

Electrical Safety and Other Legislation Amendment Bill 2024

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Electrical Safety and Other Legislation Amendment Bill 2024

Chris Lehmann & Georgia Holmes
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Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. You can visit our website at www.masterelectricians.com.au.

We commend the Queensland (QLD) Government's amendments drafted in the *Electrical Safety Act 2002* (the Act) which positively address our previously-raised concerns regarding high-risk extra low voltage (ELV) equipment. We also welcome the amendments that integrate battery and other storage technology within the Act's definition in recognition of the rapid evolution towards electrification. We are largely supportive of amendments to this portion of the *Electrical Safety and Other Legislation Amendment Bill 2024* (the Bill) with some caveats set out below.

MEA supports initiatives that improve worker safety.

MEA seek inclusion in the Bill, allowing for licenced electrical contractors to inspect and test emergency lighting and to install and maintain fire alarm systems. Licenced electrical workers are adequately trained to perform such tasks and would not require additional qualifications to be obtained.

However, MEA advocates against widening the current Industrial Manslaughter (IM) provisions under ss 34C – 34D.

While the rationale for the expansion is understood, case history and jurisdictional comparisons (both domestically and internationally) demonstrate the inequitable impact IM laws have on directors of small and medium entities (SMEs) due to their involvement in business operations, as compared with directors of large corporations. We argue extending current IM laws to include bystanders will be disproportionately unfair to SMEs, and existing laws and deterrents already penalise negligent or reckless conduct. Further information is provided below.

Electrical Safety Act

CI 6 – Insertion of s 14A (Meaning of *prescribed electrical equipment*)

In previous joint industry submissions, we highlighted the need for stronger legislative clarity between ELV and electrical work.

We are satisfied cl 6 has addressed our joint industry concern raised in earlier consultations regarding high-risk ELVs.

MEA advocate for the following equipment to be specifically included as prescribed items under s 14A(1)(c) –

- Battery Energy Storage Systems (BESS)
- Conversation equipment associated with ELV and LV supplies
- Off-power girds supplies to houses
- ES3 telecommunications data cabling and equipment.

CI 8 – Amendment to s 18 (Meaning of *electrical work*)

S 19(1)

We commend the QLD Government for adopting draft amendments suggested by MEA and NECA in our previous joint submission. In particular, we proposed the content which has been drafted in s 19(1)(i).

CI 18 – Insertion of s 121A (Changing and removing disciplinary conditions or restrictions)

MEA recommends inserting s 121(4)(d) as a provision allowing for the overturning of the licensing committee's decision based on the grounds of it being deemed unreasonable.

Electrical Fire Safety Systems

MEA requests for the Queensland legislation to clarify that the following work may be carried out by a licensed electrician without the need for any additional licence or qualifications:

- Provision of a condition report following the inspection and testing of emergency lighting (including where extra low voltage).
 - It is acknowledged that the *Queensland Building and Construction Commission Act* (The Act) and Regulations provide that the inspection and testing may be carried out by a licensed electrician, however the provision of the condition

report (as required by AS2293 Pt 2 App D) appears to require a QBCC fire protection licence, which is not supported by MEA.

- Installation and maintenance of fire alarm systems as a contractor.

Ideally, this would be clarified in the QBCC Act and Regulation, however we have not had success in achieving this and therefore we request consideration be given to the *Electrical Safety Act* and Regulations clarifying that this is electrical work, to enable electricians to continue to carry out work for which they are suitably qualified.

Transitional Provisions for *Electrical Safety and Other Legislation Amendment Act 2024*

CL 30 Part 23 – 258 Existing Proceedings

We are concerned that 258(2)(a) will cause detrimental inefficiency to the prosecution process. We advocate this be amended to state –

- (a) If the proceeding was taken by the regulators- then the regulator is to finalise the proceeding. WHS prosecutors will become party to all new prosecutions which are initiated immediately following commencement of these amendments.

Work Health and Safety Act – Industrial Manslaughter

CI 42 – s 34C Industrial manslaughter- person conducting business or undertaking, &

CI 42 – s 34D Industrial manslaughter – senior officer

Fairness and Equity

Targets SMEs

QLD created new IM legal precedent by prosecuting Australia's first IM case, *R v Brisbane Auto Recycling Pty Ltd* [2020] where two directors of a small business were sentenced to 10 months imprisonment (wholly suspended for 20 months) and a \$3 million fine for.¹

In another QLD IM case, *R v Jeffrey Owen* resulted in the director being sentenced to five years imprisonment (wholly suspended for 18 months). The defendant was

¹ *R v Brisbane Auto Recycling Pty Ltd & Ors* [2020] QDC 113

both the business owner and forklift driver which resulted in the death of a volunteer. Ironically, despite the introduction of IM provisions aiming to "pierce the corporate veil" of large corporations and provide fair justice to SMEs who are deemed more susceptible to punitive measures regarding workplace fatalities, all IM cases have involved SMEs.

"The identification of a ... negligent individual who is the embodiment of a small company is not as problematic, as with small companies it is often the case that the director will be actively involved in day-to-day operations.' The WHS laws, as currently drafted, make it more difficult for an officer of a large entity, who is not involved directly with the day-to-day operations, to be found liable."²

There is a concern that small companies are being disproportionately targeted by IM provisions. Larger corporations are better resourced to respond through lawyers.³ Our assertion is further supported by the collation of work health and safety prosecution statistics over a number of years by John Darcy, an OHS advisor, noting that "as of 2019, WorkSafe ha[d] never prosecuted an officer ... of large corporations."⁴

With a concern the current system is biased against SMEs, extending it to include bystanders would potentially expose SME directors to higher punitive repercussions than directors of large corporations. Extending IM laws will likely not assist in piercing the corporate veil, but instead is likely to impose greater levels of inequality under IM law.

United Kingdom

The United Kingdom (UK) has had "fewer than 30 convictions [since 6 April 2008], and between 2018 to 2021, those convictions only resulted from guilty pleas. In total

² Dean, C. & Reaburn, T, *Dreamworld Inquest could officers actually be imprisoned?* McCullough Robertson Lawyers, [28 February 2020]. <<https://www.mccullough.com.au/2020/02/28/dreamworld-inquest-could-officers-actually-be-imprisoned/>>

³ J. Darcy, *Industrial manslaughter will hit small business* [17 May 2019]. <(1) [Industrial manslaughter will hit small business](#) | LinkedIn>

⁴ Ibid.

there have been fewer than 40 prosecutions ... since 2008”⁵ . Master Builders, a representative organisation of the building construction industry, noted that “most of [the UK] entities that have been successfully prosecuted have been smaller organisations”⁶

The UK’s statistics supports our concerns raised that SMEs are increasingly becoming the primary targets of IM laws. IM provisions potentially undermine the rule of law, as emerging cases indicates a disparity in legal treatment in that larger corporations are less likely to be prosecuted for workplace deaths compared to SMEs.

MEA contends that extending these inequitable laws to include ‘bystanders’ in QLD will exacerbate the unfair legal position of SMEs.

Departure from Risk-Focus of WHS Law.

“Following the introduction of the Queensland industrial manslaughter provisions in 2017, there has been ongoing debate regarding their utility given the existing obligations on PCBUs and officers. These provisions also represent a departure from the usual risk-focus of WHS law”⁷.

MEA is concerned that extending IM to include bystanders will further unnecessarily intensify this shift away from the worker risk focus of WHS law. It will also potentially result in SMEs prioritising procedural compliance over flexible risk response to emerging hazards.

⁵ Wood, S, *Review of recent corporate manslaughter cases: Deco-Pak, Bosely Mill, Aster Healthcare*, Kinglsey Napley, [2 February 2022] <<https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/review-of-recent-corporate-manslaughter-cases-deco-pak-bosely-mill-aster-healthcare/>> .

⁶ Master Builders Victoria, *Maser Builders Victoria submission in response to the workplace manslaughter consultation paper* [30 May 2023] <[2019530%20-%20Workplace%20Manslaughter%20Submission%20-%20Master%20Builders%20Victoria\[1\].pdf \(mbav.com.au\)](https://www.masterbuilders.com.au/~/media/2019/530%20-%20Workplace%20Manslaughter%20Submission%20-%20Master%20Builders%20Victoria[1].pdf?mbav.com.au)>

⁷ Roberts, N, Dean, C, & Reaburn, T, *Reforms arising from Marie Boland’s review of WHS laws*, McCullough and Robertson Lawyers, [6 May 2021] <<https://www.mccullough.com.au/2021/05/06/reforms-arising-from-marie-bolands-review-of-whs-laws/>>

Work Health and Safety Act – Safety Representatives

CI 46 – Amendment of s 68 (powers and functions of health and safety representatives)

MEA is concerned s 68(ba)(ii) risks granting health and safety representatives additional access to workplace practices beyond the purview of the investigation placing an unfair burden on PCBU's. While we acknowledge that cl 47 (Amendment to s 118) does limit the scope of s 68(ba)(ii), we are concerned this provision effectively gives unfettered access to the workplace through allowing additional scrutiny with hindsight and extra personnel oversight.

Conclusion

Australia is rapidly entering a period of significant electrification and it is therefore crucial that relevant Acts are updated and future-proofed to regulate new and emerging electrotechnology. We are pleased to see “battery and other storage technology” defined under electrical installation.

MEA requests the inclusion in the Bill to permit licensed electrical contractors to inspect and test emergency lighting, and to install and maintain fire alarm systems. Licensed electrical workers possess adequate training to perform these tasks without the need for additional qualifications. The QBCC Act has failed to acknowledge the electrical industry's capabilities in conducting these procedures. Allowing electrical contractors to undertake these roles will decrease administrative costs and burdens for consumers, as electricians can efficiently perform these tasks while attending to other electrical matters on site.

MEA advocates against extending QLD's current workplace IM laws beyond fatalities to workers. Case history and jurisdictional comparisons demonstrate the existing inequitable impact IM laws are imposing on SMEs; defeating its purpose to provide balance in making it easier to prosecute executives and officers of large corporations who are not involved in the daily operations of business.

Addressing this imbalance is crucial to maintaining the integrity of the WHS framework and ensuring that all businesses, regardless of size, are held to the same

standards.

MEA applaud the Government's proactive response to electrification and workplace safety through the Bill and believe it is vital the safety of our industry's workers, businesses and stakeholders are maintained. However, we stress the importance of ensuring safety is equitably balanced with administrative burden imposed upon SMEs.

MEA looks forward to continued engagement in upcoming consultations as we continue to improve both the *Electrical Safety Act 2002* and the *Work Health and Safety Act 2011*.