

Electrical Safety and Other Legislation Amendment Bill 2024

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**Submission to the
Clean Economy Jobs, Resources and Transport Committee**

Electrical Safety and Other Legislation Amendment Bill 2024

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Introduction

1. The Queensland Council of Unions (**QCU**) is the peak council of registered unions in Queensland representing 26 affiliated unions and 400,000 workers. We have a proud history of representing the voices of Queensland workers since 1885, and have been advocating for their industrial, social, and political interests since that time.
2. Work health and safety (**WHS**) is a fundamental right for all workers and core union business, and we welcome the opportunity to make a submission to the Clean Economy Jobs, Resources and Transport Committee's (**Committee**) Inquiry into the Electrical Safety and Other Legislation Amendment Bill 2024 (**Bill**).
3. Our submission is intended to address the amendments to the *Work Health and Safety Act 2011* (**WHS Act**) proposed in the Bill.
4. Our submission is made in support of, and supplementary to, the submissions made by our affiliates, such as the Electrical Trades Union. The QCU relies on those submissions, and the knowledge and expertise of our affiliates, with respect to the other matters in the Bill.

General Comments

5. The primary objective of Australian WHS laws, including Queensland's WHS legislative framework, is to secure the health and safety of workers and workplaces. One of the ways in which this is achieved is by protecting workers and other persons against harm to their health, safety and welfare.¹ All workers

Section 3(1)(a) of the WHS Act.

should expect to go to work and return home safely to their families every day, and employers who fail in their duty of care to protect them from harm must be held accountable.

6. We note that three key amendments proposed to the WHS Act in the Bill accord with this sentiment:

- a. The amendment to section 31 of the WHS Act recognises the significant harm an employer's negligent conduct can cause to a worker's or other person's health, safety and welfare,
- b. The amendments proposed to Industrial Manslaughter provisions will ensure employers are appropriately held to account when their negligent conduct causes the death of a worker, or other person, and do not evade consequences when the threshold for an Industrial Manslaughter prosecution cannot be met, and
- c. The amendment of sections 68 and 118 of the WHS Act will ensure that Health and Safety Representatives (**HSR**) and Entry Permit Holders (**EPH**) can effectively identify hazards, inspect suspected contraventions and resolve WHS issues (all of which protect workers and other persons against harm to their health, safety and welfare).

7. The QCU commends these amendments.

Amendment of section 31 of the WHS Act

8. The amendment of section 31 of the WHS Act at clause 40 of the Bill implements recommendation 23a of the Boland review to introduce an alternative fault

element of negligence, in addition to the existing fault element of recklessness, into the Category 1 offence.²

9. The QCU notes that the Boland review found that:

- a. 'There have been very few successful Category 1 prosecutions in any of the jurisdictions that have implemented the model WHS Act', such as Queensland, and that this 'may in part be due to the difficulties associated with proving recklessness',³
- b. introducing negligence as a fault element of the Category 1 offence 'will maintain [a] risk based approach and will add that extra deterrent' into the WHS offence framework (noting this had been recommended by the 2008 National review into model WHS laws);⁴ and
- c. the amendment 'will assist prosecutors to secure convictions for the most egregious breaches of duties' and 'assist in addressing community concerns that many PCBUS accused of serious WHS breaches are escaping punishment because the bar for conviction is set too high'.⁵

10. The amendment aligns Queensland's WHS Act with the model laws which have included the fault element of negligence since April 2022.⁶ This is consistent with the object of the WHS Act to maintain and strengthen the national harmonisation of laws relating to WHS and to facilitate a consistent national approach to WHS in Queensland.⁷

² Boland, M. (2018). *Review of the model Work Health and Safety laws: final report (Boland review)*. Safe Work Australia, 15.

³ Ibid, 119.

⁴ Ibid, 122.

⁵ Ibid, 122.

⁶ <https://www.safeworkaustralia.gov.au/law-and-regulation/legislation/amendments-model-whs-laws>

⁷ Section 3(1)(h) of the WHS Act.

11. For these reasons the amendments are supported by the QCU.

Industrial Manslaughter amendments

12. Clause 42 of the Bill amends the Industrial Manslaughter provisions at sections 34C and 34D of the WHS Act, and inserts a new section 34C, to include the death of bystanders and visitors (other persons), clarify that multiple parties in a contractual chain can be charged with the crime, and allow triers of fact to return alternative verdicts, as recommended by the WHS Prosecutor in his recent review of Queensland's Industrial Manslaughter provisions.⁸

Including the death of bystanders and visitors (other persons)

13. Queensland's Industrial Manslaughter laws provide no recourse to pursue a prosecution *"where a bystander or individual dies as a result of negligent conduct at a workplace and there is a prima facie case, a reasonable prospect of conviction, and it is in the public interest to proceed... because that person [is] not a worker"*.⁹

14. The Industrial Manslaughter offence in Queensland is limited to the death of a worker only.¹⁰ In comparison, as noted by the WHS Prosecutor,¹¹ the offence is not limited in this way in other jurisdictions that have adopted the harmonised WHS laws. In those jurisdictions, the Industrial Manslaughter offence applies to the death of an 'individual' or 'another person', including persons such as bystanders or visitors to a workplace.

⁸ Nicholson, S. (2024). *Review to examine the scope and application of the industrial manslaughter provisions in the Work Health and Safety Act 2011*. Office of the Work Health and Safety Prosecutor.

⁹ Ibid, 16–17.

¹⁰ Sections 34C(1)(a) and 34D(1)(a) of the WHS Act.
Nicholson, S. (n 8), 12–14.

15. The offence applies in this way in the following jurisdictions:
- a. The Commonwealth,
 - b. Australian Capital Territory,
 - c. Western Australia,
 - d. Northern Territory, and
 - e. South Australia (commencing 1 July 2024).
16. On 4 June 2024, the Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024 was introduced into the New South Wales parliament which also seeks to apply the Industrial Manslaughter offence in the same way.
17. This means that Queensland is the only jurisdiction with Industrial Manslaughter laws which do not apply to the death of a bystander or visitor to a business or undertaking that is caused by the negligent conduct of a person conducting a business or undertaking (**PCBU**), and where a prosecution may only be taken for manslaughter in these circumstances under the Criminal Code.
18. A criminal charge of manslaughter, however, presents several challenges. Namely, that the Criminal Code is limited in that it cannot apply to a corporation and does not provide for imputation of conduct of individuals to a corporate entity. A manslaughter charge may only apply to an identifiable person held responsible on behalf of the corporation where that person is able to be identified as 'the directing mind and will' of the corporation.
19. Overcoming the difficulties of prosecuting a corporation under criminal law was a key reason for the introduction of Industrial Manslaughter laws into the WHS legislative framework in Queensland. Given a PCBU's (e.g., a corporation) primary duty of care under section 19 of the WHS Act extends to other persons,

it is appropriate that these difficulties are overcome not only for prosecutions that relate to workers, but also for prosecutions that relate to other persons (bystanders and visitors) to whom a WHS duty of care is owed.

20. Should tragic events such as those that occurred at Dreamworld in 2016 ever happen again, Queensland's laws must ensure that the relevant PCBU is not immune from the consequences of breaching their duty of care under the WHS Act and being potentially liable for a charge of Industrial Manslaughter.

21. These circumstances were discussed in the Boland review which noted that Queensland's Industrial Manslaughter laws only applied to workers and did not extend to third parties to the work relationship, such as clients, customers, visitors or neighbours (other persons).¹² That review recommended that an offence of Industrial Manslaughter must include the death of other persons at the workplace as well as workers.¹³

22. The death of bystanders and visitors (other persons) is no less important than the death of workers. This was acknowledged by the WHS Prosecutor who recommended that the Industrial Manslaughter provisions in the WHS Act be amended to include bystanders or visitors by prescribing that the offence relates to 'an individual to whom a health and safety duty is owed' rather than just a worker.¹⁴

23. The amendments to sections 34C and 34D of the WHS Act at clause 42 of the Bill implement this recommendation and are supported by the QCU. They

² Boland, M. (n 2), 123.

³ Ibid.

⁴ Nicholson, S. (n 8), 18–19.

ensure that Queensland's laws are consistent with the approach to Industrial Manslaughter in most of the country.¹⁵

Clarifying that multiple parties in a contractual chain can be charged with the crime

24. Under section 19 of the WHS Act, a PCBU has a primary duty of care to workers engaged, or caused to be engaged by the person, or whose work is influenced or directed by the person while at the workplace and to ensure other persons are not put at risk from work carried out as part of the conduct of the business or undertaking.

25. A PCBU may also have other further duties such as those outlined in sections 20 to 26 of the WHS Act that include further duties for a PCBU:

- a. with management or control of a workplace,
- b. with management or control of fixtures, fittings or plant at a workplace,
- c. that designs plant, substances or structures,
- d. that manufactures plant, substances or structures,
- e. that imports plant, substances or structures,
- f. that supplies plant, substances or structures, and
- g. that installs, constructs or commissions plant or structures.

26. The Bill removes the words 'in the course of carrying out work for the business or undertaking' from sections 34C and 34D of the WHS Act. This means that a PCBU, or a senior officer of a PCBU, may be held liable for Industrial Manslaughter if:

- a. a worker or other person dies or is injured or later dies, and
- b. the person's conduct caused the death of the worker or other person, and

⁵ Section 3(1)(h) of the WHS Act.

- c. the person was negligent about causing the death of the worker or other person.

27. As was noted by the WHS Prosecutor,¹⁶ the words 'carrying out work for the business or undertaking' in the current Industrial Manslaughter provisions may limit the application and scope of the provisions because it would need to be proven beyond a reasonable doubt that a worker died in the course of carrying out work for the PCBU charged, and corporate structures could be arranged such that the legal effect was the deceased worker was not carrying out work for the PCBU.

28. To resolve this issue, the WHS Prosecutor recommended removing the words 'in the course of carrying out work for the business or undertaking' from the Industrial Manslaughter provisions.¹⁷

29. The amendments to sections 34C and 34D of the WHS Act aim to remove any doubt and clarify that multiple parties in a contractual chain can be charged with the crime of Industrial Manslaughter, including a designer, manufacturer, importer, supplier, or a PCBU that installs, constructs or commissions plant or structures in circumstances where their negligent conduct has caused the death of any person that they owe a WHS duty to.

30. The amendments clarify that duty holders under section 19 and sections 20 to 26 of the WHS Act may be liable for Industrial Manslaughter.

31. The QCU commends the amendment.

¹⁶ Nicholson, S. (n 8), 21.

¹⁷ Ibid, 22.

Alternative verdicts

32. It is in the public interest, and the interest of every worker in Queensland, that PCBUs accused of Industrial Manslaughter do not evade the consequences of breaching their duty of care under the WHS Act on technical grounds. Alternative verdicts will assist in achieving this.

33. Alternative verdicts have been introduced in the following jurisdictions:

- a. The Commonwealth,
- b. Australian Capital Territory,
- c. Western Australia,
- d. Northern Territory, and
- e. South Australia (commencing 1 July 2024).

34. Alternative verdicts have also been included in the New South Wales Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024.

35. The new sections 34E and 233A of the WHS Act at clauses 42 and 43 of the Bill will therefore ensure that Queensland's laws are consistent with the approach to alternative verdicts in these jurisdictions. This accords with the objects of the WHS Act.¹⁸

Amendment of sections 68 and 118 of the WHS Act

36. The amendments to sections 68 and 118 of the WHS Act at clauses 46 and 47 of the Bill implement recommendations 3D and 11(c) of the review of WHS Act **(review)**.¹⁹

¹⁸ Section 3(1)(h) of the WHS Act.

¹⁹ Massy, C., Allen, C., & Swan, D. (2022). *Review of the Work Health and Safety Act 2011 – Final Report*, 15–17.

37. The QCU notes that the review made the following observations:

- a. For HSRs to be able to perform the role envisaged by the WHS Act, it is necessary for them to be completely integrated into the identification and resolution of safety issues at a workplace,²⁰
- b. While section 68 of the WHS Act provides that HSRs have the power to monitor the measures taken by a PCBU or their representative, it is unclear how this operates in practice,²¹
- c. Common types of equipment that HSRs seek to use in investigating matters and ensuring compliance are a smartphone to take photographs or videos, and equipment such as a noise meter or dust monitor for hazards such as coal dust or silica,²²
- d. With respect to EPHs, the precise scope of what is considered to fall within the term inquiring into a suspected contravention is not spelled out in the WHS Act in detail,²³
- e. Several activities that are considered a common component of a workplace inquiry are not explicitly permitted by the WHS Act at present, including information gathering activities such as using a smartphone to take photographs or videos, using a noise meter, or using a dust monitor,²⁴
- f. There is obvious merit in EPHs being able to take photographs, make videos, take measurements and/or samples of the issues they are investigating because a central part of the EPH role is to investigate suspected contraventions and take steps to have those matters addressed,²⁵ and

²⁰ Ibid, 11.

²¹ Ibid, 42.

²² Ibid.

²³ Ibid, 66.

²⁴ Ibid.

²⁵ Ibid, 68.

- g. There is general consensus among employer representatives that such conduct is common and the inclusion of it in the WHS Act would be uncontroversial.²⁶

38. Many of these observations are consistent with the views expressed to the reviewers by the QCU and our affiliates, and we strongly advocated for HSRs and EPHs to have similar powers to inspectors to take measurements and conduct tests, and to take photographs and videos.²⁷

39. We therefore support the amendments. They will ensure that HSRs and EPHs can effectively identify hazards, inspect suspected contraventions and collect evidence to assist with the timely resolution of WHS issues. They will also remove any doubt that the current practice of HSRs and EPHs is lawful and within the scope of their powers and functions to protect workers and other persons against harm to their health, safety and welfare.

Conclusion

40. The QCU thanks the Committee for the opportunity to make this submission.

41. We welcome the WHS reforms contained in the Bill and recommend to the Committee that the amendments discussed above are passed in full.

²⁶ Ibid.

²⁷ Section 165(d) of the WHS Act.