

19 September 2019

Our ref: HS - MRLC

Committee Secretary  
State Development, Natural Resources and Agricultural Industry Development Committee  
Parliament House  
George Street  
Brisbane Qld 4000

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### **Consultation on *Resources Safety and Health Queensland Bill 2019***

Thank you for the opportunity to provide a submission on the Resources Safety and Health Queensland Bill 2019 (**the Bill**). The Queensland Law Society (**QLS**) appreciates the opportunity to comment on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Mining and Resources Law Committee, whose members have substantial expertise in this area.

With respect to the Bill, we have provided comments addressing the following:

- general observations in support of the Bill
- CEO obligations to disclose information to WHS Prosecutor
- WHS Prosecutor consultation with Commissioner
- definition of "serious offence"
- individual rights to request prosecutions.

Given the short timeframe for making submissions, the QLS's submissions are relatively limited in nature. QLS's silence in respect of a provision should not necessarily be taken as an endorsement of the provision.

#### **General observations in support of the Bill**

QLS is broadly supportive of the intent and approach of the Bill, including:

- the establishment of Resources Safety and Health Queensland as an independent statutory body responsible for regulating safety and health in the State's resources industries, independent from the Department of Natural Resources, Mines and Energy;

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- refining of the supervisory and advisory roles of the Commissioner for Resources Safety and Health, and the Ministerial Advisory Committees; and
- (subject to comments below) the transfer of responsibility for prosecution of 'serious offences' under resources legislation to the Work Health and Safety Prosecutor (**WHS Prosecutor**), which is independent of both the Department, and Resources Safety and Health Queensland as the regulator.

These arrangements appear consistent with principles of good governance and independent decision-making in the administration of legislation and prosecutorial decisions.

QLS's comments relate primarily to the proposed role of the WHS Prosecutor, and the interaction between the WHS Prosecutor and Resources Safety and Health Queensland and its CEO and Commissioner. For convenience, reference is made to those provisions of the Bill that relate to the *Coal Mining Safety and Health Act 1999* (**CMSH Act**), but similar considerations apply in the context of the equivalent provisions relating to other resources legislation.

**CEO obligations to disclose information to WHS Prosecutor**

The Bill includes powers for the WHS Prosecutor to request information from the CEO, and duties on the CEO to provide the information requested. (See eg clause 84 and proposed CMSH Act sections 256 and 256A.)

It is noted that under resources legislation (such as the CMSH Act) Mines Inspectors and Inspection Officers have the power to compel a person to answer questions, and to over-ride the privilege against self-incrimination (see eg CMSH Act s139(3)(g) and 157(1)). The answers to those questions and information, documents or things obtained as a result of the answer are not admissible in evidence in a proceeding against the individual (s159). There are also similar protections associated with incident investigation reports prepared by the Site Senior Executive under s201 of the CMSH Act.

Consideration should be given to whether there should be a carve-out for such information held by the CEO, so that there is no obligation to provide such information to the WHS Prosecutor; or alternatively some means of ensuring the clear identification of such information such that the statutory 'privilege' attaching to such information and documents is not lost in the event it is transferred to the WHS Prosecutor.

**WHS Prosecutor consultation with Commissioner**

The Bill requires the WHS Prosecutor to have regard to guidelines issued under the *Director of Public Prosecutions Act 1984*, s11 (see eg clause 83(3)).

A significant focus of those guidelines is the public interest in the prosecution, and considerations relevant to the public interest.

While QLS supports the need for independent decision-making by the WHS Prosecutor, there would be value in requiring the WHS Prosecutor to seek and have regard to the views of the Commissioner on the public interest in prosecuting (or not prosecuting) an individual matter. Given the Commissioner's role and specialist knowledge, this will assist in ensuring the most appropriate use of resources in conducting prosecutions in alignment with the public interest and may also avoid prosecutions which may be against the public interest.

*Resources Safety and Health Queensland Bill 2019***Definition of 'serious offence'**

QLS notes that the definition of 'serious offence' is very broad.<sup>1</sup> This is because 'serious offence' includes an offence where the contravention caused (amongst other things) 'bodily harm'. 'Bodily harm' is defined in the Criminal Code as 'any bodily injury which interferes with health or comfort.'

This would have the effect that any offence involving even a minor injury (eg a rolled ankle or minor finger cut) would be considered a 'serious offence', which could only be prosecuted by the WHS Prosecutor. Therefore, only administrative or procedural breaches which do not involve any injury could be prosecuted by the CEO or other authorised person.

QLS does not express any view on the appropriateness of this outcome, other than to query whether it is consistent with the policy intent of how prosecutions would be run, or is an unintended consequence.

This broad definition does however have implications in other areas as noted below.

**Individual rights to request prosecutions**

The rights of individuals to request prosecutions need to be balanced with the efficient administration of justice.<sup>2</sup>

On the one hand, it is important that individuals see justice to be done and have transparency of the process. However, there is also a risk that the exercise of these rights in respect of unmeritorious matters (and the obligations on the WHS Prosecutor to respond, provide reasons, and refer matters to the DPP for advice) could become onerous and consume public resources which could be better spent elsewhere.

It is noted that, as drafted, the rights to request prosecutions would only apply in the case of 'serious offences'. As noted above, the definition of 'serious offences' is particularly broad, and could result in requests for prosecutions in connection with very minor injuries, which may not be a good use of public resources.

To address this, consideration could be given to limiting the class of serious offences in respect of which individuals can request a prosecution to those contained in sub-clauses (i) and (ii) of the definition of 'serious offence' (ie those involving fatalities and grievous bodily harm). Consideration should also be given to limiting the classes of person able to request that a prosecution to be brought to those with a sufficient nexus to the incident or injured person.

If you have any queries regarding the contents of this letter, please do not hesitate to contact

Yours faithfully



Bill Potts  
**President**

<sup>1</sup> Clause 83, proposed s255(4) CSMH Act and corresponding sections amending other acts

<sup>2</sup> As proposed in new s256B(2) CSMH Act and correspondence sections amending other acts