

Electrical Safety and Other Legislation Amendment Bill 2024

Submission No:	8
Submitted by:	Housing Industry Association Ltd
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	



14 June 2024

Committee Secretary
Clean Economy Jobs, Resources and Transport Committee
Via email: cejrtc@parliament.qld.gov.au

Consultation on Electrical Safety and Other Legislation Amendment Bill 2024

On 22 May 2024, the *Electrical Safety and Other Legislation Amendment Bill 2024* ('the Bill') was introduced into Parliament and referred to the Clean Economy Jobs, Resources and Transport Committee for inquiry and detailed consideration. HIA makes this submission in response to the inquiry.

HIA comments are mostly confined to the Industrial Manslaughter Review ('the Review') and the provisions of the Bill that examine the scope and application of the industrial manslaughter provisions in the *Work Health and Safety Act 2011* (Qld) ('the WHS Act'). HIA also refers below to the proposal in the Bill at clause 46 to amend the WHS Act to empower health and safety representatives and entry permit holders to video or photograph suspected contraventions in the workplace.

HIA have previously provided submissions opposing the insertion of an industrial manslaughter offence into the WHS Act and have expressed significant concerns with the proposals in the Bill. Most recently, HIA provided a response to the recommendations and amendments to capture the death of bystanders, duty holders, and the allowance of alternative verdicts (see Attachment 1).

Overall, HIA maintains that industrial manslaughter provisions unnecessarily duplicate protections found within the current legislative frameworks and are of the view that deaths in the workplace, or in a non-industrial context, should be a matter for criminal law. Incorporating industrial manslaughter provisions within safety laws is inconsistent with the overall, proactive objective of safety legislation.

Amendment of s 68 (Powers and functions of health and safety representatives)

Given the existing extensive abuse of right of entry powers, HIA opposes the proposal to amend section 68 of the WHS Act that gives the right for health and safety representatives and permit holders to video or photograph suspected contraventions in the workplace. The proposal to broaden the rights of permit holders is not only unjustified, it fails to consider the negative impact that the amendments could have on safety culture, the scope of the information extending beyond what is necessary, and the potential for misappropriation of materials.

The aim of the WHS Act and work health and safety frameworks should be to create a culture of compliance and cooperation. Even where there is no intention for recordings to be deliberately misused, the act of video recording can be confrontational and may create a psychosocial hazard for workers and others. If the ability to take video or photograph suspected contraventions is included in any legislative amendments, there must be strong protections offered to employers and workers, including the right to refuse recordings and the Government should ensure a risk assessment has been carried out on the potential impact of the Bill's proposal on workers and others, and measures implemented to review and re-assess these risks on a case by case basis.

The proposed drafting for s 68 requires that any photo or video captured be for the purpose of identifying or recording a hazard or risk, or the extent of a hazard or risk, to the health or safety of workers in the work group. While this may be the intention, it should also be understood by government that the scope of information captured will almost certainly extend beyond the information necessary to document a suspected contravention. The potential for video recordings to capture additional information that may be private or commercially sensitive is well beyond that of the current provisions.

Finally, given the incredibly sensitive, private nature attached to videos and photographs associated with industrial manslaughter, a range of deterrents must be put in place to prevent the misuse of information, including fines and the ability to make common law claims. Prior to making any amendment, Government need to give consideration to the unintended consequences of increasing the amount of data that can be collected by third party organisations, including privacy and data security.

Ultimately, the Government is yet to provide any justification for this amendment. WorkSafe Qld is responsible for investigating and prosecuting suspected contraventions of the WHS laws and Health and safety representatives and entry permit holders should not be given quasi-regulatory powers in attempts to compensate for the shortcomings of a government agency.

HIA welcomes the opportunity to engage with you further on these important issues. Should you require any further information or clarification, please do not hesitate to contact me by [REDACTED], or [REDACTED]

Yours sincerely

[REDACTED]

Michael Roberts
Executive Director – Queensland
HOUSING INDUSTRY ASSOCIATION LIMITED

Attachment 1

In response to the 2022 Review of the Work Health and Safety Act 2011 (Qld) (WHS Act), a recommendation was made to examine the scope and application of the industrial manslaughter provisions in Queensland. HIA has been invited to provide submissions in response to whether proposed amendments to Part 2A of the WHS Act are warranted.

In relation to this Review and the proposed amendments to the industrial manslaughter provisions of the WHS Act, HIA:

- Opposes an expansion of Part 2A to capture bystanders;
- Submits that the current provisions adequately capture all WHS duty holders, however, further submits that reference to senior officer be removed from Part 2A; and
- Opposes amendments to allow the alternative verdicts.

Capturing the death of bystanders

Industrial manslaughter provisions are specifically intended to target deaths that occur at a workplace and aim to hold individuals and organisations accountable for negligent breaches of their duty of care towards the health and safety of workers. The emphasis on workers in industrial manslaughter provisions reflects the duty of care that employers owe to those under their employment. The focus on workers underscores the unique relationship between employers and employees where employees may be more vulnerable in a workplace setting.

HIA opposes any expansion of the industrial manslaughter provisions to cover the death of bystanders.

The current legal framework adequately addresses incidents involving the death of bystanders through existing laws, including the manslaughter provisions¹ within the *Criminal Code Act 1899* (Qld) and the categorisation of such incidents as Category 1 offences² under the WHS Act, which carries criminal penalties. As such, the current legal landscape provides sufficient coverage and consequences for incidents involving the death of bystanders, negating the need for an expansion of industrial manslaughter provisions beyond the primary focus on workplace-related fatalities.

HIA acknowledges that arrangements in other states and territories of Australia are broader and capture more than just workers. Recognising the importance of national harmonisation and consistency, if it is determined that bystanders should be included within the scope of industrial manslaughter provisions, any amendment should align with the Model WHS Act and explicitly refer to 'individuals'.

Amendments to capture duty holders

The current provisions adequately capture all WHS duty holders, as such, further amendment to include others is not necessary.

However, 'senior officer' is a term that was specifically introduced within the industrial manslaughter provisions of the Queensland WHS Act. HIA does not see that this specific inclusion is necessary or warranted and should be removed from Part 2A. Work health and safety laws adequately capture all duty holders, and this inclusion is out of step with the approach elsewhere across the country.

When concerns regarding the inclusion of 'senior officers' was initially raised by industry stakeholders in 2017, Queensland Treasury responded to these submissions and highlighted that the inclusion of this term was intended to '*encourage work health and safety to be managed as a cultural priority within organisations and ensure that safety standards are managed and supported from the top down*'.³ HIA submits that the WHS Act

¹ s 303 and s 310.

² s 31.

³ Correspondence – Queensland Treasury, 20 September 2017: <https://documents.parliament.qld.gov.au/com/FAC-D297/RN4655PWHS-BF37/B21-cor-20Sep2017.pdf>, page 16.

already establishes a framework for holding senior officers accountable through the existing definition of officer and the subsequent due diligence duties. If the objective is to promote a safety culture, the legislative framework offers ample tools to hold officers and senior officers accountable for workplace safety, obviating the necessity to introduce a separate class of individuals under Part 2A of the WHS Act.

In terms of proposed alternative drafting for Part 2A, the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* inserts wording into the Commonwealth WHS Act that clarifies that industrial manslaughter offences apply if ‘the person has a health and safety duty’. Notably, industrial manslaughter provisions in the WHS legislation of WA, NT and the ACT adopt similar language. This represents more certain wording and contributes to national harmonisation of WHS laws. HIA prefers this approach over the current adopted in Queensland.

Alternative verdicts

The Office of the Workplace Health and Safety Prosecutor (‘the OWHSP’) has pursued five charges of industrial manslaughter since the introduction of the offence in 2017. Two cases have proceeded to trial, and both were successfully prosecuted, implying a certain level of effectiveness with the current system and underscoring the importance of establishing a clear connection between the defendant’s actions and the incident.

The WHS Act in Queensland does not currently allow the prosecutor to pursue an alternative verdict. WA, NT and the ACT have included alternative offence provisions,⁴ however, this approach is still relatively novel and is not consistent across the jurisdictions that have adopted industrial manslaughter provisions.

The inclusion of an alternative verdict provision is inconsistent with the WHS Act generally in that alternative verdicts are not included for Category 1 – 3 offences.

Following the implementation of the industrial manslaughter offence in Queensland, two cases have proceeded to trial. In both instances, all parties involved plead guilty to the offence resulting in successful convictions for the OWHSP. In the case of *R v Brisbane Auto Recycling Pty Ltd*,⁵ in addition to the company being found guilty of industrial manslaughter, the directors of the company were simultaneously found guilty of a Category 1 offence and were each sentenced to ten months imprisonment.

In attempt to prosecute Orko Fertilizers Pty Ltd, the industrial manslaughter charges were later downgraded to a Category 2 offence which was successfully prosecuted by the OWHSP, suggesting that a degree of flexibility already exists and reiterating that there are varying degrees of culpability for health and safety offences.

The current way in which the OWHSP is pursuing charges appears to be effective; two successful trials for the offence of industrial manslaughter have taken place⁶ and proceedings for Category 1 and 2 offences being pursued where necessary, and successfully, without the need for alternative verdict provisions.

HIA opposes any amendments that would permit the pursuit of alternative verdicts in cases of industrial manslaughter and provides that prosecutions for the offence of industrial manslaughter must remain targeted and direct. Individuals facing charges should proceed to trial with a clear and specific charge to allow them to present a focused and unambiguous defence. To facilitate this, prosecutors should be required to unequivocally decide the charge in the first instance. There has been no evidence provided that justifies the need for such an amendment, and any amendment may signify an unwarranted expansion of prosecutorial powers.

Provision of this nature may also encourage unworthy prosecutions on the basis that an alternative verdict is available for unsuccessful industrial manslaughter prosecutions. HIA recommends that this provision not be pursued and emphasises a stringent and principled approach to the prosecution of industrial manslaughter cases.

⁴ See e.g. *Work Health and Safety Act 2020* (WA), s.30(A)(2).

⁵ [2020] QDC 113.

⁶ *R v Brisbane Auto Recycling Pty Ltd* [2020] QDC 113 and *R v Jeffrey Owen* [2022] QDCSR 168.