

## Resources Safety and Health Legislation Amendment Bill 2024

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

**Resources Safety and Health Legislation  
Amendment Bill 2024**

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**Authorised by:**

Jacqueline King

General Secretary

Queensland Council of Unions

[Redacted signature line]

[Redacted signature line]

**Prepared by:**

Nate Tosh

Legislation and Policy Officer

Queensland Council of Unions

[Redacted signature line]

[Redacted signature line]

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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 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 Resources Safety and Health Legislation Amendment Bill 2024 (**Bill**).
3. Our submission is intended to emphasise key issues relevant to Queensland's Industrial Manslaughter laws, and is made in support of, and supplementary to, the submissions made by relevant industry unions. The QCU relies on those submissions with respect to other matters in the Bill.

## General Comments

4. The primary objective of Australian work health and safety laws, including Queensland's work health and safety 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.<sup>1</sup> All workers ought to be entitled to this protection irrespective of their occupation or the specific health and safety legislation that applies to their industry. All workers should expect to go to work and return home safely to their families every day.

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<sup>1</sup> Sect on 3(1)(a) of the *Work Health and Safety Act 2011*.

5. We note that a principal policy objective of the Bill is to improve the resources sector's safety and health performance to reduce the occurrence of fatalities and serious accidents,<sup>2</sup> and that this accords with the aforementioned sentiment. The QCU therefore commends the Bill.

## Industrial Manslaughter

6. While we generally commend the Bill, the QCU draws the Committee's attention to the recent review conducted by the Work Health and Safety Prosecutor (**WHS Prosecutor**), Mr Simon Nicholson, examining the scope and application of the industrial manslaughter provisions in the *Work Health and Safety Act 2011* (**WHS Act**).<sup>3</sup> We urge the Committee to consider the relevance of the WHS Prosecutor's recommendations to the relevant Industrial Manslaughter provisions in the *Coal Mining Safety and Health Act 1999*, *Explosives Act 1999*, *Mining and Quarrying Safety and Health Act 1999*, and *Petroleum and Gas (Production and Safety) Act 2004* (**Resources Safety Acts**).

7. These provisions were introduced into the Resources Safety Acts by the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* to ensure there is consistency in how deaths of workers on Queensland worksites are treated and to align with the Queensland Government's commitment to ensuring the safety and health of all workers across all industries.<sup>4</sup>

8. The QCU therefore submits to the Committee that it is appropriate for the Industrial Manslaughter provisions in the Resources Safety Acts to be amended,

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<sup>2</sup> Explanatory notes for the Bill, page 1.

<sup>3</sup> Which can be found at: [https://www.o r.q d.gov.au/system/files/2024/03/PN12976\\_%20%20ndustr a %20Mans aughter%20Rev ew%20Report.pdf](https://www.o r.q d.gov.au/system/files/2024/03/PN12976_%20%20ndustr a %20Mans aughter%20Rev ew%20Report.pdf)

<sup>4</sup> Explanatory notes for the Mineral and Energy Resources and Other Legislation Amendment Bill 2020, page 1.

so far as is relevant, in accordance with the WHS Prosecutor's recommendations as is currently being considered with respect to the comparable provisions in the WHS Act. This is appropriate to ensure ongoing consistency in how deaths of all Queensland workers are treated.

*Including the death of bystanders (other persons)*

9. The first matter that ought to be addressed, as recommended by the WHS Prosecutor, is expanding the offence in the Resources Safety Acts to include bystanders (other persons).
  
10. As with the provisions in the WHS Act, the Industrial Manslaughter provisions in the Resources Safety Acts currently only apply to workers. However, in each of the Resources Safety Acts, like the WHS Act, other persons are also owed a duty of care.<sup>5</sup>
  
11. The death of bystanders (other persons) is no less important than the death of workers. This was acknowledged by the WHS Prosecutor, who also confirmed that 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*".<sup>6</sup>
  
12. Consequently, the WHS Prosecutor recommended that the Industrial Manslaughter provisions in the WHS Act be amended to include bystanders by

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<sup>5</sup> See, e.g., ss 39(1)(c) and 41(1)(f) of the *Coal Mining Safety and Health Act 1999*, s 32(1) of the *Explosives Act 1999*, ss 36(1)(c) and 38(1)(e) of the *Mining and Quarrying Safety and Health Act 1999*, and s 699 of the *Petroleum and Gas (Production and Safety) Act 2004*.

<sup>6</sup> At page 16 and 17 of his report (n3).

prescribing that the offence relates to 'an individual to whom a health and safety duty is owed' rather than just a worker.

13. The QCU therefore submits to the Committee that the Industrial Manslaughter provisions in the Resources and Safety Acts would benefit from a similar amendment to ensure all of Queensland's Industrial Manslaughter laws are consistent, noting that the wording may need to differ slightly to more relevantly reflect how duties are prescribed in each of the Acts.

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

14. The second matter that ought to be addressed, as recommended by the WHS Prosecutor, is clarifying that multiple parties in a contractual chain can be charged with the crime.

15. The QCU notes that the Bill includes relevant amendments to clarify which entities can be subject to industrial manslaughter. However, this does not extend to other duty holders who could engage in conduct that negligently causes the death of an individual, whether or not the individual was a worker and whether or not they were carrying out work for the duty holder,<sup>7</sup> or clearly clarify that multiple duty holders holding multiple duties can be charged with the crime. The WHS Prosecutor recommended that the Industrial Manslaughter provisions in the WHS Act be amended to address this issue.

16. In the context of the Resources Safety Acts, in the first instance, this would require extending the application of the offence to ensure it applied to duty

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<sup>7</sup> E.g., designers, manufacturers, importers and suppliers of plant, or erectors and installers of plant.

holders beyond employers, such as designers, manufacturers, importers and suppliers of plant, or erectors and installers of plant (for example).

17. It would also be appropriate for the Committee to seek advice, including from the WHS Prosecutor, about the wording of the respective provisions in the Resources and Safety Acts to determine if any further amendments are required to address any potential limitations in the scope of the laws.
  
18. To elaborate, the WHS Prosecutor advised that, although untested, there may be merit in the observation that the words 'carrying out work for the business or undertaking' in the WHS Act provisions limits the application and scope of those industrial manslaughter laws, because it would need to be proven beyond a reasonable doubt that the worker died in 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.<sup>8</sup> Given the same words do not appear in any of the Resources Safety Acts it is unclear if the same issues arise, but it is appropriate for this to be explored by the Committee to determine any relevant amendments that ought to be made to ensure all of Queensland's Industrial Manslaughter laws are consistent.

### *Alternative verdicts*

19. The WHS Prosecutor also recommended that the Industrial Manslaughter provisions in the WHS Act be amended to allow triers of fact to return alternative verdicts similar to specific crimes in the *Criminal Code*. This is consistent with Industrial Manslaughter laws in other jurisdictions.

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<sup>8</sup> At page 21 of his report (n3).



20. However, the QCU notes that the offence provisions in the Resources Safety Acts differ from those in the WHS Act, and it is therefore unclear if alternative verdicts could be implemented in the Resources and Safety Acts in the manner in which the WHS Prosecutor has recommended.

21. The QCU therefore submits that this matter could be addressed by the Committee by providing a recommendation in its report that a review is conducted by the WHS Prosecutor into how alternative verdicts may be implemented in the Resources and Safety Acts to ensure all of Queensland's Industrial Manslaughter laws are consistent.

## **Conclusion**

22. The QCU thanks the Committee for the opportunity to make this submission, and we encourage the Committee to carefully consider our recommendations.