

# Electrical Safety and Other Legislation Amendment Bill 2024

## Explanatory Note

### Short title

The short title of the Bill is the Electrical Safety and Other Legislation Amendment Bill 2024.

### Policy objectives and the reasons for them

The objectives of the Bill are to give effect to a suite of recommendations from the following reviews of Queensland's safety frameworks:

- *Review of Queensland's Electrical Safety Act 2002* (ES Act Review)
- *2022 Review of the Work Health and Safety Act 2011* (WHS Act Review)
- *2024 Review to examine the scope and application of the industrial manslaughter provisions in the WHS Act* (Industrial Manslaughter Review)
- *2018 Review of the Model Work Health and Safety Laws* (Boland Review), and
- *2017 Best Practice Review of Workplace Health and Safety Queensland* (BPR).

The Bill amends the *Electrical Safety Act 2002* (ES Act), the *Work Health and Safety Act 2011* (WHS Act), the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and consequentially the *Electrical Safety Regulation 2013* (ES Regulation).

### ES Act

#### ES Act Review

The ES Act Review was completed in December 2021 and made 83 recommendations which are comprised of over 150 sub-recommendations. The purpose of the ES Act Review was ultimately to ensure Queensland's electrical safety legislative framework keeps pace with new and emerging technologies and continues to provide high standards of safety for workers and the community.

Aligned with the ES Act Review's purpose, in May 2023, a Discussion Paper was made available for public consultation that focused on three key topics grouped from the review's recommendations: 'electrical safety considerations of new and emerging technologies,' 'the changing landscape of electricity and the workforce' and 'electrical safety and electric vehicles.'

These three topics contemplated the emergence of new electrical technologies and the ongoing suitability of core definitions in the ES Act, namely: electrical equipment, electrical installation and electrical work. Upon publication of the Discussion Paper, a six-week public consultation period commenced. In response to the Discussion Paper a total of 78 submissions were received from a range of registered unions, employers, electricity entities, peak bodies, government agencies and individuals. A thematic analysis of submissions was performed, alongside further policy and economic analysis of options outlined in the Discussion Paper, to inform the development of a Decision Paper.

In January 2024, a Decision Paper was published nominating the preferred course of action for each of the issues contemplated in the Discussion Paper. The Decision Paper indicated amendments to the ‘electrical equipment’ and ‘electrical installation’ definitions should be progressed immediately to reflect the current technological landscape in Queensland. The Bill gives effect to these legislative outcomes from the Decision Paper.

In addition to consultation on the Discussion Paper, in May 2023, the ES Act Review Final Report was published with public submissions invited in response to the remaining recommendations. Public submissions and further policy analysis informed an updated Government Response to the Final Report which was published in January 2024. The updated Government Response indicated whether recommendations were:

- supported in-principle;
- considered by the Discussion Paper;
- for active scoping and consideration by Government; or
- for further consideration.

## **WHS Act and SRWA Act**

The objectives of the amendments to the WHS Act are to implement three recommendations of the WHS Act Review, recommendations from the Industrial Manslaughter, recommendation 23a from the Boland Review and recommendation 38 from BPR.

### WHS Act Review

Two recommendations implemented in the Bill relate to allowing health and safety representatives (HSRs) and entry permit holders (EPHs) to take photos, videos, measurements and to conduct tests at the workplace. This complements other WHS Act Review recommendations implemented through the *Work Health and Safety and Other Legislation Amendment Act 2024* to strengthen the role of HSRs, enhance representation of workers and clarify the powers of HSRs and EPHs in fulfilling their roles under the WHS Act.

The WHS Act Review also recommended a review of the scope and application of industrial manslaughter provisions in the WHS Act. The Work Health and Safety Prosecutor (WHS Prosecutor) completed the Industrial Manslaughter Review in February 2024 and made three recommendations to improve and strengthen the industrial manslaughter offence and provide for alternative verdicts.

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### Industrial Manslaughter Review

Implementation of the Industrial Manslaughter Review recommendations will strengthen and modernise the industrial manslaughter offence and support recommendations for a nationally consistent industrial manslaughter framework made by the Commonwealth's Senate Standing Committee on Education and Employment report: *They never came home – the framework surrounding the prevention, investigation, and prosecution of industrial deaths in Australia: October 2018* and the Boland Review.

### Boland Review

The Bill amends section 31 of the WHS Act by introducing the fault element of negligence, in addition to recklessness, into the Category 1 offence (Boland Review recommendation 23a). Implementing recommendation 23a progresses a Government Election Commitment to adopt the Boland recommendations into Queensland legislation.

As the Category 1 offence in the WHS Act is mirrored in the SRWA Act, the Bill also amends the Category 1 offence in the SRWA Act to include the fault element of negligence.

### BPR

The BPR was commissioned as a result of tragic fatalities at Dreamworld and Eagle Farm. Following the delivery of the final report in July 2017, all recommendations from the BPR, including recommendation 38 but excluding two others which were referred for further consideration by the Work Health and Safety (WHS) Board, were supported in full by government. The Bill gives effect to recommendations 38(b) and (c) which were recommended in response to concerns about the quality of training of High-Risk Work (HRW) licence applicants by Registered Training Organisations (RTOs).

## **Achievement of policy objectives**

To achieve its policy objectives, the Bill will amend the ES Act to:

- amend the definition of 'electrical equipment' to include 'prescribed electrical equipment' where the equipment is placing or may place persons or property at an electrical risk;
- clarify that the definition of 'electrical installation' captures modern energy generation and storage systems;
- clarify the ability of the Electrical Licensing Committee to include a condition or restriction in a licence as a form of disciplinary action;
- clarify the ability of the Electrical Licensing Committee to change or remove a condition or restriction in a licence;
- amend inspector powers to require the production of documents and answers to questions over longer timeframes in line with the WHS Act;
- reflect the WHS Prosecutor's role under the ES Act;
- remove a redundant requirement to keep information separately in the regulator's database for the Electrical Equipment Safety System (EESS) to reflect contemporary practice;

- amend the definition of ‘in-scope electrical equipment’ to prescribe by regulation the voltage range of the equipment and where an item is not ‘in-scope electrical equipment’;
- clarify the definition of ‘corresponding law’ for application in the ‘in-scope electrical equipment’ framework by creating a head of power to prescribe corresponding laws;
- clarify the replacement of a similar appliance in particular circumstances is not electrical installation work; and
- correct an error in section 32(3) of the ES Act where reference is made to the incorrect subsection.

In addition to amendments to the ES Act, the Bill makes amendments to the WHS Act and SRWA Act to:

- include negligence as a fault element of the Category 1 offence in the WHS Act and the SRWA Act;
- expand the scope of the industrial manslaughter offence to capture negligent conduct leading to the death of individuals (e.g., bystanders/other persons) to whom a health and safety duty is owed;
- remove ambiguity around whether multiple parties in a contractual chain can be charged with the crime of industrial manslaughter;
- provide for alternative verdicts for industrial manslaughter and Category 1 offences;
- allow HSRs and EPHs to take photos, videos, measurements and to conduct tests at the workplace;
- ensure the regulation-making power allows regulations to be made to provide the Work Health and Safety Regulator with the ability to regulate the quality of authorisation training delivered by RTOs in Queensland; and
- clarify the interaction of provisions in the WHS Act and Work Health and Safety Regulation 2011 (WHS Regulation) with the Commonwealth *National Vocational Education and Training Regulator Act 2011* (the NVETR Act) through the use of exclusionary and displacement provisions for the purposes of sections 10 and 11 of the NVETR Act to ensure the concurrent operation of the WHS Act, WHS Regulation and the NVETR Act in relation to their respective purposes.

Amendments contained in the Bill, and how these amendments achieve policy objectives, are detailed below.

## **ES Act**

### ES Act Review

#### *Electrical equipment*

Informed by recommendations from the ES Act Review and outcomes from the Discussion Paper public consultation process, the Decision Paper identified electrical risks posed by particular new and emerging extra low voltage technologies are currently outside of the scope of the electrical safety framework. The Decision Paper proposed where, extra low voltage equipment is placing or may place persons or property at an electrical risk, the equipment should be brought into the remit of the Queensland’s electrical safety legislative framework.

The Bill amends the definition of ‘electrical equipment’ to include equipment at extra low voltage where it meets a particular risk threshold and is prescribed by regulation. This threshold is met if the equipment is placing or may place persons or property at an electrical risk. Termed ‘prescribed electrical equipment,’ the Bill introduces a head of power to prescribe extra low voltage equipment, where it meets the risk threshold, in the ES Regulation. This risk-based approach will enhance Queensland’s electrical safety legislative framework by increasing its responsiveness to risks posed by extra low voltage equipment that have previously been out of scope. The Bill consequentially ensures that extra low voltage equipment that forms part of a vehicle, including equipment that provides propulsion for a vehicle, can be prescribed electrical equipment. Given this exclusion is limited to extra low voltage equipment, it could, for example, apply to the propulsion systems of vehicles such as e-scooters, electric skateboards, e-bikes or hoverboards, however, would not impact low voltage vehicle propulsion systems such as those in electric cars, electric trucks and electric buses.

By being brought into the remit of Queensland’s electrical safety legislative framework (ES Framework), the equipment will be subject to supply chain duties contained within Part 2, Division 2 of the ES Act. Broadly, these duties require designers, manufacturers, importers, suppliers and installers to ensure the electrical safety of the electrical equipment they design, make, import, supply or install. These duties include the requirement for suppliers to ensure the equipment is accompanied by information about the way the equipment must be used to ensure it is electrically safe, the requirement for manufacturers to ensure the equipment is electrically safe when made and the requirement for designers to ensure the electrical equipment is designed to be electrically safe. These duties provide vital safeguards; ensuring electrical equipment that enters the community is safe and is supplied with information about how the equipment must be used to ensure its continued use remains electrically safe.

Persons conducting a business or undertaking (PCBUs) will also be required to notify the ES Regulator of serious electrical incidents and dangerous electrical events involving prescribed electrical equipment. This new reporting will provide valuable insights to the Regulator and better visibility of emerging risks to the community. Crucially, prescribed electrical equipment will be able to be recalled by the Minister. These recall powers ensure that when a particular piece of prescribed electrical equipment is exposing the community to risk, a recall can be promptly initiated to protect Queenslanders from any loss of life, injury or damage to property.

With respect to ensuring basic tasks involving prescribed electrical equipment designed to be completed without specialised electrical expertise can continue to be completed by those in the community without electrical licences, amendments have been made to the ‘electrical work’ definition. These changes clarify which tasks are not electrical work and therefore do not need to be completed by a licensed electrical worker. The Bill clarifies connection and disconnection of prescribed electrical equipment with other extra low voltage equipment where the voltage does not exceed extra low voltage remains outside of the electrical licensing framework. Additionally, existing exclusions from the electrical work definition listed at section 18(2) will continue to apply, these include replacing of prescribed electrical equipment (or a component of prescribed electrical equipment) if that task can be safely performed by a person who does not have expertise in carrying out electrical work. Similarly, work on a non-electrical component of prescribed electrical equipment, if the person carrying out the work is not exposed to an electrical hazard, remains outside of the electrical licensing framework.

To support the extension of the electrical equipment definition to capture prescribed electrical equipment, the Bill also amends the definition of ‘appliance’ (section 13) to remove the criteria for an appliance to consume electricity at a voltage above extra low voltage. This amendment ensures appliances that consume electricity at extra low voltage can be prescribed as prescribed electrical equipment and therefore be brought into the remit of the ES Framework.

### *Electrical installation*

The Bill also implements changes to the ‘electrical installation’ definition. These changes are informed by outcomes of the ES Act Review and consequential Discussion Paper process which identified that the definition was no longer fit for purpose in the contemporary technological environment. The Bill amends ‘electrical installation’ to clearly capture new and emerging energy generation and storage systems, previously not contemplated when the definition was drafted in 2002.

The changes clarify an electrical installation includes a group of permanently connected electrical equipment that is powered by a battery or other storage technology. This change provides much needed clarity to industry and reflects the current and emerging technological environment.

The Bill also clarifies an electrical installation includes a group of permanently connected electrical equipment that generates electricity. While most solar farms in Queensland are classed as generation entities, on the basis of their significant generation capacity and therefore excluded from the definition of ‘electrical installation’, this change contemporises the definition to reflect the fact that energy generation is becoming more decentralised.

Through the Bill, clarity is also provided that work on these generating systems is electrical installation work and therefore requires an electrical mechanic licence to complete. These amendments also mean the application of regulatory requirements contained in Part 6 (Electrical installations) of the ES Regulation, such as the need for work on these systems to be compliant with *AS/NZS 3000:2018 Electrical Installations* (Wiring Rules), much more clearly apply.

### *Replacement of similar appliances*

The Bill clarifies ‘electrical installation work’ does not include the replacement of similar appliances in particular circumstances. By amending section 19, the Bill resolves ambiguity as to whether the replacement of similar appliances is electrical installation work and avoids the unintended consequences of restricting the replacement of similar appliances to licensed electrical mechanics. The amendment to section 19 provides sufficient clarity that this work can be completed by licensed electrical fitters and in particular circumstances restricted electrical licence holders, in addition to licensed electrical mechanics.

The amendment clarifies that a number of circumstances must be met when replacing the appliance for the replacement to be considered ‘similar’ and therefore not ‘electrical installation work’. These circumstances are prescribed at Part 3, Division 3A of the ES Regulation by the Bill and include:

- the similar appliance must have the same voltage rating;
- the current and power ratings of the similar appliance must not be greater than the old appliance;
- the similar appliance must perform the same function in the same way as the old appliance;

- the similar appliance has electrical characteristics that are the same as or better than the electrical characteristics of the old appliance;
- the old appliance is not part of an electrical installation located in a hazardous area.

Sectional definitions are inserted for current rating, power rating and voltage rating.

In practice, this change could provide for the replacement of a stove where the electrical ratings of the replacement stove match the old stove by a licensed electrical fitter; offering an alternative to repair for licensed electrical fitters where repair is unfeasible or uneconomical.

A definition for hazardous area is included Schedule 9 (Dictionary).

#### *Clarifying the disciplinary powers of the Electrical Licensing Committee*

The Electrical Licensing Committee (the Committee) is empowered to take disciplinary action under section 109 of the ES Act against a holder of an electrical work licence and electrical contractor licence. Amongst other disciplinary actions, the Committee can suspend a licence for a period of time determined by the Committee or until conditions decided by the Committee are complied with. Typically, the condition is an identified training course, examination or audit.

The ES Act Review identified that circumstances exist where the breach that the disciplinary action is responding to could be minor and therefore an immediate suspension unfairly impacts the livelihood of the worker. Further, some of the training courses the Committee determine to be appropriate as a disciplinary action requires the person to hold an active licence in order to undertake the course.

The Bill ensures that the Committee may include or change a condition or restriction in a licence as a form of disciplinary action under section 109, without also requiring the suspension of the licence. The intention of this amendment is for the Committee to deliver proportionate disciplinary action to the circumstances before them, reduce disproportionate impacts to licence holders and ensure the licence holder is able to complete the conditions as directed.

The Bill consequentially amends section 110 to provide a similar disciplinary power in respect to the external licence recognition provision's application to an external licence.

In line with other requirements under section 57AC, licence holders will be required to notify a PCBU that they are engaged to perform or supervise electrical work for (the relevant person), that a condition or restriction has been included or changed in their licence.

The Bill also inserts a mechanism to allow for the Committee to change a condition or restriction in the licence on application by the person, or at the Committee's own initiative, to the benefit of the licence holder. This could include, for example, extending the amount of time for the licence holder comply with a condition if there has been extenuating circumstances which have meant the condition could not be complied with in the original timeframe. The Committee is also empowered to remove a condition or restriction in the licence where the Committee is satisfied that the condition has been complied with; or the condition or restriction is no longer appropriate.

*Aligning powers of inspectors to require the production of documents and answers to questions with the WHS Act*

Following the BPR, Queensland amended the WHS Act to provide the power for an inspector, or for any other inspector, to request the provision of documents and answers to questions 30 days after an inspector first enters a place.

In 2018, the Boland Review made changes to the model WHS laws to introduce the concept of audio and audio-visual links which can be used for conducting interviews under section 171 of the model WHS laws. Queensland aligned with the model laws in 2024 through amendments contained in the *Work Health and Safety and Other Legislation Amendment Act 2024*.

The ES Act was not amended at the same time as Queensland's work health and safety legislation and therefore inspectors utilising electrical safety legislation are limited to exercising powers singularly and only whilst on site. As such, the ES Act Review recommended aligning the powers for inspectors under the ES Act and WHS Act to ensure greater consistency between the two Acts and provide greater clarity for inspectors. The change also increases the effectiveness and efficiency of investigations, particularly in regional or remote workplaces, so that the inspector does not need to re-enter a worksite to re-enliven their ability to conduct interviews or request information. To achieve this, the Bill amends section 141 of the ES Act to provide that inspector powers align with those under the WHS Act with further consequential amendments being made to section 141B to provide for the information contained in notices provided in section 141.

*Reflecting the role of the WHS Prosecutor in the ES Act*

The WHS Prosecutor is established under the WHS Act and is empowered to bring prosecutions under other Queensland safety legislation. Under the ES Act, the WHS Prosecutor is authorised and delegated functions, including an authorisation to bring proceedings. In considering the role of the WHS Prosecutor, the ES Act Review made several recommendations aimed at accurately reflecting the WHS Prosecutor's role under the ES Act.

The Bill replaces references from 'regulator' to 'WHS Prosecutor' in reflection of the WHS Prosecutor's role in bringing prosecutions under the ES Act. Further, the Bill also provides that the WHS Prosecutor may authorise a qualified member of their staff to bring proceedings under the Act. Additionally, consequential amendments are made by the Bill to other sections to reflect the role of the WHS Prosecutor including at section 186A which prescribes the procedure if prosecution is not brought. A further consequential amendment is made to section 186B which prescribes the limitation period for prosecutions. This amendment clarifies proceedings for an offence under the ES Act may be taken within 2 years after the offence first comes to the notice of the WHS Prosecutor, as opposed to the ES Regulator.

These amendments are intended to reflect the role of the WHS Prosecutor under the ES Act, align with provisions in other Queensland safety legislation and increase the operational efficiency of the Office of the WHS Prosecutor.



### *Clarifying changes for EESS*

The ES Act Review identified several areas of reform in relation to Queensland's implementation of the EESS framework.

### *Corresponding law*

The Bill amends the ES Act to provide a clearer definition of 'corresponding law' for the EESS framework by allows the prescription of corresponding laws from participating jurisdictions by Regulation. This change is intended to clarify that 'corresponding laws' are laws of participating jurisdictions in the EESS which mitigates the risk of any misinterpretation.

### *In-scope electrical equipment*

Queensland's definition of 'in-scope electrical equipment' lacks flexibility and does not provide the opportunity to be responsive to changes in technology. To create more flexibility in the framework, the Bill provides that, for 'in-scope electrical equipment,' the relevant voltage range is prescribed by regulation. In addition, to reduce the risk of equipment being inadvertently captured, the Bill provides for items to be specifically prescribed by regulation as *not* 'in-scope electrical equipment.' The changes in the Bill more closely align Queensland with the Victoria's definition of 'in-scope electrical equipment' which provides more flexibility in relation to these matters.

### *Record keeping requirements*

The Bill removes the requirement which required two pieces of information to be kept separately in the regulator's electronic database. This is now redundant as the database has been updated. The two relevant pieces of information are: a) in relation to responsible suppliers, level 2 and 3 in-scope electrical equipment, and b) information about certificates of conformity and other matters. This requirement is now out of date and redundant due to the change in the structure of the regulator's electronic database.

## **WHS Act and SRWA Act**

### Boland Review

#### *Category 1 negligence offence*

Currently under the WHS Act, a person commits a Category 1 offence if they have a health and safety duty and, without reasonable excuse, expose an individual to whom they owe a duty to a risk of death, or serious injury or illness and are reckless as to the risk.

The Boland Review found that the threshold of reckless conduct is contributing to a low number of successful Category 1 prosecutions across WHS jurisdictions and recommended an additional fault element of gross negligence, or equivalent, be included in the Category 1 offence in the model WHS Act (Recommendation 23a).

The Bill includes ‘negligence’ in the Category 1 offence, rather than ‘gross negligence’. This is consistent with the terminology used in the industrial manslaughter offence in the WHS Act and means that the existing standard of criminal negligence will apply to both offences.

The intention is that Category 1 offences will address the most serious breaches where there is a high level of risk of serious harm and the duty holder was reckless or negligent in their conduct. Category 2 offences involve less culpability as there is no fault element and apply in circumstances where there is a high level of risk of serious harm from a failure to comply with a WHS duty.

The penalties for Category 1 offences are significantly higher, and unlike Category 2 offences, a prison term can be sought for a Category 1 offence committed by an individual. The level of sanctions reflects the seriousness of the offence and the culpability of the offender rather than being solely the outcome of non-compliance with a WHS duty as set out in the Category 2 offence.

The Bill also amends the SRWA Act to include the fault element of negligence in Category 1 offence for consistency across the mirrored offence frameworks.

### Industrial Manslaughter Review

*Expanding the scope of the offence to capture the death of other persons (Industrial Manslaughter Review Recommendation 1)*

The Bill expands the scope of the industrial manslaughter offence in the WHS Act to capture the negligent deaths of individuals (that is, workers and ‘bystanders’ or other persons). It will be an offence if the negligent conduct of a PCBU or senior officer causes the death of an individual to whom the PCBU or senior officer owes a health and safety duty. Currently, the industrial manslaughter offence is limited to negligent conduct causing the death of workers.

Since Queensland introduced the industrial manslaughter offence into the WHS Act in October 2017, the majority of WHS jurisdictions, except for New South Wales and Tasmania, have introduced an industrial manslaughter offence in their WHS laws. In all other jurisdictions, the offence applies to circumstances that result in the death of an individual to whom a health and safety duty is owed. This means ‘other persons’, such as members of the public, are within the scope of the offence if a work health and safety duty applies to them.

Capturing ‘other persons’ in the industrial manslaughter offence will bring Queensland’s industrial manslaughter laws in line with those in other jurisdictions in Australia.

Similar to other jurisdictions, capturing ‘other persons’ in the industrial manslaughter offence ensures the offence applies to all circumstances where an individual is owed a health and safety duty and negligent conduct causes the death of the individual. For example, this could include a member of the public killed by the collapse of scaffolding onto a public area or a visitor to a warehouse who is struck and killed by a forklift.

The amendment is consistent with the object of the WHS Act which includes ‘protecting other persons against harm to their health and safety through the elimination or minimisation of risks from work’, as well as the primary duty of care in section 19(2) of the WHS Act which requires PCBUs to ensure that the health and safety of other persons is not put at risk from work carried out, so far as is reasonably practicable.

In linking the offence to individuals to whom a health and safety duty is owed, it should be noted that the primary duty of care for the health and safety of other persons under section 19(2) is not limited to hazards at workplaces during normal business hours. The explanatory notes for the Work Health and Safety Bill 2011 clarify that a place does not cease being a workplace simply because there is no work being carried out at a particular time. There is no requirement for an immediate temporal connection between the place or premises and the work to be performed. For example, this means that a shearing shed used for shearing only during the few weeks of the shearing season does not cease to be a workplace outside of the shearing season. Similarly, a department store does not cease to be a workplace when it is closed overnight.

In February 2015, a construction company was found guilty of a Category 2 offence while owing a duty under section 19(2) of the WHS Act in these circumstances. A member of the public was seriously injured in an incident that occurred on the site of construction work on a day and time when no work was being undertaken at the site.

Capturing ‘other persons’ will ensure that negligent work-related deaths of other persons can be treated with the same level of seriousness as the negligent death of workers and allow sentencing judges to have the appropriate scope to adequately deal with the worst examples of corporate or individual behaviour that leads to the death of other persons.

The penalties for offences involving ‘other persons’ will be the same as the current penalties for fatalities involving workers, that is, a maximum custodial sentence for an individual of 20 years and a maximum fine for a body corporate of \$10 million.

*Clarifying that multiple parties in a contractual chain can be charged with the crime (Industrial Manslaughter Review Recommendation 2)*

The amendments in the Bill remove ambiguity around the culpability of multiple parties in a contractual chain. This addresses concerns raised during the Industrial Manslaughter Review that the current wording “carrying out work *for the business or undertaking*” limits the application of the offence because it needs to be proven beyond reasonable doubt that the worker died in the course of carrying out work for the PCBU who has been charged with the offence.

*Alternative verdicts to industrial manslaughter (Industrial Manslaughter Review Recommendation 3)*

Currently, there is no alternative verdict to industrial manslaughter in the WHS Act. In deciding whether to take a case of industrial manslaughter, the WHS Prosecutor must consider whether a jury is likely to be satisfied beyond reasonable doubt that the person is guilty of an industrial manslaughter offence, otherwise the outcome can result in the defendant being acquitted despite evidence of culpability in the offence. This situation causes distress for the family, friends, and community of the person fatally injured.

The Bill amends the WHS Act to provide for alternative verdicts of a Category 1 or Category 2 offence. This ensures that where a verdict of industrial manslaughter cannot be reached, the courts have the ability to find the defendant guilty of an alternative offence where this is supported by the evidence.

Providing alternative verdicts is largely consistent with other jurisdictions with an industrial manslaughter offence, with the exception of Victoria, and is consistent with the *Criminal Code 1899* where natural alternatives regularly feature.

For the purpose of alternative offences to industrial manslaughter, the limitation period for prosecutions for Category 1 and 2 offences, in section 232 of the WHS Act, will not apply. This is to ensure that alternative verdicts can be made even if the prosecution for industrial manslaughter commenced after the limitation period for prosecutions for the alternative offences.

#### *Other alternative verdicts*

The Bill also amends the WHS Act to provide for an alternative verdict for the Category 1 offence of a Category 2 offence in order to implement a more fulsome framework for alternative verdicts for the most serious offences in the WHS Act.

The alternative verdict framework provided in the Bill will support the work of the Office of the WHS Prosecutor in seeking the highest penalties available under the WHS Act for the most egregious circumstances involving work-related fatalities or the risk of fatality or serious injury or illness. Higher penalties can be sought with the knowledge that where the jury is not satisfied beyond reasonable doubt that the defendant is guilty of the offence they have been charged with, the offender can be found guilty, where the evidence supports it, of an alternative offence rather than being acquitted.

The table below sets out the alternative offences being implemented in the Bill.

<b>Offence</b>	<b>Alternative verdict</b>
WHS Act - Industrial manslaughter	Category 1 Category 2
WHS Act - Category 1	Category 2
SRWA Act - Category 1	Category 2

#### WHS Act Review

##### *Power of health and safety representatives and entry permit holders to take photos, videos, measurements and conduct tests*

During the WHS Act Review, stakeholders queried what activities fell within the term ‘inquiring’ in relation to the EPH’s role of inquiring into a suspected contravention of the WHS Act. Several activities considered common in workplace inquiries were identified as not being explicitly permitted by the WHS Act. Examples included information-gathering activities, such as using a smartphone to take photos or videos or using a noise meter or a dust monitor. In relation to these issues, parallels were drawn with section 89(1)(ba) of the *Occupational Health and Safety Act 2004* (Vic), which specifically allows for photos, measurements, sketches, and recordings to be taken or made at the workplace.

The WHS Act Review noted the preliminary view expressed in *Kirby v JKC Australia LNG Pty Ltd* [2015] FCA 1070, White J was that section 118 of the model WHS laws did not permit a WHS entry permit holder to take photographs.

The WHS Act Review considered there was merit in permitting EPHs to take photos or videos and use equipment, such as noise meters or dust monitors, to inquire into suspected contraventions of the WHS and ES Acts. In relation to photos and videos, the reviewers found that being able to use photos and videos of safety issues, particularly demonstrating dangerous acts, benefitted both employers and unions. For an HSR inquiring into a risk or hazard to the health or safety of workers, or an EPH inquiring into a suspected contravention, there is merit in being able to capture images which may show there is a risk to a person's health or safety at the workplace which must be eliminated or minimised, so far as is reasonably practicable.

Allowing an HSR or EPH to capture such images is intended to facilitate resolution of work health and safety issues and enable possible contraventions of the WHS Act to be addressed by the relevant PCBU. As recommended by the WHS Act Review, the Bill provides that EPHs and HSRs may take photos, videos, and take measurements or conduct tests at the workplace when performing their duties.

Additionally, in making these recommendations, the reviewers observed the parameters regarding use or disclosure of information gathered under Part 7 (Workplace entry by WHS entry permit holders) of the WHS Act. Consequently, the Bill highlights other relevant laws which may regulate taking photos or videos, e.g., *Corrective Services Act 2006*.

While the WHS Act Review contemplated extending HSR and EPH powers to include taking samples, the Bill instead provides for an HSR or EPH to conduct tests. This achieves the intent of the WHS Act Review recommendation by enabling an HSR or EPH to conduct tests for health and safety issues, such as noise and dust levels, without compromising matters such as site preservation, chain of custody and removal of evidence, property protection, and compensation requirements if any damage were to occur.

## BPR

To implement recommendations 38(b) and (c) of the BPR, an approval framework will be established in the WHS Regulations which will allow the WHS Regulator to prescribe minimum training standards and enforce compliance for RTOs delivering training that supports the issue of an authorisation by the WHS Regulator in Queensland.

The Bill introduces changes to support the establishment of the regulatory approval framework by:

- making clear that authorisation training quality falls within the remit of the WHS Act;
- ensuring the concurrent operation of both Queensland's regulatory approval framework and the NVETR Act in relation to their respective purposes. This will be achieved by limiting the application of the NVETR Act to the extent that it would render inoperative Queensland's regulatory approval framework where it is inconsistent with the NVETR Act by:
  - excluding certain provisions of the regulatory approval framework (State authorisation provisions) from the application of section 9(1) of the NVETR Act to the extent only that section 9(1) would otherwise prevent those State authorisation provisions from continuing to apply to certain RTOs providing authorisation training, assessment or instruction;

- declaring that all provisions of the WHS Act and any regulations made under the WHS Act (including provisions enacted or amended after commencement) are displacement provisions for the NVETR Act generally; and
- making clear that the regulation-power allows regulations to be made providing for the RTO approval process and the setting of training, assessment or instruction standards required for an authorisation to be prescribed in detail within the WHS Regulation.

## Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

### ES Act

Alternative ways of achieving the policy objectives were considered during consultation on the definitions of ‘electrical equipment’ and ‘electrical installation.’

#### ‘Electrical equipment’ and ‘electrical installation’ definitions

The Discussion Paper considered non-legislative approaches to address the recommendation of the ES Act Review that identified risks posed by new and emerging extra low voltage technologies were not adequately managed. Options canvassed outside of legislative amendments to the ‘electrical equipment’ and ‘electrical installation’ definitions were:

- maintain the status quo, whereby:
  - other than in niche circumstances (such as cathodic protection systems), extra low voltage equipment is outside the scope of the electrical equipment definition, and as a result, the electrical safety legislative framework.
  - the electrical installation definition remains unchanged, reflecting the technological environment in 2002.
- increase education and awareness, including:
  - increased Government communication and engagement with electrical workers, electrical contractors, PCBUs, unlicensed workers, and the community, on risks of emerging technologies and approaches to risk management.
  - Government promoting standards for particular extra low voltage technologies and development of training to support safe work with extra low voltage technologies.
  - Government providing homeowner guidance as relevant.

Consultation confirmed that stakeholders largely did not support maintaining the status quo for the following reasons:

- there are new and emerging technologies posing unacceptable electrical risk to the community and the workforce that necessitates action;
- new technologies continue to emerge, and the current electrical safety legislative framework is not responsive enough to the risks that may be posed by these technologies; and
- the definition of electrical installation has not kept pace with the development of new energy generation and storage technologies.

Outcomes of consultation also indicated that stakeholders did not consider an education and awareness approach (option 3) to be suitable on the basis that education and awareness activities alone are not sufficient to manage the electrical risks posed by new and emerging technologies.

## **Estimated cost for government implementation**

Whilst there will be costs for government implementation of amendments to the ES Act in the Bill, these costs will be met from existing resources. Any funding required beyond existing agency resources will be subject to normal budget processes.

No financial impacts are anticipated from the proposed WHS Act and SRWA Act amendments.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard for fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (LS Act).

### **ES Act**

Consideration has been given to achieving a balance between individual rights and liberties, and regard for the purpose of the ES Act which is directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity (section 4, ES Act). Provisions which potentially infringe FLPs are set out below.

Sufficient regard to the institution of parliament, by authorising the amendment of an Act only by another Act (s 4(4)(c) LS Act).

### *Head of power to prescribe prescribed electrical equipment*

Clause 6 of the Bill provides a head of power to prescribe extra low voltage equipment that is placing or may place persons or property at an electrical risk (*prescribed electrical equipment*) in subordinate legislation.

A fundamental definition of the ES Act is ‘electrical equipment’ as the ES Act prescribes a range of requirements that apply to electrical equipment, including those for licensing, supply chain duties, incident notification, regulatory requirements and recall powers. Previously, extra low voltage equipment could not be ‘electrical equipment,’ leaving a gap of regulation for extra low voltage items that can pose genuine electrical risk to Queenslanders.

The ES Act Review recognised that it is necessary for the ES Act to be responsive to new and emerging technologies; particularly those at extra low voltage. In response, section 14 is amended to include prescribed electrical equipment in the definition of electrical equipment. A new section 14A then provides that prescribed electrical equipment means extra low voltage equipment that is placing or may place persons or property at an electrical risk and is prescribed by regulation. Rather than significantly increasing regulatory burden by capturing *all* extra low voltage equipment, the

approach recognises that only particular extra low voltage equipment poses a significant risk to Queenslanders and should therefore be subject to the additional requirements.

In practice, in order to prescribe an item as prescribed electrical equipment, the Minister must be satisfied there is evidence the equipment is placing or may place persons or property at an electrical risk. While this amendment does amend the scope of equipment captured by the legislation, this is considered justified on the basis that for this situation to eventuate there must be a serious safety risk to the community. Amendments to the ES Regulation remain subject to Executive Council scrutiny in line with existing legislative processes.

These amendments are considered to be justified on the basis that they will implement a mechanism for the ES Regulator to be responsive to emerging risks, limit the regulatory burden by permitting the prescription of specific items (as opposed to extra low voltage equipment in general) and remain subject to relevant scrutiny.

*Head of power to prescribe not in-scope electrical equipment*

Clause 11 of the Bill establishes a head of power to prescribe items of electrical equipment as *not* ‘in-scope electrical equipment’ in the ES Regulation. The ES Act Review recommended this power be introduced to prevent the unintentional capture of electrical equipment as ‘in-scope electrical equipment.’

Prescribing equipment as not ‘in-scope electrical equipment’ will provide an avenue to minimise regulatory burden in instances the framework was not intended to be enacted. This power will allow the ES Regulator to be responsive to technologies in line with other participating EESS jurisdictions, such as Victoria.

Amendments to the Regulation remain subject to Executive Council scrutiny in line with existing legislative processes.

Consequently, the amendments are considered to be justified as they will implement a mechanism for the ES Regulator to be responsive to extenuating circumstances, whilst remaining subject to relevant scrutiny.

*Head of power for prescribing circumstances for replacing similar appliances which is not electrical installation work*

Clause 9 of the Bill provides a head of power to prescribe circumstances in which replacement of similar appliances that does not amount to electrical installation work.

The ES Act Review identified ambiguity as to whether replacement of similar appliances in an electrical installation (such as a stove) is a form of ‘repairing or maintaining electrical equipment on an installation’ and therefore not electrical installation work. Prescription of circumstances for the replacement of similar appliances will provide clarity to industry on the circumstances that need to be met for this work to be excluded from the scope of electrical installation work.



Amendments to the Regulation remain subject to Executive Council scrutiny in line with legislative processes. Consequentially, the amendments are considered to be justified as they provide the necessary detail on the circumstances that must be satisfied for work to be excluded from the scope of electrical installation work whilst remaining subject to relevant scrutiny.

*Head of power to prescribe the voltage of in-scope electrical equipment*

Clause 11 of the Bill provides for the prescription of a voltage range for ‘in-scope electrical equipment.’ The Bill implements a recommendation of the ES Act Review, where it was identified that the current definition was inflexible and does not provide the opportunity for responsiveness to changes in technology. This power will allow the Regulator to be responsive to technologies in line with other participating EESS jurisdictions, such as Victoria.

Consequently, the amendments are considered to be justified as they will implement a mechanism for the ES Regulator to be responsive to emerging issues, whilst remaining subject to relevant scrutiny.

Sufficient regard to the rights and liberties of individuals (s 4 (3) LS Act)

*Inspector powers to require the production of documents and answers to questions*

Clause 20 of the Bill aligns the powers for an inspector under the ES Act to require the production of documents and answers to questions to align with the WHS Act. In practice, this includes changes which:

- provide for the power to be exercised for 30 days after entry to the place
- allow another inspector to exercise the powers for the purpose of entry under the section; and
- provides the option for answers to be given either in person or using audio/audiovisual links.

Section 141 of the ES Act essentially establishes a compulsory process whereby a person must produce documents or answers to questions upon written notice by an inspector if an inspector has entered the place within 30 days. This effectively reverses the onus to the person to produce documents and answers to questions to avoid penalty, unless a reasonable excuse is provided. The change engages the rights and liberties of individuals by requiring a person to produce to an inspector a document which the person has custody of, or access to. It is considered appropriate for the person to comply with such a requirement, as it is in the interest of aiding an investigation and ensuring safety issues are appropriately addressed.

*Evidentiary matters*

Clauses 24, 25 and 26 of the Bill provides that an appointed person is not required to show proof of signature, or appointment or authority. Clause 23 provides that an appointed person is: the regulator, the WHS Prosecutor, an appropriately qualified member of the WHS Prosecutor’s staff who holds a relevant authorisation, or an inspector. These amendments establish arrangements that shift the burden of proof from the appointed person to another person. These amendments benefit the state, placing the onus on others to challenge rather than the state to prove the signature, appointment or authority of an appointed person.

In practice, these arrangements are already applied to the regulator, an inspector and by extension the WHS Prosecutor (who is appointed as an inspector under the ES Act). In effect, Clause 24 only extends these arrangements to cover an appropriately qualified member of the WHS Prosecutor's staff who holds a relevant authorisation. This is a consequence of changes to section 186, which now provide that an appropriately qualified member of the WHS Prosecutor's staff can be authorised to bring proceedings under the ES Act.

The amendments are justified on the basis that an appointed person under the ES Act is performing functions and exercising powers vital to them performing their roles. Extending the existing arrangements to an authorised member of the WHS Prosecutor's staff who holds a relevant authorisation is considered appropriate to ensure efficiency of the judicial process.

Sufficient regard to the institution of parliament, subordinate legislation, contains only matter appropriate to subordinate legislation (s 4(5)(c) LS Act)

*Prescribing circumstances for replacement of similar appliances*

Clause 33 of the Bill prescribes in the ES Regulation the circumstances which must be met for the replacement of similar appliances to not be considered electrical installation work. Prescription by Regulation allows for the ES Regulator to clearly prescribe the circumstances this work can be carried out by a licensed electrical mechanic, a licensed electrical fitter, and, in particular circumstances, a restricted licence holder. Prescription by Regulation allows for the framework to be fit for purpose, providing an avenue for the ES Regulator to respond should the circumstances of these replacements change over time or no longer be fit for purpose. Any amendments to prescribed circumstances will be subject to relevant scrutiny.

*Prescribing the voltage of in-scope electrical equipment*

Clause 34 of the Bill prescribes in the ES Regulation that the voltage range of in-scope electrical equipment is low voltage. The reference to low voltage in the Act relies on the definition of low voltage already provided for in the Act. Prescription by Regulation allows for the ES Regulator to remain responsive to changes in technologies. Any further changes to the definition of voltage will be subject to relevant scrutiny.

Sufficient regard to the institution of parliament, subordinate legislation, contains only matter appropriate to subordinate legislation (s 5 LS Act) and sufficient regard to the rights and liberties of individuals (s 3 LS Act)

*The definition of hazardous area*

Clause 36 of the Bill inserts a new definition of *hazardous area* in the ES Regulation, being that the definition relies on the definition of hazardous area provided for in the Wiring Rules. The Wiring Rules are a technical standard for electrical installations in Australia. By referring to the Wiring Rules in the definition, this means where the definition in the Wiring Rules is changed, this change is passively adopted by Queensland legislation. The amendment is justified on the basis that the Wiring Rules contains highly technical information that is not practical to be included in legislation. Contained in the ES Regulation, the definition can be amended should changes made to the Wiring Rules be contrary to Queensland's expectations.

The Wiring Rules are a technical standard that is accessed via a subscription service or other transaction, this engages with the rights and liberties of individuals. This is considered justified on the basis that this is relevant only to a small subset of professionals whose professional obligations include compliance with the technical standard. Existing sections of the ES Regulation already require compliance with the Wiring Rules (for example, section 70). It is an expectation that industry is familiar with and up to date on any changes to the Wiring Rules.

## **WHS Act**

Consideration has been given to achieving a balance between individual rights and liberties, and regard for the principle that workers and other persons should be given the highest level of protection, as is reasonably practicable, against harm to their health, safety and welfare from hazards and risks arising from work (section 3, WHS Act). Provisions which potentially infringe FLPs are set out below.

Sufficient regard to the rights and liberties of individuals (s 4 (2) (a) LS Act), makes rights and liberties or obligations, dependent on administrative power only if the power is sufficiently defined (s 4 (3) (a) LS Act) and is consistent with the principles of natural justice s 4 (3) (b) LS Act

### *Industrial manslaughter*

Clause 42 of the Bill removes the limitation period for prosecutions for Category 1 and 2 offences to ensure that alternative verdicts can be made even if the prosecution for industrial manslaughter commences after the limitation period for prosecutions for the alternative verdicts. This is consistent with the approach adopted for alternative verdicts in the Commonwealth *Work Health and Safety Act 2011*.

Under section 232 of the WHS Act, proceedings for Category 1 and 2 offences under the WHS Act may be taken within two years after the offence first comes to the notice of the WHS Prosecutor, or within one year after a coronial report or coronial inquiry.

Disapplying limitation periods for alternative verdicts to industrial manslaughter potentially raises the fundamental legislative principle that administrative power should reasonably end the liability to prosecution. Parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them. Where no limitation period applies it could be difficult for a person to defend themselves years after the fact.

By removing limitation periods in relation to alternative verdicts, the Bill seeks to ensure the accused does not escape punishment on technical grounds. This would mean that if the prosecution commenced industrial manslaughter proceedings outside the limitation period that applied to, for example, a Category 2 offence (2 years after the offence first comes to the notice of the regulator or 1 year after a coronial finding – see section 232 of the WHS Act), it would not impact the ability of a court to find the accused guilty of a Category 2 offence in the alternative.

The inclusion of alternative verdicts in the Bill also potentially raises fundamental legislative principles to fair and reasonable treatment and procedural fairness by raising the prospect that a person may be convicted of an offence that is different to the offence charged. However, the authority to plead an alternative offence is provided in section 567(2) of the *Criminal Code 1899* if the offending is “founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose”.

By providing alternative verdicts in cases where the offence of industrial manslaughter cannot be proved beyond reasonable doubt, the Bill enables an alternative verdict to be found in the event that a court finds that the evidence supports conviction for an alternative offence. Consequently, the amendments are considered to be justified.

#### Sufficient regard to the rights and liberties of individuals (s 4 (3) LS Act)

*Power of health and safety representatives and entry permit holders to take photos, videos, measurements and conduct tests*

Clauses 46-47 of the Bill will allow HSRs and EPHs to take photos, videos, measurements and conduct tests at the workplace. This potentially infringes the rights and liberties of individuals, including the right to privacy. However, the Bill provides privacy safeguards which limit when and of whom photos and videos can be taken, and existing WHS Act provisions limit how photos or videos can be used or disclosed in the instances where they are permitted to be taken or made.

The exercise of these new powers is restricted by existing limits on HSR powers EPH rights in the WHS Act. In particular:

- HSRs can only exercise the new power for the purposes listed in section 68(1) of the WHS Act, and within the limits prescribed in sections 68(2) and 69 of the WHS Act, which limit the taking of a photo or video to recording a risk or hazard to the health or safety of workers in their work group; and
- EPHs can only exercise this new right for the purpose listed in section 117 of the WHS Act, and within the limits prescribed in sections 118 and 127 of the WHS Act, which limit the capture to when it is directly relevant to the suspected contravention of the WHS Act or the ES Act.

The Bill includes a new safeguard to ensure that photos or videos taken under the exercise of these new powers cannot be live streamed to other parties not bound by the same statutory obligations as HSRs and EPHs, and that confidential or sensitive information outside the scope of these powers is not inadvertently captured during a live streaming event. The Bill also notifies HSRs and EPHs that other relevant laws may apply to any photos or videos taken under the exercise of these new powers e.g., the *Privacy Act 1988 (Cth)* may limit the disclosure and use of information collected, and section 227A of the *Criminal Code* sets out offences for observing or visually recording another person if it is in breach of privacy.

Given the purpose of the amendments, particularly noting the positive outcomes for promoting safe workplaces, any departures from fundamental legislative principles are justified and balanced by safeguards for the collection, use and disclosure of any personal information within the limits of the WHS Act.

## Consultation

### ES Act

#### ES Act Review

In 2020, the former Minister for Education and Minister for Industrial Relations announced an independent review of the ES Act. The ES Act Review was informed by public and targeted consultation with interested parties.

The independent Reviewer established an Industry Reference Group. The Industry Reference Group met on a number of occasions throughout the Review to consider reform proposals. Members of the Industry Reference Group included representatives from industry, registered unions and social partners. To further support the Reviewer, two working groups were established to consider specific issues within their expertise, namely: the Work Health and Safety Working Group and the Manufacturers, Wholesalers and Retailers Working Group.

On 5 March 2021, an Issues Paper was released for public comment for a period of six weeks. A total of 57 responses were received from employer and industry groups, registered unions, electricity entities, boards and committees and government agencies. At the discretion of the Reviewer, a number of follow up meetings were conducted with specific stakeholders.

#### Consultation on ES Act Review recommendations

In May 2023, the Office of Industrial Relations (OIR) published the ES Act Review Final Report and a Discussion Paper focussing on review recommendations relating to key definitions and emerging technologies. Upon publication, OIR commenced two consultation periods. The first sought feedback on issues raised in the Discussion Paper and the second sought feedback on all remaining recommendations from the Review.

#### *Discussion Paper and Decision Paper*

The Discussion Paper addressed recommendations from the ES Act Review which touched on the key ES Act definitions of ‘electrical equipment,’ ‘electrical installation’ and ‘electrical work.’ These were considered through three topics:

- electrical safety considerations of new and emerging technologies;
- the changing landscape of electricity and the workforce; and
- electrical safety and electric vehicles.

Feedback on the Discussion Paper was open for a period of six weeks. The OIR received 78 submissions to the Discussion Paper from a range of industry bodies, businesses, government departments, electricity entities, registered unions, committees, and individuals.

Submissions to the Discussion Paper, alongside further policy analysis and economic analysis, informed a Decision Paper. Outcomes communicated in the Decision Paper included support for legislative amendments to the definitions of ‘electrical equipment’ and ‘electrical installation’ to

ensure the ES Act keeps pace with the rapid rate of technological advancement and can respond to real and emerging risks.

#### *Consultation on the remaining ES Act Review recommendations*

Given the breadth of recommendations contained in the ES Act Review, the OIR encouraged feedback on the remaining recommendations (not contemplated in the Discussion Paper) for a period of three months.

The 88 submissions that were received during this period informed the updated Government Response and legislative amendments contained in this Bill. Similarly, responses were received from a range of industry bodies, businesses, government departments, electricity entities, registered unions, committees and individuals.

Amendments progressed in the Bill were identified as broadly supported by stakeholders during the consultation period and their merits upheld by further policy analysis.

### **WHS Act and SRWA Act**

#### Boland Review

##### *Negligence element in the Category 1 offence*

The implementation of recommendation 23a of the Boland Review introduces the fault element of negligence, in addition to recklessness, into the Category 1 offence amending section 31 of the WHS Act.

The review of the model WHS laws was undertaken by Ms Marie Boland in 2018. The review found that the model WHS laws are largely working as intended but proposed 34 recommendations to address identified issues and improve clarity and consistency. Of the 34 recommendations, 19 required amendments to the model WHS laws.

The impacts of the 34 recommendations and alternative options were assessed through release of a national Consultation Regulation Impact Statement. The findings of this consultation were outlined in a national *Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety Laws December 2019* (Decision RIS) which was considered by WHS Ministers in May 2021.

#### Industrial Manslaughter Review

##### *Industrial manslaughter and alternative verdicts*

A substantial consultation process was undertaken as part of the Industrial Manslaughter Review. The WHS Prosecutor invited confidential submissions from 28 organisations, including Queensland Council of Unions, Australian Workers Union, Construction Forestry Mining Energy Union, Australian Industry Group, Master Builders Queensland, Housing Industry Association, Queensland Farmers Federation, Queensland Law Society and Persons Affected by Work-related Fatalities and Serious Incidents Consultative Committee. Submissions were also invited from

Department of Justice and Attorney-General, Office of the Director of Public Prosecutions and Resources Safety and Health Queensland.

### WHS Act Review

*Power of health and safety representatives and entry permit holders to take photos, videos, and measurements and conducting tests*

Recommendations 3D and 11(c) arose out of the WHS Act Review which was conducted in 2022. A total of 51 written submissions were received and a further 14 in-person consultation sessions were held between the reviewers and key stakeholders to further extrapolate on the information in their submissions.

Further consultation on these provisions was undertaken with union and industry bodies, including: Queensland Council of Unions, Australian Workers Union, Construction, Forestry, Mining and Energy Union, Electrical Trades Union, Plumbing and Pipe Trades Employees Union, Shop Distributive and Allied Employees Association, Business Chamber of Queensland, Local Government Association of Queensland, Master Builders Queensland, Queensland Corrective Services, Queensland Health, Youth Justice, the Department of Education, the Department of Justice and Attorney-General, and the Queensland Police Service.

### BPR

The OIR consulted with industry bodies and government departments following the release of the BPR in relation to the proposed RTO approval framework. The feedback was supportive of broadening the scope of the WHS Regulator to cover the quality of training by RTOs.

In 2023, further face-to-face consultation sessions were conducted with RTOs and accredited assessors delivering HRW training across Queensland. The feedback received was broadly supportive of the framework. Further consultation will occur prior to final implementation of the approval framework via an amendment regulation.

### **Development of the Bill**

In January 2024, targeted consultation was undertaken on a partial exposure draft of the Bill and a policy overview document detailing the remainder of the proposed amendments. Consultation involved key stakeholders from registered unions, industry, electricity entities, peak bodies and government agencies. Feedback received has been incorporated into the Bill where appropriate.

### **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland. The Bill's consistency with comparable reforms introduced by other jurisdictions is discussed below.

## **ES Act**

### Electrical Equipment Safety System (EESS) Reforms

The EESS is a regulatory framework for low voltage, consumer electrical equipment. An intergovernmental agreement, to which Queensland is a participating jurisdiction, aims to establish a consistent framework across jurisdictions in Australia.

The Bill more closely aligns Queensland's implementation of the existing EESS framework with Victoria. The implementation of the EESS in Victoria has allowed the regulator to be more responsive to technological changes.

## **WHS Act**

### Industrial Manslaughter, and alternative verdicts

Amendments to the industrial manslaughter offence, to capture the deaths of other persons to whom a health and safety duty is owed and to provide for alternative verdicts, reflect the scope of the industrial manslaughter provisions in the majority of WHS jurisdictions that have adopted the industrial manslaughter offence.

Providing a more fulsome framework for alternative verdicts is similar to the approach in the *Work Health and Safety Act 2020* (WA). In addition, the amendments support recommendations for a nationally consistent industrial manslaughter offence in the model work health and safety laws, made by the Commonwealth's Senate Standing Committee on Education and Employment report *They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia: October 2018* (Recommendation 13) and the 2018 Review of the model WHS Laws (Recommendation 23b).

For the purpose of alternative verdicts to industrial manslaughter, the Bill provides that the limitation period for prosecutions for Category 1 and 2 offences does not apply. This is to ensure that alternative verdicts can be made even if the prosecution for industrial manslaughter commenced after the limitation period for the prosecutions for the alternative verdicts. This approach is consistent with the Commonwealth *Work Health and Safety Act 2011*.

### Taking photos, videos, and measurements and conducting tests

The WHS Act Review, in recommending amendments to permit EPHs to take photos, videos and measurements, and conduct tests, noted that similar powers are included in the *Occupational Health and Safety Act 2004* (Vic).



## Notes on provisions

### Part 1 Preliminary

*Clause 1* sets out the short title of the Act which is the *Electrical Safety and Other Legislation Amendment Act 2024*.

*Clause 2* provides that Part 5, division 3 commences on 1 January 2025. The remaining provisions commence on assent.

### Part 2 Amendment of Electrical Safety Act 2002

*Clause 3* provides that Part 2 of the Bill amends the *Electrical Safety Act 2002* (ES Act). Note that Schedule 1 also amends the ES Act.

*Clause 4* amends section 13 (Meaning of *appliance*) to omit the requirement for a device to consume electricity at a voltage that is greater than extra low voltage for the device to be an ‘appliance.’ This supports the amendments to section 14 and the insertion of section 14A, ensuring that appliances that consume electricity at extra low voltage can be prescribed as *prescribed electrical equipment*.

*Clause 5* amends section 14 (Meaning of *electrical equipment*) to capture *prescribed electrical equipment* within the meaning of electrical equipment. This ensures that items of prescribed electrical equipment, which would otherwise not be captured by the electrical equipment definition, are subject to the same requirements under the ES Act as other electrical equipment. The definition of *prescribed electrical equipment* is provided for in new section 14A (Meaning of *prescribed electrical equipment*). New section 14(3) provides that prescribed electrical equipment is electrical equipment even it forms part of a vehicle. This is intended to ensure vehicles with extra low voltage propulsion systems such as e-scooters, e-bikes, electric skateboards and hover boards are in scope. These amendments are not intended to impact vehicles with low voltage propulsion systems such as electric cars, electric buses and electric trucks. This is despite section 14(2) which otherwise typically excludes equipment that forms part of the propulsion of a vehicle.

*Clause 6* inserts new section 14A (Meaning of *prescribed electrical equipment*) to define ‘prescribed electrical equipment.’ This definition establishes the criteria that an item must meet to be eligible for prescription in the ES Regulation as prescribed electrical equipment. Any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is used for controlling, generating, supplying, transforming or transmitting electricity at extra low voltage or is operated by electricity at extra low voltage is eligible to become prescribed electrical equipment.

New section 14A(b) establishes a threshold of risk that an item is required to meet to be prescribed. The intent is to align this threshold with the purpose of the ES Act; namely to prevent persons from being killed or injured by electricity and prevent property from being destroyed or damaged by electricity. As such, the threshold established allows items to be prescribed where they are placing or may place persons or property at an electrical risk. *Electrical risk* is defined at section 10 of the ES Act. It is considered that this threshold strikes the right balance in ensuring items identified as posing risk to persons or property, such as through fire events, can become *prescribed electrical equipment*.

Finally, new section 14A(c) provides that for an item to be prescribed electrical equipment it must be prescribed by regulation.

*Clause 7* amends section 15 (Meaning of *electrical installation*) to expand the definition of *electrical installation* to capture new and emerging energy storage and generation technologies. Amendments to section 15(1)(b) recognise that electricity can be supplied from not only the works of an electricity entity or a generating source but also from a battery or other storage technology system.

New section 15(1A) also provides that an electrical installation is a group of items of electrical equipment that:

- are permanently electrically connected together;
- are used to generate electricity at a voltage greater than extra low voltage; and
- do not include items that are works of an electricity entity.

Insertion of new section 15(1A) responds to the changing and evolving nature of the technological landscape and clarifies that electrical installations can generate electricity.

The effect of these changes to the definition of *electrical installation* clarifies that those performing electrical work on these new technologies must comply with additional safety requirements associated with installations. For example, compliance with the Wiring Rules. Consequential amendments are made to renumber section 15(1A) to (3) as section 15(2) to (4).

*Clause 8* amends section 18 (Meaning of *electrical work*) to insert new exclusions from the *electrical work* definition. New sections 18(2)(p-q) provide the circumstances where work does not constitute electrical work, and therefore does not require a licence to perform. This primarily excludes connecting and disconnecting an item of prescribed electrical equipment to and from another piece of existing extra low voltage equipment if this task is ordinarily meant to be performed by members of the community.

Circumstances inserted by new section 18(2)(p) are connecting an item of prescribed electrical equipment to existing equipment if:

- the task can be safely performed by a person who does not have expertise in carrying out electrical work;
- after they are connected, the item of prescribed electrical equipment and existing equipment remain controlling, generating, supplying, transforming or transmitting electricity at extra low voltage or operated by electricity at extra low voltage;

- the prescribed electrical equipment is not located in an area in which the atmosphere presents a risk to health and safety from fire or explosion; and
- the prescribed electrical equipment is not (and is not part of) a cathodic protection system.

Similarly, circumstances inserted by new section 18(2)(q) are disconnecting an item of prescribed electrical equipment from existing equipment if:

- the task can be safely performed by a person who does not have expertise in carrying out electrical work;
- before they were disconnected, the item of prescribed electrical equipment and existing equipment were controlling, generating, supplying, transforming or transmitting electricity at extra low voltage or operated by electricity at extra low voltage;
- the prescribed electrical equipment is not located in an area in which the atmosphere presents a risk to health and safety from fire or explosion; and
- the prescribed electrical equipment is not (and is not part of) a cathodic protection system.

These circumstances aim to ensure that basic tasks, designed for unlicensed members of the public to undertake, which involve the connection and disconnection of prescribed electrical equipment to other prescribed electrical equipment or equipment at extra low voltage, remain able to be carried out by members of the community.

New section 18(3) inserts a sectional definition for *existing equipment* and *extra low voltage equipment*. In this section *existing equipment* means one or more items of prescribed electrical equipment or extra low voltage equipment. In this section *extra low voltage equipment* means any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that – is used for controlling, generating, supplying, transforming or transmitting electricity at extra low voltage or is operated by electricity at extra low voltage.

These definitions are relevant to the new exclusion to electrical work included at new sections 18(2)(p-q), this clarifies basic connection and disconnection of prescribed electrical equipment to other prescribed electrical equipment or extra low voltage equipment where the voltage does not exceed extra low voltage, remains outside the scope of licensed electrical work. This definition provides clarity as to what is meant by extra low voltage equipment.

*Clause 9* amends section 19 (Types of electrical work for this Act) to insert an additional type of electrical work that is not ‘*electrical installation work*.’ This amendment clarifies that replacing an appliance included in the electrical installation (the old appliance) with a similar appliance does not constitute *electrical installation work* if it meets the circumstances prescribed in the ES Regulation. The change is intended to clarify the circumstances in which an appliance can be replaced by a licensed electrical fitter and restricted licence holders (when it falls within the scope of the licence). Consequential amendments are made to renumber section 19(1)(aa) and (b) as section 19(1)(b) and (c).

*Clause 10* amends section 48A (Definitions for Part 2A) to clarify that, for the purposes of the EESS, the definition of ‘corresponding law’ means a law of another State that is prescribed by regulation. Prescription of corresponding laws is intended to provide greater clarity as to which jurisdictions are ‘participating jurisdictions.’ A corresponding law is a law that implements the EESS framework.

*Clause 11* amends section 48B (Meaning of *in-scope electrical equipment*) to provide that ‘in-scope electrical equipment’ is operated by a voltage range prescribed by regulation. Section 48B(2) provides a head of power to prescribe particular items as *not* ‘in-scope electrical equipment.’ This gives the ES Regulator the ability to prescribe items of electrical equipment unintentionally captured as in-scope electrical equipment and the flexibility to respond to emerging technological advancements. The remainder of the section is unchanged and retains its original meaning.

*Clause 12* amends section 48D (Regulator to establish and maintain national register) to remove a redundant requirement for the regulator to keep information about (a) responsible suppliers, level 2 and 3 in-scope electrical equipment; and (b) information about certificates of conformity and other matters in separate databases. Updates to the structure of the database mean this requirement is no longer necessary. Consequential amendments are made to renumber section 48D(4) to (6) as section 48D(3) to (5).

*Clause 13* amends section 49 (Regulator may accept an electrical safety undertaking) to relocate the requirement for the regulator to publish guidelines for electrical safety undertakings from section 186 (Prosecutions). This relocation is necessary to reflect that this responsibility remains with the ES Regulator and is not transferring to the WHS Prosecutor.

*Clause 14* amends section 54A (Proceeding for alleged contravention) to reflect that it is the WHS Prosecutor who is responsible for discontinuing proceedings under section 54A(4) if an electrical safety undertaking is in effect in relation to the contravention. Amendments to section 54A(4)(a) clarify that the regulator must notify the WHS Prosecutor, and the WHS Prosecutor must take all reasonable steps to have the proceedings discontinued as soon as possible.

*Clause 15* amends section 57AC (Licence holder engaged by person conducting a business or undertaking must notify changes) to clarify that a licence holder is required to notify the relevant person if the Electrical Licensing Committee includes or changes a condition or restriction in a licence. This is a consequence of amendments to sections 109 and 110.

*Clause 16* amends section 109(1) (Electrical licence issued by regulator) to insert a new section (aa) to clarify that the Electrical Licensing Committee can include or change a condition or a restriction in a licence as a form of disciplinary action. This will allow the Committee to take a course of disciplinary action that is proportionate to matters before them. For example, including a condition in a licence to complete a specific training course or a restriction from performing certain work tasks.

*Clause 17* amends section 110 (External licence) to clarify that the Electrical Licensing Committee can impose or change a condition or restriction on an external licence recognition provision’s application to the external licence. These changes are intended to align the disciplinary actions available to the Committee for external licence holders working in Queensland with disciplinary actions that can be taken by the Committee against a holder of a Queensland-issued licence under amended section 109.

*Clause 18* inserts new section 121A (Changing and removing disciplinary conditions or restrictions) to provide a mechanism for the Electrical Licensing Committee to change or remove a condition or restriction imposed under sections 109 or 110. New section 121A(2) provides that a person may make a written application to the Committee to have a condition or restriction changed or removed.

New section 121A(3) provides that where the Committee is satisfied that it is reasonable to change a condition or restriction, the condition or restriction may only be changed in a way which is beneficial to the person. For example, on application of the licence holder, the Committee may extend the time to comply with a condition to complete a training course from three months to six months, should exceptional personal circumstances necessitate. As another hearing does not occur as part of this process, this amendment is consistent with the principles of natural justice by only permitting changes to the conditions or restrictions in a license in a way that benefits the license holder.

New section 121A(4) provides that the Committee may remove a condition or restriction in a licence where the Committee is satisfied:

- the condition has been complied with (e.g., the licence holder has completed the training course);
- a condition decided by the Committee relating to the restriction has been complied with, (e.g. where a condition was placed in a license where the license holder was restricted to a particular type of electrical work until a particular training course had been completed and evidence that the training course has been completed has been provided to the Committee); or
- the condition or restrictions is no longer appropriate in all circumstances.

Powers under new sections 121A(3) and (4) may be used by the Committee on its own initiative or on an application by a person.

New section 121A(5) provides that the Committee must give notice of its decision to the person.

New section 121A(6) provides that where the Committee determines to change or remove a condition or restriction for the purposes of an external licence, notice of the Committee's decision (but not the reasons for the decision) must be published in the gazette.

*Clause 19* amends section 122 (Functions of the regulator) to remove section 122(1)(h) the function to conduct and defend proceedings under this Act before a court or tribunal. This amendment is consequential as prosecutions are brought by the WHS Prosecutor so there is no need for this to remain as a function of the regulator. This amendment mirrors the amendment to the WHS Act upon establishing the WHS Prosecutor. Further section 122(3), which provides clarification in relation to section 122(1)(h), is omitted. Consequential amendments are made to renumber section 122(1)(i) as section 122(1)(h).

*Clause 20* amends section 141 (Power to require production of documents and answers to questions) to align the powers of inspectors in relation to the production of documents or answering of questions with the WHS Act. Changes to section 141 will more closely align the ES Act to section 171 of the WHS Act, to provide consistency of powers for inspectors and enhance the capability of inspections, particularly in regional and remote areas.

New section 141(2A) provides that, within 30 days after the day of entering a place, the inspector (or another inspector) may give written notice to a person to require the production of answers and documents within a stated period. Extending the operation of the section to also include another inspector better reflects operational practice and allows the original inspector, or a subsequent inspector, to exercise their powers in relation to the requesting of documents or answers to questions without being required to re-enter the place. This is particularly useful for workplaces in remote areas where multiple entries may not be feasible.

New sections 141(2B) and 141(2C) provides the ability for persons to answer questions by audio or audio-visual link, rather than attending in person before the inspector. Conversely, a person may request to attend in person, rather than by audio or audio-visual link. The inspector must agree with either request if it is reasonable in the circumstances.

New section 141(2D) limits a request for documents or answers to questions to those that are relevant to the purpose for which the place was originally entered.

New section 141(2E) provides that a notice served under new section 141(2A) by an inspector must be issued or given under section 150G (Issue and giving of notice). For example, by delivering it personally to the person or sending it by post to the person's last known place of residence.

Consequential amendments are made to renumber section 141(2A) to (7) as section 141(3) to (12).

*Clause 21* amends section 141B (Warning to be given) to make consequential amendments to set out what must be included in a written notice issued under new section 141(2A). Consequential amendments are made to renumber section 141B(1A) to (3) as section 141B(2) to (4).

*Clause 22* amends section 167 (Definitions for pt 12) in particular the definition of *disciplinary decision* to include whether to change or remove a condition or restriction included in an electrical licence or on the external licence recognition provision's application to an external licence.

*Clause 23* inserts a new section 178A (Definition for division) which provides a definition for *appointed person* for application in the division.

*Clause 24* amends section 179 (Proof of appointment and authority unnecessary) to replace the words 'the regulator or an inspector' with 'an appointed person.' This change simplifies drafting of this provision and is consequential to new section 186(2)(aa), ensuring that the WHS Prosecutor, or a member of their staff authorised to bring proceedings under the ES Act, are not required to present proof of appointment or authority. New section 181(5) provides for the definition of 'appointed person.'

*Clause 25* amends section 180 (Proof of signature) to replace the words 'the regulator or an inspector' with 'an appointed person'. This change is consequential to new section 186(2)(aa), ensuring that the signature of the WHS Prosecutor, or a member of their staff authorised to bring proceedings under the ES Act, does not need to be proven as to whose signature it purports to be. New section 181(5) provides for the definition of 'appointed person'.

*Clause 26* amends section 181 (Evidentiary aids) by replacing section 181(5) with new definitions of 'appointed person' and 'certificate.' The new definition of *appointed person* means the regulator, the WHS Prosecutor, an appropriately qualified and authorised member of the WHS Prosecutor's staff or an inspector. Changes to the definition of a *certificate* clarifies a certificate purporting to be signed by the WHS Prosecutor or an appropriately qualified member of the WHS Prosecutor's staff who holds an authorisation from the WHS Prosecutor either generally or in a particular case, is also a certificate in addition to those signed by an inspector or the regulator. This is achieved by referencing an appointed person in the definition of certificate. Sections 179 (Proof of appointment and authority unnecessary) and 180 (Proof of signature) are also amended to use the new defined term of 'appointed person'.

*Clause 27* amends section 186 (Prosecutions) to provide that the WHS Prosecutor is responsible for bringing prosecutions under the Act, rather than the Regulator. This change reflects the WHS Prosecutor's standing to bring proceedings under various Queensland safety legislation. Consequential amendments are made to renumber section 186(2)(aa) and (b) as section 186(2)(b) and (c).

New subsection 186(2)(aa) provides that the WHS Prosecutor may authorise an appropriately qualified member of their office to bring proceedings under the Act. These changes are intended to increase the operational efficiency of the Office of the WHS Prosecutor. Amendments to 186(2)(b) allow the WHS Prosecutor to provide written authorisation for an inspector to take proceedings either generally or in a particular case. Section 186(4) is amended to replace the existing requirement for the regulator to issue and publish on the regulator's website general guidelines for the prosecution of offences under the ES Act and general guidelines for the acceptance of electrical safety undertakings under this Act. This is replaced with the requirement for the WHS Prosecutor to have regard to any guidelines issued under the *Director of Public Prosecutions Act 1984*, section 11 in deciding whether to bring a prosecution for an offence under the ES Act. Requirements for the regulator to publish general guidelines for the acceptance of electrical safety undertakings under the ES Act has been relocated to section 49 as this responsibility remains with the regulator.

*Clause 28* amends section 186A (Procedure if prosecution is not brought) to replace references to 'regulator' to 'WHS Prosecutor'. This is a consequential change reflecting the WHS Prosecutor's role under the Act. A person can now make a written request to the WHS Prosecutor (instead of the ES Regulator), should certain offences not be prosecuted after a period, to request that a prosecution is brought. The WHS Prosecutor then has obligations under the remainder of 186A in responding to the request.

*Clause 29* amends section 186B (Limitation period for prosecutions) to provide that a proceeding for an offence against this Act may be taken within two years after the offence first comes to the notice of the WHS Prosecutor, rather than the regulator. This change is part of the suite of amendments to accurately reflect the role of the WHS Prosecutor in the ES Act. Given changes to section 186 to establish the role of WHS Prosecutor in taking proceedings for an offence under the Act, it was considered that the role of the WHS Prosecutor should also be reflected in the limitation period provision for prosecutions. Practically, this means the proceedings for an offence against the ES Act may be commenced within two years after the offence first comes to the notice of the WHS Prosecutor. This change reflects the equivalent provision under the WHS Act and provides additional time to the WHS Prosecutor to bring proceedings as they are not usually made aware of a matter until the regulator's investigations are finalised.

*Clause 30* inserts new Part 23 (Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2024) to insert transitional provisions for the amendments to sections 141 (Power to require production of documents and answers to questions), 141B (Warning to be given) and 186 (Prosecutions) of the Act.

New section 257 (Application of ss 141 and 141B) provides that sections 141 and 141B, as in force before commencement of the Bill, continue to apply in relation to a place entered by an inspector under section 138 before the commencement. This ensures that additional inspector powers will not be retrospectively applied where inspectors have entered a place under section 38 prior to the commencement of the Bill.

New section 258 (Existing proceedings) ensures that prosecutions under section 186, which have not resolved by the commencement of the Bill, can continue to progress without disruption. This is achieved by providing that the WHS Prosecutor becomes party to the proceedings in place of the regulator. Further, any written authorisations to an inspector continue to be in force and are taken to be an authorisation from the WHS Prosecutor.

New section 259 (Continued application of limitation period) provides that section 186B as in force immediately before the commencement continues to apply in relation to offences that came to the notice of the regulator before the commencement.

Clause 31 amends Schedule 2 (Dictionary) to insert new definitions of *appointed person*, *prescribed electrical equipment* and *WHS prosecutor*.

### **Part 3 Amendment of Electrical Safety Regulation 2013**

Clause 32 provides Part 3 of the Bill amends the *Electrical Safety Regulation 2013* (ES Regulation).

Clause 33 inserts new Division 3A (Replacement of appliances) in Part 3 to provide for new section 26A (Circumstances for replacing similar appliance – Act, s19). Replacing an appliance in the electrical installation with a similar appliance if the circumstances prescribed in the ES Regulation are met does not constitute *electrical installation work* which means a greater number of licence types can undertake this work.

Circumstances prescribed by new section 26A are:

- the similar appliance must have the same voltage rating as the old appliance;
- the similar appliance must have a current rating that is not greater than the current rating of the old appliance;
- the similar appliance must have a power rating that is not greater than the power rating of the old appliance;
- the similar appliance has the same way of performing the function as the old appliance;
- electrical characteristics that are the same as or better than the electrical characteristics of the old appliance; and
- the old appliance must not be part of an electrical installation located in a hazardous area.

These circumstances permit the replacement of an appliance with an appliance with equally suitable characteristics on an electrical installation by a licensed electrical fitter or, in particular circumstances, a restricted electrical licence holder. The characteristics intend to represent the replacement as an equal and safe swap, ensuring the option of replacement is available as an alternative to repair by a licensed electrical fitter. The characteristics listed ensure the replacement is suitable to be undertaken by a licensed electrical fitter, a licensed electrical mechanic and when it is within the scope of work, a restricted electrical licence holder.

New section 26A(2) provides sectional definitions for *current rating*, *power rating* and *voltage rating*.



*Clause 34* inserts new section 122A (Voltage range for in-scope electrical equipment – Act, s48B) to provide that the prescribed voltage range for in-scope electrical equipment is low voltage. The definition of low voltage is in Schedule 2 of the ES Act. This reflects the existing voltage range of ‘in scope electrical equipment’ under the EESS framework.

*Clause 35* inserts new Division 13 (Other matters) in Part 7 to provide for new section 187A (Corresponding laws – Act, s 48A, definition *corresponding law*). Victoria’s *Electricity Safety Act 1998*, and by extension statutory instruments made under Victoria’s Act, is prescribed as a corresponding law, to reflect the presence of the EESS framework in that jurisdiction.

*Clause 36* amends Schedule 9 (Dictionary) to insert a new definition for *hazardous area*.

## **Part 4 Amendment of Safety in Recreational Water Activities Act 2011**

*Clause 37* provides that Part 4 amends the *Safety in Recreational Water Activities Act 2011*.

*Clause 38* amends the title of section 21 (Reckless conduct – category 1) to also include negligent conduct.

This clause amends section 21(1)(c) to include negligent conduct as a fault element in the Category 1 offence, in addition to the existing fault element of reckless conduct. The same maximum penalty applies for negligent conduct as for reckless conduct. The amended section includes ‘negligence’ rather than ‘gross negligence’ to be consistent with the industrial manslaughter offence and means that the existing standard of criminal negligence will apply to both offences.

## **Part 5 Amendment of Work Health and Safety Act 2011**

*Clause 39* provides that Part 5 of the Bill amends the *Work Health and Safety Act 2011* (WHS Act).

*Clause 40* amends the title of section 31 (Reckless conduct – category 1) to also include negligent conduct.

This clause amends section 31(1)(c) to include negligent conduct as a fault element in the Category 1 offence, in addition to the existing fault element of reckless conduct. The same maximum penalty applies for negligent conduct as for reckless conduct. The amended section includes ‘negligence’ rather than ‘gross negligence’ to be consistent with the industrial manslaughter offence and means that the existing standard of criminal negligence will apply to both offences.

*Clause 41* amends section 34A (Definitions for part) to omit section 34A(3) as a consequence of omitting and inserting new sections 34C and 34D.

*Clause 42* replaces sections 34C (Industrial manslaughter – person conducting business or undertaking) and 34D (Industrial manslaughter – senior officer) with new sections 34C and 34D for the crime of industrial manslaughter for persons conducting a business or undertaking and senior officers respectively. New sections 34C and 34D amend the industrial manslaughter offence to capture the death of an ‘individual to whom the person has a health and safety duty’. This amendment expands the offence to capture not only negligent conduct causing the death of a worker

but to also capture negligent conduct causing the death of other persons or bystanders to whom the person has a health and safety duty. This is consistent with the industrial manslaughter offence in other Australian jurisdictions. The maximum penalty for industrial manslaughter is unchanged.

New sections 34C and 34D also remove ambiguity around the potential culpability of multiple parties in a contractual chain for the crime of industrial manslaughter. This is to address concerns raised during the Industrial Manslaughter Review that the current wording “carrying out work *for the business or undertaking*” limits the application of the offence because it needs to be proven beyond reasonable doubt that the worker died in the course of carrying out work for the PCBU who has been charged with the offence.

New section 34E (Alternative offences to industrial manslaughter) provides for alternative offences to industrial manslaughter. This means that on an indictment charging a person with industrial manslaughter the person may be alternatively convicted of a category 1 offence or a category 2 offence, where an alternative offence is established by the evidence. Section 34E(2) provides that for the purpose of convictions for alternative offences to industrial manslaughter, the limitation period for prosecutions for Category 1 and 2 offences, in section 232(1) of the WHS Act, will not apply. This is to ensure that convictions for alternative offences can be made even if the prosecution for industrial manslaughter commenced after the limitation period for prosecutions for the alternative offences.

*Clause 43* inserts a new section 233A (Alternative offence to category 1 offence) which provides that on an indictment charging a person with a category 1 offence the person may be alternatively convicted of a category 2 offence. This means that, where the elements of a Category 1 offence are found not to be met, the person may be convicted of a Category 2 offence if that offence is established on the evidence. As section 36(a) of the SRWA Act applies part 13 (other than division 7) of the WHS Act, new section 233A also implements the alternative offence to category 1 for prosecutions brought under the SRWA Act.

*Clause 44* inserts new Division 3 (Vocational education and training regulation) in Part 2 of Schedule 1 to clarify the relationship between State authorisation regulation provisions and the *National Vocational Education and Training Regulator Act 2011* (Cth). This clause also declares each provision of the WHS Act and any regulations a displacement provision for the purposes of section 11 of the *National Vocational Education and Training Regulator Act 2011* (Cth).

*Clause 45* amends Schedule 3 (Regulation-making powers) to insert new section 6A (Training, assessment or instruction). Section 6A establishes a regulation making power for matters relating to organisations providing training, assessment or instruction for an authorisation.

*Clause 46* amends section 68 (Powers and functions of health and safety representatives) to clarify and extend the powers of health and safety representatives (HSRs). Current limits imposed in subdivision 5 on the HSR exercising a power or function continue to apply in relation to the extension of powers and functions.

New section 68(2)(ba)(i) provides that an HSR can take measurements or conduct tests for the purpose of identifying or recording a hazard or risk to the health or safety of workers in the work group. To facilitate this activity, the HSR may bring to the workplace and use equipment and materials that are reasonably necessary for the measurements or tests (new section 68(2A)(a)).

A requirement is included in new section 68(2A)(b) for HSRs to take into account the need for compliance with the relevant Act when taking measurements and conducting tests to mitigate the risk of these activities being carried out in an unsafe manner.

New section 68(2)(ba)(ii) allows an HSR to take photos and videos at a part of the workplace to record a risk or hazard to the health and safety of workers in the work group. It is intended that an HSR will be able to use their smartphone or other portable device to take photos or videos.

These extended powers are subject to safeguards in new subsection (2B) including a prohibition on taking a photo or video of a person participating in an interview under section 68 of the WHS Act; a person who is not a worker in the work group or a worker at the workplace whose actions are directly affecting a worker in the work group; and a prohibition on live streaming the photo or video. In addition, a note is inserted at the end of subsection (2B) to bring attention to other laws that regulate the taking of photos or videos; for example, the *Corrective Services Act 2006* and the Criminal Code.

The note at the end of section 68 refers the reader to section 271 and the *Privacy Act 1988* (Cth) in relation to limits on the use and disclosure of information collected under this section.

*Clause 47* amends section 118 (Rights that may be exercised while at workplace) to provide a WHS entry permit holder (EPH) with additional rights that may be exercised while at a workplace to inquire into a suspected contravention. The EPH may:

- take measurements and conduct tests directly relevant to the suspected contravention under new section 118(1)(aa)(i); and
- take photos and videos directly relevant to the suspected contravention under new section 118(1)(aa)(ii). It is intended that an EPH will be able to use their smartphone or other portable device to take photos or videos.

New section 118(1A)(a) provides for the EPH to bring to the workplace and use equipment and materials as reasonably necessary for the measurements or tests under new section; for example, a noise meter or dust monitor. New section 118(1A)(b) requires an EPH to take into account the need for compliance with a relevant Act when taking measurements and conducting tests. This will mitigate the risk of these activities being carried out in an unsafe manner.

The safeguards in new subsection (1B) includes a prohibition on taking a photo or video of a person who is not a relevant worker or a worker at the workplace whose actions are directly affecting a relevant worker, and a prohibition on live streaming the photo or video. In addition, a note is inserted at the end of subsection (1B) to bring attention to other laws that regulate the taking of photos or videos, for example, the *Corrective Services Act 2006* and the Criminal Code.

The note at the end of section 118 refers the reader to section 148 and the *Privacy Act 1988* (Cth) in relation to limits on the use and disclosure of information collected under this section.

## **Part 6 Other amendments**

*Clause 48* provides that Schedule 1 makes further amendments to the ES Act.

### **Schedule 1 Other amendments**

*Clause 1* amends section 32 (Duty of person conducting business or undertaking that manufactures electrical equipment) to replace the incorrect reference to '(1)(b)' with the correct reference of '(2)(b).'

*Clauses 2 to 7* amends the headings of sections 58, 66, 108, 113, 178 and 200 in line with current drafting conventions.