

---

**SUBMISSION INTO THE RESOURCES SAFETY AND HEALTH BILL 2019**

---

**SUBMISSION MADE TO:** Committee Secretary

State Development, Natural Resources  
and Agricultural Industry  
Development Committee

Parliament House  
George Street  
Brisbane Qld 4000

**By Email:** [sdnraidc@parliament.qld.gov.au](mailto:sdnraidc@parliament.qld.gov.au)

**AUTHOR:** Samantha Williams

Collieries' Staff and Officials Association

Level 1, 491 Kent Street  
SYDNEY NSW 2000

**P:** (02) 9269 0688

**E:** [REDACTED]

## Introduction

The Association of Professional Engineers, Scientists and Managers, Australia – Collieries Staff Division (also known as the Collieries' Staff and Officials Association (**CSOA**)) welcomes the opportunity to provide a submission into the Resources Safety and Health Queensland Bill 2019 (the **RSHQ Bill**).

Generally speaking, the CSOA is supportive of the RSHQ Bill. The CSOA supports any effort by government to make workplaces safer. The RSHQ Bill's proposal to establish an independent statutory body and independent Commissioner for Resources Safety and Health, with functions across all resources sectors (including the black coal mining industry) is welcomed by the CSOA. The CSOA believes that the RSHQ Bill will improve and enhance the already robust health and safety regime in Queensland.

Notwithstanding the above, the CSOA does have a number of concerns about the RSHQ Bill, in particular, the replacement section 256B – Procedure if prosecution not brought.<sup>1</sup> The CSOA is concerned that this proposed section requires significant review to ensure transparency so that the rights and the reputation of individuals working in the black coal mining industry are not unfairly tarnished by the release of certain information by the regulator.

In addition to the CSOA's concerns about the proposed section 256B, the CSOA is concerned about the amended section 264 – Costs of investigation.<sup>2</sup> In particular, the CSOA is concerned about the lack of guidance in the RSHQ Bill in respect of the award of costs against employees, as distinct from that of directors.

Each of the above concerns are outlined in detail below.

## The Collieries' Staff and Officials Association

The CSOA is a division of the Association of Professional Engineers, Scientists and Managers, Australia (**APESMA**). APESMA is a federally registered trade union with over 25,000 members nationally.

---

<sup>1</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 84.

<sup>2</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 85.

The CSOA represents supervisory, professional, administrative, clerical and technical employees engaged in the black coal mining industry across Australia. In Queensland the CSOA's membership is located in the coalfields of, the Bowen, and Surat Basins and Ipswich in Queensland, as well as in NSW (the Illawarra, Western District, the Hunter, and Newcastle), Tasmania and in Western Australia.

Relevant to the RSHQ Bill, the CSOA's members include first and second line supervisory staff known as 'Deputies,' and Undermanagers (also known as Senior Shift Supervisors) who supervise the safe mining of coal. The CSOA also represents Mine Surveyors who are responsible for accurately and safely survey the mine site, and Ventilation Officers who are responsible for the safe monitoring and control of ventilation at underground coal mines.

By virtue of their supervisory roles, Deputies, Undermanagers/Shift Supervisors, Mine Surveyors and Ventilation Officers owe a safety duty above and beyond the ordinary mine worker, and to both themselves, and those who they supervise. These duties are well known within the industry, and mine managers, supervisors and surveyors have been prosecuted and convicted for failing to comply with these duties under the relevant work health and safety acts.<sup>3</sup>

### **The CSOA's concerns with the Resources Safety and Health Queensland Bill 2019**

#### Proposed Section 256B<sup>4</sup>

In respect of the proposed section 256B of the RSHQ Bill, the CSOA has three main concerns, namely:

1. the competencies required, or the responsibilities of the 'person' who makes a request of the WHS prosecutor that a prosecution be brought under the proposed section 256B;
2. the confidentiality requirements on a 'person' who makes a request under the proposed section 256B and receives a response from the regulator; and

---

<sup>3</sup> See, for example, *Stephen Finlay McMartin v Newcastle Wallsend Coal Company Pty Ltd & Ors* [2004] NSW IR Comm 202 (the Gretley Decision).

<sup>4</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 84.

3. the lack of consequences for making a false or misleading statement in the course of requesting a prosecution.

#### Competencies or responsibilities of person who makes a request

The CSOA notes that the RSHQ Bill does not provide a definition of a 'person.' In circumstances such as these, the CSOA is of the view that a 'person' may be any natural person, or any organisation that may be unsatisfied with the WHS Prosecutor's decision not to prosecute for a 'serious offence' under the proposed act.

The CSOA is concerned that the absence of such a definition creates a risk that persons who are not suitably qualified, or who lack the relevant competencies in understanding the complexities of the black coal mining industry may make a request to the WHS Prosecutor to further consider whether a WHS prosecution should be brought for a serious offence.

The CSOA is concerned that this approach will result in persons who are not properly trained or qualified, or who lack the relevant competencies and understanding of the black coal mining industry may make requests of the WHS Prosecutor for a prosecution to be commenced. The CSOA is of the view that this approach creates a circumstance whereby a party, who do not understand the intricacies or the technical complexities of the black coal mining industry may make a request that the WHS Prosecutor again consider whether a prosecution be brought in relation to the act or omission that may have constituted a serious offence.

The CSOA is concerned that the broad definition of 'person' has the potential to facilitate the misuse of s 256B by well-meaning but unqualified individuals, or to allow activist or lobby groups, or others who may have ulterior motives to make a request of the WHS Prosecutor to bring a prosecution. The effect of such a request on those people, who often work in roles covered by the CSOA and who have otherwise already been investigated and subject to an investigation process would be significant and would cause them further stress and anxiety.

In addition to the personal stress and anxiety caused by the potential reactivation of a prosecution that a person thought had concluded, the professional stress placed on the person who was subject to the request for a prosecution to be brought would also be significant.

Accordingly, the CSOA recommends that the definition of 'person' in the proposed section 256B of the RSHQ Bill be limited to a 'person' who has the same level of skills and competencies as the person against whom they are making a complaint.

The CSOA is of the view that our proposed definition strikes the correct balance in ensuring that there remains a right for a person or organisation to make a request of the WHS Prosecutor to bring a prosecution while also ensuring the person who makes such a request is otherwise properly qualified and/or competent to make such a complaint.

#### Confidentiality requirements

The CSOA notes that the proposed section 256B of the RSHQ Bill requires the WHS Prosecutor must provide a notice in writing to the person who made the request, details of whether a prosecution has been or will be brought, or if not, the reasons why the prosecution was not commenced. Similarly, if the matter is referred to the Director of Public Prosecutions (DPP) the DPP must also provide advice in writing that is ultimately given to the person who made the request under the proposed section 265B of the RSHQ Bill.<sup>5</sup>

The CSOA is concerned that within the proposed section 265B of the RSHQ Bill, there is no obligation on the person who made a request to have a prosecution commenced to keep the reasons of the WHS Prosecutor or the DPP confidential.

The CSOA is concerned that in circumstances where a person who makes a request to have a prosecution commenced under the proposed section 265B of the RSHQ Bill that is subsequently declined, either by the WHS Prosecutor or the DPP, and there is no obligation on the person who made the request to keep the reasons not to prosecute confidential, there may be a risk that the person who made the request may release the reasons for refusing to bring the prosecution.

In response to the original request, these reasons may name the same individual and although the ultimate finding of the WHS Prosecutor or DPP would indicate that a prosecution was not warranted, our members are concerned that if the reasons are released including their name they would unfairly suffer damage to their reputation and future employment prospects.

---

<sup>5</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 84.

Should the reasons contain comments or findings by the WHS Prosecutor that may be negative to the persons involved in the alleged safety breach, and although the ultimate finding of the WHS Prosecutor or DPP would indicate that a prosecution was not warranted, the reasoning behind the decision not to prosecute would cause damage to our members reputation and future employment prospects.

The CSOA recommends that section 256B of the RSHQ Bill be amended to include a confidentiality provision similar to the one contained at the proposed amended section 66 of the RSHQ Bill.<sup>6</sup> The confidentiality provision should prevent the disclosure of any information provided to the person who made the request by the WHS Prosecutor or the DPP and any such disclosure by a person should be a contravention of the act and a civil penalty provision with a maximum penalty of not less than 100 penalty units.

Further, the CSOA recommends that section 256B of the RSHQ Bill also include an obligation on the WHS Prosecutor or the DPP to provide the person who made the request for a prosecution to be brought be notified of the consequences of disclosing any information from the WHS Prosecutor or the DPP.

#### Consequences for making a false or misleading statement

Finally, the CSOA is concerned that the RSHQ Bill remains silent on what would happen if a person who makes a request for a prosecution makes a false or misleading statement in the course of requesting the prosecution.

The CSOA is concerned that in making a request for a prosecution, a person may make additional statements or include facts which were not part of the initial investigation of the matter.

If a person making a request for a prosecution is permitted to make additional statements or include facts which were not otherwise part of the initial investigation of the matter and these facts or statements are later found to be untrue, the CSOA submits that the person who made the false or misleading statement(s) should be in contravention of the act, and a civil penalty provision with a maximum penalty of not less than 100 penalty units.

---

<sup>6</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 66.

### Amended Section 264(1)<sup>7</sup>

The CSOA notes the retention of section 264(1) in the RSHQ Bill which allows the court, on conviction of a person to make an order for the person to pay the reasonable costs incurred by the RSHQ in investigating and preparing the prosecution of the offence.

The CSOA opposes the retention of section 264(1) of the RSHQ Bill insofar as an individual person (such as a Deputy or Undermanager is concerned) is concerned on the basis that such an order may have a crushing effect on the individual concerned compounding any fine that may have been awarded against them.

Accordingly, the CSOA submits that the proposed section 264(1) of the RSHQ Bill should only apply to corporate defendants, or in the alternative if the proposed section 264(1) is to apply to individuals, only in where the conduct of the individual caused the RSHQ to incur additional costs associated with their investigation or the prosecution of the offence.

### **Conclusion**

In conclusion, the submission of the CSOA in respect of the RSHQ Bill is as follows:

1. broadly speaking, the CSOA supports the proposed RSHQ Bill;
2. in respect of the proposed section 256B of the RSHQ Bill:
  - a. the CSOA submits that a 'person' who is permitted to make a request that the WHS Prosecutor or the DPP bring a WHS prosecution under the act be limited to a person or organisation engaged in black coal mining operations;
  - b. the CSOA submits that there be an obligation on the person who requests that a WHS prosecution be brought to keep any reasons given by the WHS Prosecutor or the DPP not to prosecute confidential;
  - c. the CSOA submits that if a person fails to keep any reasons given by the WHS Prosecutor or the DPP confidential be liable for a civil penalty with the maximum penalty being not less than 100 units; and

---

<sup>7</sup> Resources Safety and Health Queensland Bill 2019 (Qld) cl 85.

- d. the CSOA submits that if a person requesting a prosecution makes a false or misleading statement in the course of requesting a prosecution should be liable for a civil penalty with the maximum penalty being not less than 100 units.
3. the proposed section 264(1) of the RSHQ Bill should only apply to corporate defendants, or in the alternative, it should only apply to individuals where the conduct of the individual caused the RSHQ to incur additional costs associated with the investigation of the offence(s) or the prosecution of the offence(s).

The CSOA thanks the Committee for taking the time to read and consider our submission. If however there are any further questions the Committee may have in relation to the CSOA's position on the RSHQ Bill, please contact Ms Samantha Williams, Legal Officer.

Samantha Williams  
**Legal Officer**  
**Collieries' Staff and Officials Association**

19 September 2019