

Memorandum of Understanding
made at Brisbane on the 20th of April 2022

between

the State of Queensland acting through the
Department of Education
ABN 94 496 188 983
(Office of Industrial Relations)

and

the State of Queensland acting through the
Queensland Police Service
ABN 29 409 225 509

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Part 1 – Introduction

Purpose

The purpose of this Memorandum of Understanding (MOU) is to build on an established professional relationship based on effective administrative practices and open communication between the Queensland Police Service (QPS), and the Office of Industrial Relations (OIR) located in the Department of Education (the parties). This MOU clarifies specific working arrangements between the parties in relation to the attendance, investigation and reporting of workplace incidents, recreational water activity incidents and electrical incidents and provides specific information on the respective roles, responsibilities and obligations of QPS officers and OIR officers.

Officers from QPS and OIR regularly attend workplace incidents and all electrical incidents that have resulted in a serious injury or illness or death.

While operating under separate legislative frameworks, the goal of the parties is the same, that is, to conduct a thorough investigation of the incident to establish the facts of the matter and if warranted, initiate appropriate responses, which may include commencing legal proceedings.

This MOU is also intended to ensure coroners are informed of the extent of each Party's investigation into a reportable death. OIR investigates deaths on behalf of the regulator as prescribed by the relevant legislation to establish the facts of the matter and if warranted, initiate appropriate responses, which may include commencing legal proceedings.

This MOU should be read in conjunction with any other existing MOU between a Queensland Government agency and other organisations with responsibility for attending and investigating workplace and electrical incidents. The MOU between Department of Education, the Department of Transport and Main Roads and QPS addresses other enforcement issues.

Legislative scope

This MOU applies to the investigation of workplace and electrical incidents that have resulted in serious injury or illness or death covered by the:

- *Work Health and Safety Act 2011*
- *Electrical Safety Act 2002*
- *Safety in Recreational Water Activities Act 2011*
- *Police Powers and Responsibilities Act 2000*
- *Coroners Act 2003*
- *Criminal Code Act 1899.*

Definitions

Certain terms used in this MOU are defined in Schedule 1. However, if a term in Schedule 1 is defined by legislation, the definition in the relevant legislation, as amended from time to time, prevails over the definition in Schedule 1.

Part 2 – Responsible departments for this Memorandum of Understanding

At the commencement of this MOU, the Queensland departments that have responsibility for administering the relevant legislation are:

- QPS and
- Department of Education, through the OIR.

This MOU has been prepared at the agency level within the responsible department. If the responsible department changes due to portfolio reassignment or redistribution, there should be negligible effect on the operation of the MOU, that is, a Machinery of Government change does not void the MOU or automatically necessitate renegotiation. Such changes will be incorporated at the time of the scheduled review.

Queensland Police Service

QPS is the primary law enforcement agency in Queensland. QPS operates throughout the State upholding the law and providing assistance to the community when necessary and in times of emergency, disaster and crisis. QPS provides quality core policing services 24 hours a day to approximately five million Queensland residents and over seven million people who visit the State each year.

The provision of policing services contributes to the Government priority of 'protecting our children and enhancing community safety'.

Department of Education, Office of Industrial Relations

The OIR includes the agencies of Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO). The OIR administers the *Work Health and Safety Act 2011*, the *Safety in Recreational Water Activities Act 2011*, and the *Electrical Safety Act 2002*.

WHSQ's goal is to foster safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related death, injury and illness in Queensland.

The ESO's goal is 'electrically safe homes, workplaces and other environments', with the key outcome being to reduce electricity related deaths and injuries in Queensland.

Part 3 – Cooperation between the parties

The parties, through their relevant agencies, agree to observe and comply with this MOU.

Each party will:

- ensure that agency officers affected by the MOU are provided with appropriate training and resources to enable them to give effect to the MOU
- develop mechanisms to enable each agency to give effect to and monitor the implementation of the MOU within their respective agencies
- where it is likely that agencies will need to cooperate in a joint investigation, the contact officer in Schedule 2 will nominate a coordinating officer to help establish

which agency will lead the investigation and to facilitate cooperation and completion of the investigation; and

- where it is likely that agencies will need to cooperate during separate investigations, the contact officer in Schedule 2 will nominate a coordinating officer to facilitate cooperation and completion of the investigation.

The role of the coordinating officer is to:

- work with other coordinating officers in the MOU group to determine which agency will take the lead role in any joint investigation
- provide a point of contact for other agencies in the MOU group when investigations are undertaken
- oversee the implementation of the Protocols during investigations; and
- fulfil responsibilities of the coordinating officer outlined in the Protocols.

In the event of circumstances arising that are not covered by this MOU, the parties agree to consult each other in a timely manner to reach agreement on jurisdiction and action.

Incident notification

The OIR must be advised of any:

- notifiable workplace incident (including a work-related recreational water activity incident)
- dangerous electrical event at workplaces or residences
- serious electrical incidents at workplaces or residences
- that are reported to the QPS and have not been notified to OIR by the Queensland Ambulance Service (QAS) communications centre or other party.

These incidents include, but are not limited to:

- incidents involving a serious bodily injury or serious illness, including death, of a worker
- incidents involving a serious bodily injury or serious illness, including death, of a member of the public, likely to have been caused by a workplace or work activity
- diving and snorkelling incidents resulting in a serious bodily injury or serious illness, including death, of a member of the public that may be linked to a workplace or a workplace activity
- exposure to substances at a workplace likely to cause death or serious bodily injury or a serious illness to a worker or member of the public
- any workplace incident resulting in a dangerous event
- incidents where a person is killed by electricity or a person receives a shock or injury from electricity, and is treated for the shock or injury by or under the supervision of a doctor
- incidents where a person receives a shock or injury from electricity at high voltage, whether or not the person is treated for the shock or injury by or under the supervision of a medical practitioner.
- Incidents of union right of entry where QPS has been called to attend at the request of either party.

In most incidents, notification of serious workplace incidents will be firstly received by the QAS communication centre. The QAS normally notifies the OIR's Assessment

Services immediately of any workplace incident or electrical incident that results in a fatality or serious bodily injury.

In accordance with QPS Operational Procedures, a QPS officer will notify the Assessment Services immediately of any workplace incident or electrical incident that results in a fatality or serious bodily injury if they become aware that the QAS has not made a notification.

The OIR will notify the QPS about a dangerous electrical event, serious electrical incident or notifiable incident, if it is suspected that police involvement is required. The incident will be reported without delay to the QPS via the local police communication centre, by the person receiving the notification.

The QPS agrees to ensure that QPS officers liaise with appropriate OIR officers regarding any subsequent investigation. If there is a need for clarification on the details of the OIR officer conducting the investigation, the police officer should contact the local Investigation Manager (IM) – see Schedule 2 for contact details.

For matters relating to disputes involving entry to a workplace, and cooperation between the QPS and OIR on these issues see **Part 5 – Disputed entry issues**.

Information sharing/Disclosure of information

At times, WHSQ, the ESO and QPS conduct enquiries or investigations into the same matter. These agencies may gather information independently of each other. However, the information gathered by one agency may be relevant to another's investigation. On occasions there will be a need for one agency to ask another agency for some or all the information gathered by that agency.

The parties acknowledge that general information sharing, where it is considered practical and appropriate, will minimise duplication of government resources. This information sharing will also minimise the anxiety and grief to the injured person, family and work colleagues by not having to repeatedly relive the incident. The agencies agree that, subject to legislative provisions, such relevant information will be shared as requested.

The parties are required to comply with the *Information Privacy Act 2009* (IP Act). The IP Act places obligations on agencies to handle, collect, store, secure, use and disclose personal information in accordance with the Information Privacy Principles (IPPs). Information Privacy Principle 11 (IPP11) of the IP Act limits disclosure of an individual's personal information to particular circumstances. The parties acknowledge that personal information may only be disclosed to another party consistent with the IPPs.

The functions carried out by QPS and OIR (in relation to the attendance, investigation and reporting of incidents that have resulted in serious injury or illness or death) are within the definition of a law enforcement agency within the IP Act¹. Personal

¹ Schedule 5 of the IP Act defines a *law enforcement agency* as —

(a) for the purposes of IPP 11(1)(e)—an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth) or any entity mentioned in paragraph (b); or

(b) otherwise—

(i) the Queensland Police Service under the *Police Service Administration Act 1990*; or

information obtained for the purposes of attendance, investigation and reporting of an incident may be disclosed to another enforcement agency conducting an investigation or commencing proceedings into the same matter, in accordance with IPP11(1)(e).

The parties agree that, subject to legislative provisions, information available to one agency, which is relevant to the responsibilities of another agency, will be shared as requested. Each agency will provide relevant information to the other agency on a 'best endeavours' basis. This will be subject to any relevant legal and operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information including compliance with the *Information Privacy Act 2009* and *Right to Information Act 2009*.

The *Right to Information Act 2009* provides members of the public with a legally enforceable right to access documents held by Queensland government agencies. The *Right to Information Act 2009* requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

Disclosure of information to the OIR by QPS will be in accordance with s. 10.1 'improper disclosure of information' and s. 10.2 'authorisation of disclosure' of the *Police Service Administration Act 1990*, the QPS Operational Procedures Manual and in the case of an investigation involving a death, and where applicable, the authority of the investigating coroner.

If required, the QPS will provide OIR access to a coronial document for the purpose of investigation or prosecution under s. 54(5) of the *Coroners Act 2003*.

Where necessary, QPS and OIR will conduct early and ongoing consultation to discuss coronial investigation requirements to determine which agency will be making certain enquiries and to determine if additional areas need to be considered at the request of the coroner.

When sharing information, the parties acknowledge the confidentiality requirements of the legislation applicable to each. The agency providing the information has the right to specify the level of confidentiality attached to the information being provided in order to protect that information from unauthorised use or disclosure. The agency receiving the information will take all reasonable steps to ensure the information is used or disclosed for the purpose for which it was obtained.

Examples of information that may be shared by agencies, subject to legislative provisions and consideration on a case by case basis are:

(ii) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*; or

(iii) the community safety department; or

(iv) any other agency, to the extent it has responsibility for—

(A) the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of offences and other breaches of laws for which penalties or sanctions may be imposed; or

(B) the management of property seized or restrained under a law relating to the confiscation of the proceeds of crime; or

(C) the enforcement of a law, or of an order made under a law, relating to the confiscation of the proceeds of crime; or

(D) the execution or implementation of an order or decision made by a court or tribunal.

- information regarding the investigation of incidents such as incident reports and notification of the commencement of an investigation or the commencement of proceedings; and
- research or data on injuries, illnesses, fatalities or incidents.

Training

To promote professional relationships between the agencies, joint training sessions may be undertaken. Such training would serve to allow agency officers to share experiences and knowledge, develop investigation skills and enhance working relationships in joint investigations.

Part 4 – Investigation management

Investigations are undertaken in order to determine:

- causes
- compliance with the legislation
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the legislation
- lessons to be learnt and to influence the legislation and policy; and
- what response is appropriate for an alleged breach of legislation.

Reportable deaths

The QPS will lead investigations into reportable deaths. The OIR investigates workplace deaths and all deaths caused or likely to have been caused by electricity at workplaces or residences unless there are specific reasons for not doing so (i.e. when the incident is outside the authority's jurisdiction). In such cases, those reasons will be recorded.

The investigation undertaken by OIR officers will be limited to the extent the incident relates to the jurisdictional boundaries of the legislation administered by the OIR.

Other incidents

The QPS will be the lead agency for all other serious workplace or electrical incidents until the QPS determines that there is no issue relating to the incident that it needs to progress further. The QPS will then hand over the lead agency role to WHSQ or the ESO as appropriate.

In regional Queensland, where an OIR officer may not be able to attend the workplace incident or electrical incident site immediately, QPS agrees to ensure that its officers will undertake preliminary investigative functions on behalf of an OIR officer, if requested. The preliminary investigative functions may include the collection of photographs, witness statements and notations on observations of the scene and securing the scene until an inspector can reasonably attend, where required.

Where investigation findings reveal non-compliance, the agencies may individually consider whether or not a prosecution should be commenced, another sanction applied, or other appropriate action taken.

Immediate action at incident scene

QPS officers, as the first to arrive on scene, will perform the functions of the 'first response officer'. These functions are detailed in QPS Operational Procedures Manual.

In certain circumstances, QPS officers may establish the workplace incident site or electrical incident site as a crime scene under s.165 'Initial establishment of crime scene' and s. 168 'Restricting access to crime scene' of the *Police Powers and Responsibilities Act 2000*. Under s. 168 'Restricting access to crime scene' and s. 176 'Powers at a crime scene' of this Act, QPS officers have the power to refuse entry to persons which can include OIR officers. In these circumstances OIR officers may only enter the site with the permission of the responsible QPS officer. OIR officers should coordinate their investigation through the responsible QPS officer on the scene. The QPS acknowledges that where it is appropriate and safe, access to the crime scene will be granted to OIR officers.

Maintaining scene security

Once the QPS officer in charge of the crime scene decides that the police officer no longer requires the site, that officer or their delegate is to maintain security of the scene for a reasonable time period until the site is handed over to the control of the OIR officer managing the investigation. It is important that the site is not able to be tampered with, particularly while the attention of officers may be on interviews being conducted. In the case of a workplace incident, plant may be an important factor for investigation and care should be taken to ensure plant is also secured, as part of scene security.

Evidence

It is acknowledged that QPS and OIR officers have seizure powers delegated under respective legislation. It is also acknowledged that circumstances may arise at a workplace incident where both QPS officers and OIR officers find it necessary to seize property as part of the investigation. Cooperation between the agencies is essential to ensure that evidence is not damaged, altered or in any way compromised. Where evidence has been seized by one agency and access to this evidence is necessary for investigation by another agency, all reasonable effort to facilitate access is to be made.

If an OIR officer issues a seizure notice on property which is subsequently seized and removed by QPS officers, the QPS, upon request by the OIR, will keep a copy of the seizure notice with the property and will note in the property register that the WHSQ and/or the ESO will require access to the property.

It is acknowledged that QPS officers have been specifically trained in regard to the handling, collecting and storing of property due to the nature and frequency of their core work function. It is also acknowledged that the QPS has systems and facilities in place for storing property in a more secure manner than is often available to the OIR. As a result, QPS officers will generally retain any seized property from a workplace incident or electrical incident where the incident is part of a crime scene or investigation.

Appropriate arrangements should be made between investigating officers from QPS and OIR to gain access to evidence, particularly if further examination (i.e. x-ray, ultrasonic) is required. Where testing is required to be conducted by an external source, the requesting party will have the responsibility of meeting such costs. Should the QPS and the OIR require the tests to be conducted, the cost is to be equally shared between the QPS and the OIR.

For significantly large items of evidence (i.e. heavy plant and equipment, vessels, amusement devices etc.) authorised QPS property points should be used. If such property points are not available, local government/council should be approached.

Where a crime scene has been established, under s. 168 'Restricting access to a crime scene' and s. 169 'Preserving evidence at a crime scene' of the *Police Powers and Responsibilities Act 2000*, QPS officers are empowered to prevent persons from removing evidence or otherwise interfering with the crime scene or anything in it and for that purpose, may detain and search the person.

Statements and interviews

It is acknowledged that there is no 'property' in a witness. The QPS and the OIR have equal rights to access witnesses.

If appropriate, statements may be taken from witnesses in the presence of officers from OIR and the QPS. Consideration should be given to having specially trained officers with experience conduct interviews to ensure the value of interviews is maximised.

Consideration should be given to having records of interview conducted conjointly if considered appropriate. The adoption of this practice will facilitate more timely reporting and an open exchange of information assisting each agency to meet its requirements. This practice will also help reduce any unnecessary or additional anxiety and grief for the family, friends, witnesses and work colleagues by not repeatedly reliving the incident.

Responsibilities and powers - Queensland Police Service

Members of the QPS have extensive investigative powers which are coupled with corresponding responsibilities. These powers and responsibilities are conferred under various pieces of legislation, predominately the *Police Powers and Responsibilities Act 2000*, the *Police Powers and Responsibilities Regulation 2012* and the QPS Operational Procedures Manual.

Responsibilities and powers – Office of Industrial Relations

WHSQ inspectors have powers under s. 165 'General powers on entry' and s. 175 'Power to seize evidence etc.' of the *Work Health and Safety Act 2011* to enter a workplace incident site and search, inspect, remove items, make enquiries as required and to seize evidence.

ESO inspectors have powers under the *Electrical Safety Act 2002*, Part 11 'Securing compliance', Division 1 'Functions and powers of inspectors', Division 2 'Powers relating to entry', s. 141 and Division 4 'Serious electrical incident or dangerous electrical event', s. 143 and s. 144. Some WHSQ inspectors have powers under the *Electrical Safety Act 2002*.

If a site is not an established crime scene, OIR and QPS officers may exercise their respective entry and seizure powers.

Subject to the provisions of s. 14 'Helping public officials exercise powers under other Acts' of the *Police Powers and Responsibilities Act 2000*, an OIR officer may ask a QPS officer to help the OIR officer to perform their lawful functions. This help does not

extend to the process of conducting records of interview with any person suspected of breaching the *Work Health and Safety Act 2011* or the *Electrical Safety Act 2002*.

Aircraft and airfield incidents

Officers administering the *Work Health and Safety Act 2011* will not investigate incidents involving aircraft in flight mode (where the aircraft has commenced flight operations and has not successfully completed its planned flight).

WHSQ will only be involved in aircraft incidents associated with the general maintenance activities and incidents not associated with the safe operation of an aircraft.

QPS functions in relation to aircraft incidents are detailed in the QPS Operational Procedures Manual.

Diving incidents

Diving and snorkelling incidents, resulting in a serious bodily injury or serious illness including death, of a member of the public whose recreational water activities are provided by a person conducting a business or undertaking or a workplace must be immediately notified to OIR Assessment Services. Members of the public conducting recreational water activities provided by a person conducting a business or undertaking are covered by the *Safety in Recreational Water Activities Act 2011* which is administered by WHSQ.

The QPS also agrees that the QPS Officer-in-Charge of the Police Diving Unit, on receipt of diving equipment forwarded for the purposes of investigating a diving related death will liaise with WHSQ inspectors in relation to the testing of the seized equipment.

The QPS functions in relation to diving incidents are detailed in the QPS Operational Procedures Manual.

Electrical incidents

The QPS agrees that QPS officers who attend an electrical incident in a workplace or domestic premises where a person has been electrocuted will notify the OIR where the police officer believes that the OIR has not been notified.

The QPS functions in relation to electrical accidents including electrical incidents at domestic premises are detailed in the QPS Operational Procedures Manual.

Fire incidents

If the QPS has a reasonable belief that the fire may have been:

- of an electrical cause, or electrical involvement (either deliberate or accidental); or
- caused by hazardous chemicals, or involving hazardous chemicals (either deliberate or accidental)

then, subject to requirements of legislation and this MOU, the OIR will assist the QPS in:

- examination at the fire scene
- examination of electrical samples and/or hazardous chemical samples seized by the QPS
- evidence gathering, continuity of evidence and evidence analysis

- determination of cause of fire; and
- information sharing as required.

Once the QPS has ceased its fire scene investigation, the OIR may (subject to the requirements of any other MOU with other agencies) continue the investigation of breaches of OIR legislation. Subject to the requirements of legislation and this MOU, the QPS will assist the OIR in evidence gathering, continuity of evidence, evidence analysis, determination of the cause of fire and information sharing as required.

Proceedings

It is acknowledged that QPS and OIR have powers to initiate legal proceedings arising from a workplace or an electrical incident. In some instances, these proceedings may be commenced under the Criminal Code. On advice of the commencement of proceedings under the Criminal Code, OIR officers will liaise with the QPS concerning the temporary suspension of the work health and safety or electrical safety investigation until those proceedings have concluded. It is acknowledged that, notwithstanding the commencement of proceedings under the Criminal Code, the OIR may lay its complaint to ensure that prosecution timeframes are not compromised. QPS should inform the Office of the Work Health and Safety (WHS) Prosecutor of any decision by the QPS to commence proceedings under the Criminal Code.

The OIR is constrained by a two year statute of limitations for commencing legal proceedings or within one year after a coronial report, inquiry or inquest. Should the QPS commence proceedings arising from the same workplace or electrical incident, the OIR will inform the Office of the WHS Prosecutor about serving its summons and request the court to hold the matter over until the QPS case is completed.

The QPS and OIR, including the Office of the WHS Prosecutor, agree to inform each other of the status of the investigations and any proceedings that ensue.

Coronial Support

The OIR, will provide to the relevant coroner a report for each investigation into a reportable death that falls within its jurisdiction at the conclusion of the investigation. The OIR will assist the coroner, when requested, in matters that fall within the jurisdiction of the legislation it administers.

If required the QPS will provide the Coronial Liaison Officer (CLO) in the OIR access to a coronial document for the purpose of investigation or prosecution under s. 54(5) of the *Coroners Act 2003*.

Entry to Queensland Police Service workplaces

From time to time OIR officers may be required to exercise their powers in QPS workplaces. The QPS will facilitate appropriate security arrangements for OIR inspectors. The OIR agrees wherever possible, to ensure their inspectors make direct contact with the Officer in charge of the relevant QPS workplace prior to exercising their powers.

Part 5 – Disputed entry issues

At times the QPS may be called to disputes about a right of entry to a workplace regarding health and safety matters.

The QPS agrees to notify OIR of disputes involving entry to a workplace promptly. This will enable the matter to be dealt with appropriately by an inspector with their expert understanding of WHS laws, and to, ideally, de-escalate tensions on site.

Right of entry powers - summary

The *Work Health and Safety Act 2011* gives WHS entry permit holders (employee organisations/trade unions) right of entry powers to allow them to make contributions to work health and safety outcomes in workplaces.

Under Part 7, a WHS entry permit holder may enter a workplace for the following purposes that relate to, or affect, a relevant worker:

- to enquire into a suspected contravention of the *Work Health and Safety Act 2011* (WHS Act) that relates to, or affects, a relevant worker (see section 117); or
- to inspect employee records or information held by another person (see section 120); or
- to consult on work health and safety matters with, and provide advice on those matters, to one or more relevant workers who wish to participate in the discussions (see section 121).

WHS entry permit holders are authorised to exercise these powers under both state and federal laws if they hold the appropriate identification card or permit.

Entry to investigate suspected work health and safety contraventions extends to electrical safety-related contraventions, even though this area of health and safety is dealt with by the separate *Electrical Safety Act 2002*, not the *Work Health and Safety Act 2011*.

It is important that WHS entry permit holders are not constrained in exercising their powers under the WHS Act as they may have received information about possible contraventions of the WHS Act provided confidentially by workers and be attempting to prevent dangerous work practices that present immediate risks to those at the worksite.

It is an offence for a person conducting a business or undertaking to obstruct a WHS entry permit holder in the exercise of their power, unless the person has a reasonable excuse for the obstruction.

If a dispute arises about right of entry by a work health and safety entry permit holder, any party to the dispute can ask for an inspector to be appointed to assist in resolving the dispute.

Entry under section 81(3) or 68(g)

Rights to enter a workplace exist under two other areas of the WHS Act. Entry by a representative of a party to a WHS issue may occur under section 81(3) of the WHS Act for the purposes of assisting to resolve the issue, and also to assist a health and safety representative (HSR) under section 68(2)(g) of the WHS Act. External parties attempting to enter a workplace under s81(3) and s68(2)(g) are not required by Queensland's WHS Act to hold a permit although an official of an organisation (under the *Fair Work Act 2009*) is required to hold a Federal permit.

External parties who are officials of state based organisations, such as employees of the Construction, Forestry, Maritime, Mining and Energy Union Queensland (CFMEUQ), are not captured by the *Fair Work Act 2009* and are not required to hold a federal entry permit.

Where external parties attempt to enter a workplace because they have been called to assist in resolving a WHS issue or to assist an HSR with their functions (s.81(3) and s.68(2)(g)), but are denied entry by the occupier, the WHS Act enables the parties to ask the WHS regulator to appoint an inspector to assist in resolving the matter. The external parties could include union officials or other health and safety experts.

Queensland Police Service assistance

In all circumstances in which the QPS is called to attend a disputed entry to worksites for work health and safety matters, the QPS should notify OIR of the dispute.

The QPS should follow the expert advice of OIR as to the operation of the WHS Act. This approach will enable the matter to be appropriately dealt with by a Workplace Health and Safety Inspector appointed under the WHS Act.

QPS will undertake relevant enquiries with the WHSQ inspector/s, the workplace and the union official/s to enable them to be in a position to make a determination in relation to relevant matters.

QPS's role will involve:

- Instigating necessary actions to keep the peace
- Reinforcing and giving necessary directions to relevant parties to support lawful directions and requirements issued by WHSQ inspectors

A Guide has been prepared to assist QPS and OIR officers to cooperate and resolve disputed entry to worksites for WHS matters. The guide includes contact details for relevant OIR officers and is at schedule 3 of this MOU.

Part 6 - Governance

Ownership of the Memorandum of Understanding

The agencies to which this MOU applies acknowledge that the Department of Education is the owner of this MOU.

Term of Memorandum of Understanding

This MOU will commence on and be effective from the date of execution by all parties and will continue in force until terminated by the parties.

This MOU supersedes and replaces any previous MOU or agreements regarding the conduct of investigations into workplace and electrical incidents between the OIR and the QPS.

Maintenance, review and evaluation of Memorandum of Understanding

This MOU may be varied or withdrawn at any time by an agreement in writing executed by the parties.

The parties agree to maintain the currency of this MOU as required.

Minor information updates which do not affect the operation or validity of the MOU may be undertaken at any time with the updated information forwarded to the other party

and appended to this MOU. For example, updating the contact details listed in Schedule 2.

The parties agree to review and evaluate the operation of the MOU within three years of its commencement. Following the evaluation, the parties will, where appropriate or necessary, develop mechanisms to discuss, share observations and improve the MOU and/or ways in which the parties are operating under the MOU.

Availability of Memorandum of Understanding

The parties agree to circulate the signed MOU to all affected officers in their respective agencies.

The parties agree to publish the signed MOU on their respective web sites.

Resolution of issues regarding the application of the Memorandum of Understanding

If there is an issue between agencies in relation to the application of the MOU, the parties will:

- firstly, ensure agency contact officers, listed in Schedule 2, use their best endeavours and act in good faith to resolve the issue in a timely manner
- secondly, if the issue(s) cannot be resolved in the first instance, the agency that has an issue with a component of the MOU refers the matter in writing to the relevant Chief Executive Officer of the other agency/s to which this MOU applies; and
- finally, in the event that the issue/s cannot be resolved to the satisfaction of each party, each party will refer the issue to its departmental Chief Executive Officer for timely resolution.

What is not intended

This MOU is not intended to:

- be legally binding, so that an alleged or real breach of any provision of this agreement is not intended to give rise to a legally enforceable cause of action;
- entitle or require a person to disclose information that is the subject of legal professional privilege;
- affect the law or practice relating to legal professional privilege; or
- restrict the statutory duties, directions and powers available to Queensland government agencies that are responsible for investigation into workplace and electrical incidents.

Interdepartmental cooperation

Each party agrees that:

- subject to any intervention or direction by QPS and/or Emergency Services, the agency receiving the incident notification is to immediately make attempts to secure the scene, so long as it is not likely to pose a serious threat of death or injury to the attending officers
- the agency receiving the incident notification is to advise the other agencies in writing as soon as practicable if it intends investigating an incident that is subject to this MOU
- the agencies will cooperate, where possible, to ensure timely and accurate outcomes to the investigations when more than one agency is involved

- each agency may provide, upon request from another, technical assistance where specialist skills and knowledge may be required
- where any agency issues a notice under an Act, or issues written directions and the notices or directions may be of interest to the other agency, a copy of that notice or written direction shall be forwarded to that agency; and
- the agencies agree to keep each other fully and freely informed on the progress of an investigation which may fall either wholly or partially within their respective jurisdictions, when requested.

The coordinating officers appointed by each agency for the incident are to:

- take responsibility for passing on all relevant information when requested, subject to legislative provisions, to the other agency in relation to any investigation of interest
- work together on those matters, subject to legislative provisions, to ensure an outcome consistent with legislation
- inform the other agency in writing when a decision is made to relinquish involvement in an investigation where a matter is more appropriately dealt with by the other agency; and
- when an incident investigated by one agency results in the need for enforcement action, the agency will advise the other agency of its intention to take action.

In the event of a notifiable incident, a dangerous electrical event or a serious electrical incident the agencies agree to appoint a lead agency, where relevant, and to liaise with each other with respect to any planned investigations regarding these incidents. The coordinating officers will work together to ensure that each agency is managing resultant actions in accordance with its role and responsibilities.

Media releases


There will be no media releases without the express agreement of the parties.

Signatories



**Signed for and on behalf of
the Queensland Police Service by
Mr Paul Taylor
Deputy Commissioner (Regional Queensland)**

Dated this 20th day of April 2022



**Signed for and on behalf of
Department of Education by
Tony James
A/Deputy Director-General (Office of Industrial Relations)**

Dated this 14 day of March 2022

SCHEDULE 1

DEFINITIONS

For the purposes of this MOU the following terms apply. However, if a term in this Schedule is defined by legislation, the definition in the relevant legislation, as amended from time to time, prevails over the definition in this Schedule.

‘Dangerous electrical event’, under the *Electrical Safety Act 2002*, is any of the following—

- (a) the coming into existence of circumstances in which a person is not electrically safe, if—
 - (i) the circumstances involve high voltage electrical equipment; and
 - (ii) despite the coming into existence of the circumstances, the person does not receive a shock or injury;
- (b) the coming into existence of both of the following circumstances—
 - (i) if a person had been at a particular place at a particular time, the person would not have been electrically safe; and
 - (ii) the person would not have been electrically safe because of circumstances involving high voltage electrical equipment;
- (c) an event that involves electrical equipment and in which significant property damage is caused directly by electricity or originates from electricity;
- (d) the performance of electrical work by a person not authorised under an electrical work licence to perform the work;
- (e) the performance of electrical work by a person if, as a result of the performance of the work, a person or property is not electrically safe;
Examples for paragraph (e)—
 - the connection of electrical equipment to a source of supply involving incorrect polarity or other incorrect connection; and
 - the performance of electrical work as a result of which an exposed wire is left in circumstances in which it can be energised by the operation of a switch or circuit breaker or the insertion of a fuse;
- (f) the discovery by a licensed electrical worker of electrical equipment that has not been marked as required under this Act.

Form 1 is the form used by the QPS to advise the coroner of a reportable death under the *Coroners Act 2003*.

‘Memorandum of Understanding’ means this MOU document, including the protocols and schedules incorporated in this document.

‘Notifiable incident’, under the *Work Health and Safety Act 2011* means:

- (a) the death of a person; or
- (b) a serious injury or illness of a person; or
- (c) a dangerous incident.

In further explaining this definition, a ‘serious injury or illness’ of a person means an illness or injury requiring the person to have:

- (a) immediate treatment as an in-patient in a hospital; or
- (b) immediate treatment for —
 - (i) the amputation or any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or

- (iv) a serious burn; or
- (v) the separation of his or her skin from an underlying tissue (for example, degloving or scalping); or
- (vi) a spinal injury; or
- (vii) the loss of a bodily function; or
- (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance.

and a 'dangerous incident' means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to health or safety emanating from an immediate or imminent exposure to –

- (a) an uncontrolled escape, spillage or leakage of a substance; or
- (b) an uncontrolled implosion, explosion or fire; or
- (c) an uncontrolled escape of gas or steam; or
- (d) an uncontrolled escape of a pressurised substance; or
- (e) electric shock; or
- (f) the fall or release from a height of any plant, substance or thing; or
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use under the *Work Health and Safety Regulation 2011*; or
- (h) the collapse or partial collapse of a structure; or
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel.

'Serious electrical incident', under the *Electrical Safety Act 2002*, means an incident involving electrical equipment if, in the incident—

- (a) a person is killed by electricity; or
- (b) a person receives a shock or injury from electricity, and is treated for the shock or injury by or under the supervision of a doctor; or
- (c) a person receives a shock or injury from electricity at high voltage, whether or not the person is treated for the shock or injury by or under the supervision of a doctor.

SCHEDULE 2

CONTACT DETAILS

	Contact Officer	Coronial Liaison Officer	Incident notification
Queensland Police Service www.police.qld.gov.au	Inspector, Assistant to the State Coroner Brisbane Magistrates Court Lvl 1 363 George St Brisbane 3006 2501	Organisational Improvement Unit, Police Headquarters 200 Roma St Brisbane 3364 6898	Principal Health and Safety Advisor Level 2 30 Makerston Street Brisbane 3015 5685I
Workplace Health and Safety Qld www.worksafe.qld.gov.au and Electrical Safety Office www.electricalsafety.qld.gov.au	Principal Advisor, Office of Industrial Relations Phone 1300 632 987 Whsq.aaa@oir.qld.gov.au	Director , Coronial and Enforceable Undertakings Services Office of Industrial Relations Phone (07) 34069980 / 0466 027 117 ohscoronialliaison@oir.qld.gov.au	1300 362 128 For emergencies where death or serious injury occur as a result of electric shock ring (07) 3406 6884.

SCHEDULE 3

GUIDE ON ENTRY TO WORKSITES FOR WORK HEALTH AND SAFETY MATTERS

Purpose

The purpose of this guide is to assist Queensland Police Service (QPS) officers who are called regarding a disputed entry to worksites for WHS matters

Officers attending a workplace dispute

Officers should not force entry into a worksite or become involved in the dispute unless there is:

- an apparent danger to a person or persons; or
- to prevent riots or breaches of the peace or of law.

Assisting an occupier remove a person/s from a workplace

Officers may only assist an occupier to remove a person from a workplace if:

- the Office of Industrial Relations (OIR) advises that the persons have no legal authority to be on the premises; or
- the person is committing an offence (e.g. behaving in a disorderly manner).

For further assistance, officers should refer to section 13.17.3: Trespass (Industrial disputes) of the OPM.

Helping public officials exercising a power

Upon request from a Public officer, an officer may assist the official if:

- the officer establishes the public officer is a public official under the authorising law; and
- the public officer explains the powers the public official has under the authorising law

In these circumstances QPS will give necessary directions to relevant parties to comply with WHS inspectors' powers and requirements under the WHS Act.

Further, QPS will issue necessary warnings to those not complying with a lawful request under both the WHS legislation and QPS legislation.

QPS will initiate all steps with a view to keeping the peace and will only use force in circumstances where parties are:

- Failing to keep the peace;
- Obstructing lawful requests; or
- Committing an offence under the Criminal Code etc.

(see s. 13.3.2: Helping public officials exercise powers under various Acts of the OPM).

The OIR, as part of its responsibilities, is empowered through its inspectorate to ensure work health and safety compliance and respond to incidents at worksites under the *Work Health and Safety Act 2011* (WHS Act 2011).

What should you do?

In all circumstances in which the QPS is called to attend a disputed entry to worksites, the QPS will notify OIR of the dispute. Where practicable, the QPS should notify OIR of the dispute before attending the site. The QPS should follow the expert advice of OIR as to the operation of the WHS Act 2011.

Until such time as the OIR provide advice to the QPS, the QPS will attempt to keep the peace between the parties. This approach will enable the matter to be appropriately dealt with by a Workplace Health and Safety Inspector appointed under the WHS Act 2011. Further, this approach will ensure QPS resources are not wasted on matters that fall within the jurisdiction of OIR.

The following representatives of OIR are first points of contact for these matters:

- Marc Dennett Executive Director, WHS Compliance and Field Services
0477 306 458
- Helen Burgess Director, Construction Compliance and Field Services
0481 014 901

Entry to workplaces under the *Work Health and Safety Act 2011*

There are a number of mechanisms under the *Work Health and Safety Act 2011* (the WHS Act) that enable entry to a workplace by an external representative. These are as follows.

1. A Work Health and Safety (WHS) Entry Permit Holder exercising their right of entry powers may enter under sections 117, 120 and 121, Part 7 of the WHS Act.

A WHS entry permit holder may enter a workplace for the following purposes that relate to, or affect, a relevant worker:

- to enquire into a suspected contravention of the WHS Act;
- to inspect employee records or information held by another person; or
- to consult on WHS matters with, and provide advice on those matters, to one or more relevant workers who wish to participate in the discussions.

WHS entry permit holders are authorised to exercise these powers under both state and federal laws, if they hold the appropriate identification card or permit. It is important that WHS entry permit holders are not constrained in exercising their powers under the WHS Act as they may have received information about possible contraventions of the WHS Act provided confidentially by workers and be attempting to prevent dangerous work practices that present immediate risks to those at the worksite.

Entry to investigate suspected work health and safety contraventions extends to electrical safety-related contravention, even though this area of health and safety is dealt with by the separate *Electrical Safety Act 2002*, not the *Work Health and Safety Act 2011*.

- 2. Entry by a representative of a party to a WHS issue may occur under section 81(3) of the WHS Act for the purposes of assisting to resolve the issue.**
- 3. Entry to assist a health and safety representative (HSR) may occur under section 68(g) of the WHS Act.**

Where external parties attempt to enter a workplace because they have been called to assist in resolving a WHS issue or to assist a HSR with their functions (s81(3) and s68(g)), but are denied entry by the occupier, the WHS Act enables the parties to ask the WHS regulator to appoint an inspector to assist in resolving the matter. WHS inspectors are empowered to exercise any of their compliance powers under Part 10 of the WHS Act to assist in resolving the dispute.

This includes assisting to facilitate entry to a workplace where failure to allow entry has occurred. External parties attempting to enter a workplace under s81(3) and s68(g) are not required by Queensland's WHS Act to hold a permit although they are required to hold a federal permit.

External parties who are officials of state based organisations, such as CFMEUQ employees, are not captured by the *Fair Work Act 2009* and are not required to hold a federal entry permit

Under the WHS Act 2011 there exists appeal mechanisms for all parties in relation to decisions made and notices issued by Workplace Health and Safety inspectors.