory conduct is defined at section 105 of the *Work Health and Safety Act 2011* (NSW), but this definition is concerned with discrimination by a person against a worker, not in relation to the conduct of the business as is set out in the Reform and Modernisation Bill).

Every time a head contractor in the construction industry calls for tenders from subcontractors to carry out work, the head contractor must choose between subcontractor tenders. Principal contractors generally choose between tenderers on matters pertaining to quality, reliability and price. As currently drafted, there is arguably an appreciable risk that a person exercising a right of entry under the proposed amendments would be capable of alleging discriminatory practices or decision-making in such circumstances, regardless of whether or not there was any actual improper motive or discrimination.

Section 118 – Rights that may be exercised while at the workplace

Proposed section 118(a1) introduces a new capacity for a WHS entry permit holder to inspect digital work systems relevant to a suspected contravention of the WHS Act. This change will enable an intolerable intrusion into the managerial prerogative of businesses in NSW. This is of the utmost concern to the NSW building industry. The NSW Government should refrain from granting any further powers to WHS entry permit holders in the construction industry. The misuse of such powers by building unions for unrelated industrial purposes has been well documented in multiple Royal Commission inquiries and various reviews and reports. The addition of further powers as set out in s. 118(a1) would encourage the misuse of such powers by building unions to conduct fishing expeditions and potentially expose commercially sensitive data or employee personal information to inadvertent disclosure.

Current protections in s. 148 of the WHS Act from unauthorised usage or disclosure of documents obtained in the course of the exercise of a WHS entry permit holder's powers are inadequate to deal with the risk generated by the proposed new laws. Broad exceptions apply to the operation of this prohibition of unauthorised usage or disclosure in s. 148(a) – (e).

Existing powers currently available to WHS entry permit holders are sufficient to enable necessary information to be obtained. Section 118(1)(d) of the WHS Act currently provides that a WHS entry permit holder may require a PCBU to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to a suspected contravention. This power is appropriately limited to requests for a document which is kept at the workplace and that is accessible from a computer that is kept at the workplace. **No such limitations are present in proposed s. 118(a1).**

The issues presented by the Reform and Modernisation Bill are compounded by the recently passed *Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025* (NSW). The Workplace Protections Act enabled the exercise of WHS entry permit holders' powers under the WHS Act in relation to, inter alia, another contravention of the WHS Act relating to or affecting a relevant worker that the WHS entry permit holder comes to reasonably suspect while at the workplace. MBA wrote to the NSW Government highlighting the significant problems with the Workplace Protections Act on 25 June 2025 and 1 July 2025 (**see Annexures A and B to the letter of 13 August attached**).

Productivity is already under severe pressure in the NSW construction sector. The changes proposed in Schedule 4 of the Reform and Modernisation Bill will mean that any future productivity gains that may arise due of the use of new digital work systems will not be realised and the current productivity malaise will be intensified. Considering the changes proposed in Schedule 4, industry may speculate as to whether managerial control of companies is surreptitiously being granted to the unions via legislation.

MBA holds significant concerns concerning the operation of proposed s. 21A(1) of the Reform and Modernisation Bill, in conjunction with the proposed section 118(a1). Together these laws would potentially enable a construction union to enter the office of a building company and search digital work systems, potentially including customer record management systems (CRMs), tendering document software and email servers amongst other digital systems. All major construction companies use CRMs, tendering software, and email programs to manage their various construction works. These digital work systems contain sensitive commercial information, particularly the identification of which subcontractor has won work on which job site, how much they are costing and when they are scheduled to carry out the work.

Accessing these digital work systems would enable a construction union to establish what the profit margin was for any construction job of any price. The amendments contained in the Reform and Modernisation Bill generate an appreciable risk that such information will be used for purposes entirely unrelated to genuine safety concerns, such as the improper application of leverage in industrial disputes or enterprise bargaining. Inappropriate misuse of sensitive commercial information for industrial purposes may result in reduced profitability of construction projects. We appreciate that for many industries this scenario would sound far-fetched, however, the ability and practice of construction unions in NSW and elsewhere to extract taxpayer monies from the commercial building industry, largely via the misuse of safety laws, has been extensively documented over a regrettably long period of time and continues to this day, largely via certain worker entitlement funds.

For the avoidance of doubt, MBA supports safety laws designed to protect the health and safety of workers. MBA's major concern is the misuse of these laws by construction unions looking to abuse the right of entry power for their own financial gain.

MBA urges the Committee to recommend that the NSW Parliament not to pass the Reform and Modernisation Bill for the reasons outlined in this submission.

Alternatively, in the event that the Committee recommends that the Reform and Modernisation Bill be passed, MBA proposes that digital work systems be redefined in the Reform and Modernisation Bill to exclude digital work systems used by contractors in the building and construction industry. Specifically, MBA proposes that the definition of a 'digital work system' in the Bill be amended as follows to exclude tendering documentation in the building and construction industry:

"digital work system means an algorithm, artificial intelligence, automation, online platform or software, but does not include any such algorithm, artificial intelligence, automation, online platform or software which is used by or for a construction company for the purposes of management or tendering for work".

MBA is happy to further explore these important issues with the committee as requested.

Monday, 1 September 2025

Master Builders Association
New South Wales

Hon. Sophie Cotsis, MP
Minister for Industrial Relations and Work Health and Safety
52 Martin Place
SYDNEY NSW 2000
Via email: office@Cotsis.minister.nsw.gov.au

Dear Minister,

Further to our discussions on 25 August 2025, thank you for taking the time to listen to the Master Builders Association of NSW (**MBA**) concerns in relation to the Workers Compensation Legislation Amendment (**Reform and Modernisation**) Bill 2025 tabled on 6 August 2025 and Incolink's operations in NSW.

The Reform and Modernisation Bill

As we set out in our letter to you of 13 August 2025, the MBA holds strong concerns concerning the Proposed s. 21A(1) of the Reform and Modernisation Bill, in conjunction with the proposed section 118(a1). Together these laws would enable a construction union to enter the office of a building company and search the digital work systems, potentially including customer record management systems (CRMs), tendering document software and email systems amongst other systems.

MBA appreciates that the building and construction industry is not the intended target of these proposed new laws. The businesses that are intended to be the subject of these new safety laws have very large numbers of employees under their direct employment and managerial control. The building industry, by contrast, utilises a sub-contracting model which means that a head contractor has far less direct managerial control of the workers on any given construction site.

A consequence of the proposed laws is that a construction union could gain unrestricted access to a building company's tendering software as well as its emails, CRMs and other sensitive commercial information. All major construction companies use CRMs, tendering software, and email programs to manage their various construction works. These digital work systems contain sensitive commercial information, particularly the identification of which subcontractor has won work on which job site, how much they are costing and when they are scheduled to carry out the work. Accessing these digital work systems would enable a construction union to establish what the profit margin was for any construction job of any price.

This information could easily be used for purposes totally unrelated to genuine safety concerns, such as the improper application of leverage in industrial disputes or union wage setting without relation to the normal labour market indicia, such as inflation and the consumer price index.

Most concerningly, a construction union which knew exactly how profitable any project was, would know exactly how much money the union could extract from that project, thereby reducing the profit that a construction business may make on that job. We appreciate that for many industries this scenario would sound far-fetched, however, the ability and practice of construction unions in NSW and elsewhere to extract public monies from the commercial building industry, largely via the misuse of safety laws, has been extensively documented over a regrettably long period of time.

For the avoidance of doubt, MBA supports safety laws designed to protect the health and safety of workers. What we are concerned about here is the misuse of these laws by construction unions looking to abuse these laws for their own financial gain.

MBA believes that there is a workable solution to this issue, MBA proposes that digital work systems be defined in the Reform and Modernisation Bill to exclude digital work systems used by contractors in the building and construction industry. The current wording for the definition of a "Digital Work System" is as follows; "*digital work system means an algorithm, artificial intelligence, automation*…"

MBA suggests the following words be used to alleviate the potential unintended consequences for the NSW building and construction industry as mentioned above.

> "*digital work system means an algorithm, artificial intelligence, automation, online platform or software, but does not include any such algorithm, artificial intelligence, automation, online platform or software which is used by or for a construction company for the purposes of management or tendering for work".*

It may be argued against this that employees in the construction industry should also be protected from abuses by artificial intelligence and MBA agrees with this proposition. In response, however, we would note two key points. Firstly, artificial intelligence (AI) poses no genuine risk to job security in the construction industry. AI is never going to be given control of a crane or possess the ability to pour concrete or lay bricks. In fact, automated brick laying machines such as the Hadrian Brick X have been in operation for many years now and are still largely unused by the construction industry. Secondly, the construction unions are already highly active where safety is concerned in the construction industry. The major construction unions are all well versed at utilising their rights of entry as regards their members on construction sites. In summary, the health and safety of employees in the construction industry does not appear to be threatened by the growth of AI.

MBA also notes the Reform and Modernisation Bill sets out four new specified risks to health and safety that are to be considered, these are:

1. *excessive or unreasonable workloads for workers at work in the business or undertaking,*
2. *the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking,*
3. *excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking,*
4. *discriminatory practices or decision-making in the conduct of the business or undertaking.*

The first three risks deal specifically with the treatment of workers at work in a business. For the reasons set out above, these risks in the construction industry must for the most part be mitigated by the subcontractors carrying out the works. The fourth risk is notable as it deals with discriminatory practices or decision making in the conduct of the business without reference to workers. This fourth risk is of real concern to the construction industry in light of the proposed law to search digital work systems.

Every time a head contractor in the construction industry calls for tenders from subcontractors to carry out the work packages, the head contractor must choose between the subcontractor tenders in order to carry out the work. The very act of choosing a successful tenderer is a process involving at least some form of discrimination, usually on the basis of quality, reliability and price. If construction unions had the ability to search a head contractors digital work systems for discriminatory practices, they would almost certainly be able to make such an allegation against any head contractor, regardless of whether or not there was any actual improper discrimination.

Discriminatory practice is not defined as a term in the Reform and Modernisation Bill (*NB, discriminatory conduct is defined at section 105 of the Work Health and Safety Act 2011, but this definition is concerned with discrimination by a person against a worker, not in relation to the conduct of the business as is set out in the Reform and Modernisation Bill*) and the words will therefore be given their plain and ordinary meaning when the legislation is subject to interpretation before the courts. This could easily result in the unintended but

dire consequence that the proposed law would enable construction unions to commence safety prosecutions against head contractors on the basis of discriminatory conduct simply for failing to choose a subcontractor that was union aligned, regardless of the actual reasons that the business has chosen a different subcontractor.

Again, the proposed alteration of the definition of digital work systems to deliberately exclude those systems used in the construction industry would effectively remedy these issues.

Incolink

As discussed at our meeting, MBA is deeply concerned about the increased operation of Incolink in NSW. Essentially, our concern is that NSW taxpayer money is, via Incolink, flowing over the border and into the coffers of the CFMEU Victoria and Master Builders Victoria. In our view this is taxpayer money that should remain in NSW for the benefit of the people in NSW.

The central issue is that Incolink distributes income to third parties, namely the CFMEU Victoria and Master Builders Victoria. The problem with this arrangement is as follows. The job of an employer industrial association is to advocate for the interests of its members. The fact that Incolink is funded by those same members, via CFMEU pattern enterprise agreements, gives rise to a perverse incentive in which the association may become more concerned with the health of the redundancy fund, than they are in the interests of their own members.

The CFMEU's $1.3 billion Incolink fund disperses tens of millions of dollars of surplus monies to its shareholders, namely the CFMEU Victoria and Master Builders Victoria – these are the groups who negotiate the rates which building companies must contribute to Incolink via the pattern CFMEU enterprise agreements. Moreover, the senior staff of the shareholders are also directors of Incolink who make decisions concerning disbursements from the fund back to the shareholders. In the view of MBA this is a clear and fundamental conflict of interest.

In our letter to you of 4 August we set out at length the troubled history of worker entitlement funds. The current situation with Incolink in NSW is highly comparable to the situation faced by NSW in the 1980's and 1990's with the Construction Employees Redundancy Trust (CERT) which was set up by the Australian Federation of Construction Contractors (AFCC) (AFCC was a national entity representing contractors up until 1993) in conjunction with a number of building unions including the Building Workers' Industrial Union of Australia (BWIU).

CERT was a private trust controlled by the AFCC and the BWIU. Just like Incolink does today, CERT was distributing moneys it held to industrial associations. In 1992 the Gyles Royal Commission found that CERT's design gave undue influence to the AFCC and the BWIU over funds held by the trust. This is surely being replicated today with Incolink distributing millions of dollars to industrial associations. As was reported in the Sydney Morning Herald on 18 July this year:

> "*Detailed accounts of Incolink's payments, obtained under freedom of information, show the fund provided $31.5 million in safety and training grants since 2018. Of that total, $9 million went to the CFMEU and $12 million went to Master Builders Victoria. According to the FOI, $12 million of that money, or 37 per cent of the distributions, came from* [Victorian] *government coffers*." [1]

To reiterate, the position of MBA is that NSW taxpayer monies should not flow to Incolink as these monies will likely be forwarded to Victorian industrial associations.

[1] The Sydney Morning Herald, July 18, 2025, "*Victoria gives $12m to CFMEU-aligned fund under scrutiny*" by Kieran Rooney.

In terms of a solution to this issue, in handing down his Royal Commission report in 1992, Gyles made recommendations that any contractor that was involved with CERT be banned from coming onto any NSW Government building site. MBA suggests that this position be adopted in relation to Incolink. This would effectively ensure that no further NSW taxpayer monies would be distributed to third parties via Incolink. This could be enforced by the NSW Construction Compliance Unit.

We note that the Australian Securities and Investment Commission (ASIC) is currently assessing options for regulation of employee redundancy funds, including potentially expanding the ASIC definition of such funds to include long-service leave entitlements and other employee entitlements as appropriate.

On this basis, MBA submits that, noting that such funds are currently not subject to fulsome and transparent regulation, the NSW Government should ensure that no NSW taxpayer monies flow to funds that inappropriately provide revenue for third parties.

Thank you again for your consideration of these important issues. If MBA can be of any further assistance, please do not hesitate to contact us.

Yours sincerely,

Strebre Delovski
Acting Executive Director

13 August 2025

Hon. Sophie Cotsis, MP
52 Martin Place
SYDNEY NSW 2000

By email : office@Cotsis.minister.nsw.gov.au

Dear Minister,

RE: **Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025**

We are writing in relation to the Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 (**Reform and Modernisation Bill**) tabled on 6 August 2025 and which became publicly available on 7 August 2025. Specifically, we wish to raise some concerns held by the Master Builders Association of NSW (**MBA**) with respect to various elements of the Reform and Modernisation Bill.

MBA agrees that there is an urgent need to stem the increased tide of psychological injury claims in the NSW workers compensation system. Earlier this year, the Premier acknowledged the significant problem presented by a 10 percent per year increase over the past five years in psycho-social or psychological claims. MBA's membership is primarily comprised of small to medium sized enterprises that can ill-afford the dramatic increase in premiums that proliferation of such claims has generated.

However, the Reform and Modernisation Bill would make significant changes to the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) that would likely be detrimental to businesses in NSW and act as an unnecessary roadblock to the implementation of digital systems and the positive effects such systems may have across the workplace.

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and safety of any person. Proposed s. 21A(2) lists the following risks that a PCBU must consider:

- excessive or unreasonable workloads for workers at work in the business or undertaking;
- the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking;
- excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking;
- discriminatory practices or decision-making in the conduct of the business or undertaking.

The proposed reforms would arguably generate unhelpful overlap and complexity for companies seeking to utilise new or existing digital work systems. Existing laws already regulate the abovementioned matters, and the proposed reform unhelpfully duplicates regulation already provided under the following:

- *Work Health and Safety Act 2011* (NSW) – primary duty of care provided for under s. 19;
- *Workplace Surveillance Act 2005* (NSW) – deals with monitoring and surveillance at the workplace;
- *Anti-Discrimination Act 1977* (NSW) - prohibits discrimination, vilification, sexual harassment and victimisation;
- *Fair Work Act 2009* (Cth) – provides an extensive range of protections at the federal level against adverse action taken for prohibited reasons;
- Commonwealth anti-discrimination laws – protect against discrimination on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in employment;
- Modern awards and enterprise agreements – include consultation provisions where employers wish to introduce a major workplace change or changes to rosters or hours of work.

Digital work systems are ubiquitous throughout the construction industry in NSW and are in use for a wide variety of matters up to and including tendering on multi-billion-dollar projects. MBA is therefore very concerned about the changes proposed in Schedule 4 of the Reform and Modernisation Bill. The definition of 'digital work system' is excessively broad and will potentially cover systems in current use including CRM systems and even email rules. Should the proposed amendments be

passed in their current form, companies would likely be subject to the increased cost of proactively evaluating their digital schedules and metrics and engaging in new risk assessment processes. For larger enterprises, this may involve utilising existing fatigue management processes. However, for smaller enterprises, conducting such reviews would likely need to factor in the cost of engaging IT expertise or safety specialists. Such outlay is likely beyond the reach of many enterprises.

An appropriate regulatory response to the growth of artificial intelligence and digital systems in the workplace should strike the correct balance to allow businesses to harness the benefit of such systems whilst safeguarding the health and safety of their workforces. In volume 4 of its 5-year productivity inquiry report in 2023, the Productivity Commission made the following comments that urged a balanced approach to such regulation:

> *There are various policy options that can support the ethically responsible use of technology and data, ranging from information provision to regulation. Direct intervention and its potential benefits in improving confidence in emerging technology and data uses must be balanced against the potential costs incurred by businesses in complying with government requirements. A risk-based approach is appropriate to guide governments on where stronger activity is necessary, and provide clarity for businesses on where to focus their efforts on improving their ethics maturity.*
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> *It is vital that government consults widely with industry and technical experts when designing and implementing policy responses to high-risk ethical issues. This is partly because the technical details of emerging uses of technology and data can be challenging for policymakers to grasp, and stakeholder engagement promotes mutual understanding and reduces the possibility of introducing ineffective policies or unnecessarily restrictive regulations.*

The NSW Government should hesitate before embarking upon legislative reforms aimed at constraining or limiting the use of digital work systems without further considering the significant impact such laws would likely have on business' capacity with respect to compliance.

Section 118 – Rights that may be exercised while at the workplace

Proposed section 118(a1) introduces a new capacity for a WHS entry permit holder to inspect digital work systems relevant to a suspected contravention of the WHS Act. This change will enable an intolerable intrusion into the managerial prerogative of our members in NSW. This is of the utmost concern to the NSW building industry.

The NSW Government should refrain from granting any further powers to WHS entry permit holders in the construction industry. The misuse of such powers by building unions for unrelated industrial purposes has been well documented in multiple Royal Commission inquiries and various reviews and reports. The addition of further powers by proposed s. 118(a1) would encourage the misuse of such powers by building unions to conduct fishing expeditions and potentially expose commercially sensitive data or employee personal information to inadvertent disclosure. Current protections in s. 148 of the WHS Act from unauthorised usage or disclosure of documents obtained in the course of the exercise of a WHS entry permit holder's powers are inadequate to deal with the risk generated by the proposed new laws. Broad exceptions apply to the operation of this prohibition of unauthorised usage or disclosure in s. 148(a) – (e).

Existing powers currently available to WHS entry permit holders are sufficient to enable necessary information to be obtained. Section 118(1)(d) of the WHS Act currently provides that a WHS entry permit holder may require a PCBU to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to a suspected contravention. This power is appropriately limited to requests for a document which is kept at the workplace and that is accessible from a computer that is kept at the workplace. Such limitations are not present in proposed s. 118(1a).

The issues presented by the Reform and Modernisation Bill are compounded by the recently passed Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025. The Workplace Protections Act enabled the exercise of WHS entry permit holders' powers under the WHS Act in relation to, inter alia, another contravention of the WHS Act relating to or affecting a relevant worker that the WHS entry permit holder comes to reasonably suspect while at the workplace. MBA sent correspondence to your office to highlight significant problems with the Workplace Protections Act on 25 June 2025 and 1 July 2025 (**see Annexure A** and **Annexure B)**.

Productivity is already under severe pressure in the NSW construction sector. The changes proposed in Schedule 4 of the Reform and Modernisation Bill will mean that any future productivity gains that may arise due of the use of new digital work systems will not be realised and the current productivity malaise will be intensified. Considering the changes proposed in Schedule 4, industry may speculate as to whether managerial control of companies is surreptitiously being granted to the unions via legislation.

Workers compensation disputes in the NSW Industrial Relations Commission

MBA is also concerned about the proposed changes in Schedule 2 of the Reform and Modernisation Bill, specifically those enabling workers compensation disputes to be determined in the NSW Industrial Relations Commission (**NSW IRC**).

Under the changes, the NSW IRC will be able to deliver binding determinations concerning the conduct in question, even if the business has not consented to the arbitration. The proposed new laws risk exposing businesses to additional cost and time pressures in order to defend a claim.

The Reform and Modernisation Bill constitutes an enormous change to the NSW industrial relations landscape. It has been proposed without any meaningful consultation with industry. We urge the NSW Government to immediately halt the progress of this bill and to enter into a genuine and comprehensive consultation process so that these issues may be appropriately ventilated and considered.

We are further available to provide additional information with respect to our views on the Reform and Modernisation Bill in writing or in person.

Kind regards,

Strebre Delovski
ACTING EXECUTIVE DIRECTOR

Annexure A

Master Builders Association
New South Wales

Wednesday, 25 June 2025

Hon. Sophie Cotsis, MP
Minister for Industrial Relations and Work Health and Safety
52 Martin Place
SYDNEY NSW 2000
office@Cotsis.minister.nsw.gov.au

Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025

Dear Minister,

Further to the letter we sent on 18 June 2025 to your office we are again writing in relation to the recently tabled Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025 (**Workplace Protections Bill**). As the largest representative of employers in the NSW Building and Construction industry, we hold grave concerns about the proposed changes. We understand that the Workplace Protection Bill has today passed the NSW lower house with amendments.

We are asking as a matter of urgency that the Government delay the progress of the Bill to the upper house until industry has been given the opportunity to make detailed submissions as part of a formal process of consultation. Alternatively, given that the *Workers Compensation Legislation Amendment Bill 2025* passed the NSW lower house and was then referred to the Public Accountability and Works Committee to conduct an inquiry, we suggest that this may also be an appropriate course of action for the Workplace Protection Bill.

Below is a list of our initial key concerns with the proposed changes.

1. The Workplace Protections Bill seeks to expand the rights of WHS Permit Holders performing their duties at a workplace. Rights held by a WHS Permit Holder under the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) are dealt with in Part 7 Division 2 of that Act (Entry to inquire into suspected contraventions). Section 118 of the WHS Act provides an exhaustive list of what a WHS Permit Holder may do in relation to a suspected contravention whilst exercising a right of entry under that Division. Item 5 of Schedule 2 of the Workplace Protections Bill would expand the referenced list to include rights to:

    a. take measurements or conduct tests directly relevant to the suspected contravention; and,
    b. take photos and videos directly relevant to the suspected contravention.

    We consider that such an expansion would have severely detrimental consequences for the building and construction industry. Providing such powers to WHS Permit Holders would:

    - Unnecessarily duplicate functions already held by the applicable regulator (SafeWork NSW);
    - Generate an unnecessary overreach which would be in conflict with the WHS Act's intent;
    - Give rise to significant evidentiary and privacy concerns with respect to how any collected photographic or video materials are to be utilised;
    - Lead to substantial worksite disruption and delays;
    - Expose employers to potential misuse of such powers for industrial leverage.

2. The Workplace Protections Bill also seeks to grant unions in NSW an increased ability to initiate a prosecution under the WHS Act. This is a deeply concerning development for industry. Currently, a union may only initiate a prosecution with respect to a Category 1 or Category 2 offence if SafeWork NSW has declined to commence such a prosecution, contrary to advice from the NSW Director of Public Prosecutions (NSW DPP).

   Under the proposed changes, if SafeWork NSW declines to prosecute an employer, a union will then be able to commence a prosecution against that employer for any class of alleged offence under the WHS Act. It appears to us that under the proposed changes, all the union must do if SafeWork NSW declines to prosecute, is simply consult with SafeWork NSW concerning the unions intention to commence a prosecution. Additionally, the Workplace Protections Bill would provide a financial incentive to the unions to commence prosecutions as a court may direct that a portion of a fine or penalty imposed in the proceedings be paid to the union.

   We do not understand why a union should be empowered to bring a prosecution when the public regulator has declined to prosecute. We also do not understand why the unions should be able to gain financially from such a prosecution. A deep concern for industry is that an enhanced prosecutorial power will be used improperly as an industrial weapon by unions. We anticipate that unions may threaten an employer with WHS prosecutions to further any given industrial agenda. We of course hold no such concerns with SafeWork NSW. Moreover, SafeWork NSW have no financial incentive to prosecute and are in all their actions subject to Ministerial oversight.

We welcome the opportunity to discuss this matter with you and to make submissions in due course.

Kind regards,

Strebre Delovski
Acting Executive Director

Annexure B

Master Builders Association
New South Wales

Tuesday, 1 July 2025

Hon. Sophie Cotsis, MP
Minister for Industrial Relations and Work Health and Safety
52 Martin Place
SYDNEY NSW 2000

By email: office@Cotsis.minister.nsw.gov.au

Dear Minister,

RE: Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025

Further to our discussions last week we are again writing in relation to the Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025 (**Workplace Protections Bill**).

We are grateful for your time last Wednesday evening to meet with us to discuss our concerns with the Workplace Protections Bill. We note that the concerns we raised about potential misuse of photographs and videos taken in a workplace, as well as concerns about vexatious prosecutions were noted in the second reading speech as was discussed.

The Workplace Protections Bill passed the NSW parliament last Thursday 26 June with amendments and is awaiting assent to become law. It is one of these amendments that we wish to discuss. The insertion of a section 118(5) into the Workplace Protections Bill was the result of an amendment by the Greens, which was referred to in the Legislative Council's message of 26 June 2025. Section 118 of the *Work Health and Safety Act (2011)* (WHS Act) sets out the rights that a permit holder may exercise whilst at a workplace after having entered that workplace under the WHS Act. The new section 118(5) will insert the following words into that part of the WHS Act.

> *"The WHS entry permit holder may exercise a function under subsection (1) in relation to another contravention of this Act relating to or affecting a relevant worker that the WHS entry permit holder comes to reasonably suspect while at the workplace under this division."* (Emphasis added).

The effect of these words is that permit holders will be empowered to go on what is commonly referred to in the construction industry as a "*site walk*". This is where a permit holder enters a site, ostensibly in relation to one suspected contravention of the WHS Act. Once on site, the permit holder then notices other suspected contraventions of the WHS Act and insists on walking the entire site to ensure safety. The outcome of this practice is that the entire building site is effectively closed, sometimes for hours, as all work ceases on that site until the walk is finished.

This has been a common method by which building unions use safety laws as an industrial relations weapon. For example, these site walks are commonly attempted if a building contractor is using non-union sub-contractors. Building contractors are especially vulnerable to this type of stop-work tactic as their contracts are

almost always low margin fixed sum contracts with significant liquidated damages for delays. Building unions are well aware of this and have commonly exploited this vulnerability.

Under the current law employers have been able to successfully resist this tactic by requiring the permit holder to conduct a separate entry for each suspected contravention of the WHS Act. This action by employers appropriately stopped site walks taking place. Under the new section 118(5) this power to resist this abuse of process will be removed and building contractors will be unable to resist any permit holder who wishes to conduct site walks.

This development is of grave concern to the Master Builders Association. For the reasons explained above, site walks are a very problematic industrial weapon, and we anticipate that they will increase as a result of the new law. This will in the long-term result in increased costs to build and will also threaten the profitability and viability of building contractors.

We would welcome the opportunity to discuss this matter with you as a matter of urgency.

Kind regards,

Strebre Delovski
ACTING EXECUTIVE DIRECTOR