



Electrical Safety and Other Legislation Amendment Bill 2024

Report No. 9, 57th Parliament
Clean Economy Jobs, Resources and Transport
Committee
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Clean Economy Jobs, Resources and Transport Committee

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All web address references are current at the time of publishing.

Contents

Chair’s foreword	iii
Recommendations	iv
Executive Summary	v
1 Introduction	1
1.1 Policy objectives of the Bill	1
1.2 Reviews of Queensland safety framework	1
1.2.1 Electrical Safety Act Review	1
1.2.2 WHS Act Review	2
1.2.3 Industrial Manslaughter Review	2
1.2.4 Boland Review	2
1.2.5 Best Practice Review of Workplace Health and Safety Queensland	3
1.3 Government consultation on the Bill	3
1.4 Legislative compliance	3
1.4.1 <i>Legislative Standards Act 1992</i>	3
1.4.2 <i>Human Rights Act 2019</i>	3
1.5 Should the Bill be passed?	3
2 Examination of the Bill	4
2.1 Amendments to the <i>Electrical Safety Act 2002</i>	4
2.1.1 Electrical equipment	4
Committee comment	8
Committee comment	9
2.1.2 Meaning of electrical installation	9
2.1.3 Disciplinary powers of the Electrical Licensing Committee	10
2.1.4 Inspectors power to require documents and answers to questions	11
Committee comment	12
2.1.5 Replacement of similar appliances	12
2.2 Amendments to the WHS Act and SRWA Act	12
2.2.1 Category 1 negligence offence	13
2.2.2 Expansion of scope of offence to capture the death of other persons	14
Committee comment	17
2.2.3 Multiple parties in a contractual chain can be charged with the crime	17
2.2.4 Alternative verdicts to industrial manslaughter	17
Committee Comment	19
Committee comment	19
2.2.5 Best Practice Review of Workplace Health and Safety Queensland	20
2.2.6 Power of health and safety representatives and entry permit holders to take photos, videos, measurements and conduct tests	20
Committee Comment	22
2.3 Other matters considered	22
Committee Comment	23

Appendix A – Submitters	24
Appendix B - Officials at public departmental briefing on 10 June 2024	25
Appendix C - Witnesses at public hearing on 8 July 2024	26
Appendix D - Abbreviations and acronyms	27

Chair's foreword

This report presents a summary of the Clean Economy Jobs, Resources and Transport Committee's examination of the Electrical Safety and Other Legislation Amendment Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written and oral submissions on the Bill. In particular, I wish to express my heartfelt gratitude to the Consultative Committee for Work-Related Fatalities and Serious Incidents, including Mr Sean O'Connor, whose lived experience about the death of his sister, Kerry, provided the committee with important context about the necessity of the legislative amendments proposed by this Bill.

I also thank our Parliamentary Service staff and secretariat.

I commend this report to the House.



Kim Richards MP

Chair

Recommendations

Recommendation 1

3

The committee recommends the Electrical Safety and Other Legislation Amendment Bill 2024 be passed.

Executive Summary

This report provides a summary of the Clean Economy Jobs, Resources and Transport Committee's examination of the Electrical Safety and Other Legislation Amendment Bill 2024.

The purpose of the Bill is to give effect to recommendations from the following reviews of Queensland's safety frameworks that have occurred from 2017 onwards:

- Review of Queensland's *Electrical Safety Act 2002*
- 2022 Review of the *Work Health and Safety Act 2011*
- 2024 Review to examine the scope and application of the industrial manslaughter provisions in the *Work Health and Safety Act 2011*
- 2018 Review of the Model Work Health and Safety Laws
- 2017 Best Practice Review of Workplace Health and Safety Queensland.

The Committee held a departmental briefing on 10 June to assist in gaining a better understanding of proposed amendments contained in the Bill.

The committee received 14 submissions and held a public hearing in Brisbane on 8 July 2024, at which 7 stakeholder groups appeared.

The committee wrote to the Department of State Development and Infrastructure and the Queensland Building and Construction Commission seeking additional information on the Bill and clarifications on key points that were raised by stakeholders.

Based on its examination, the committee recommends that the Bill be passed.

The committee assessed whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

The committee was satisfied that potential limitations to fundamental legislative principles were reasonable and sufficiently justified, and that the Bill is compatible with human rights as outlined in the *Human Rights Act 2019*.

1 Introduction

1.1 Policy objectives of the Bill

The Bill amends the *Electrical Safety Act 2002* (ES Act), the *Work Health and Safety Act 2011* (WHS Act), the *Safety in Recreational Water Activities Act 2011* (SRWA Act) and consequentially the *Electrical Safety Regulation 2013* (ES Regulation).

The objectives of the Bill are to give effect to a suite of recommendations from the following reviews of Queensland's safety frameworks:

- Review of *Queensland's Electrical Safety Act 2002*¹ (ES Act Review)
- 2022 Review of the *Work Health and Safety Act 2011*² (WHS Act Review)
- 2024 Review to examine the scope and application of the industrial manslaughter provisions in the WHS Act³ (Industrial Manslaughter Review)
- 2018 Review of the Model Work Health and Safety Laws⁴ (Boland Review), and
- 2017 Best Practice Review of Workplace Health and Safety Queensland⁵ (BPR).

1.2 Reviews of Queensland safety framework

1.2.1 Electrical Safety Act Review

The ES Act Review was completed in December 2021 and made 83 recommendations. The purpose of the review was to ensure Queensland's electrical safety legislative framework keeps pace with new and emerging technologies and continues to provide high standards of safety for workers and the community.⁶

In May 2023, a Discussion Paper was made available for public consultation and focussed on three key topics from the review's recommendations: electrical safety considerations of new and emerging technologies, the changing landscape of electricity and the workforce, and electrical safety and electric vehicles.⁷

These topics contemplated the emergence of new electrical technologies and the ongoing suitability of the ES Act's core definitions, namely: electrical equipment, electrical installation, and electrical work. A total of 78 submissions were received from a range of registered unions, employers, electricity entities, peak bodies, government agencies and individuals. The submissions prompted further

¹ Office of Industrial Relations, *Electrical Safety Act 2002 review*, <https://www.oir.qld.gov.au/public-consultation/electrical-safety-act-2002-review>

² Office of Industrial Relations, *Work Health and Safety Act 2011 review*, <https://www.oir.qld.gov.au/public-consultation/work-health-and-safety-act-2011-review>

³ Office of the Work Health and Safety Prosecutor, *Review to examine the scope and application of the industrial manslaughter provisions in the Work Health and Safety Act 2011*, https://www.oir.qld.gov.au/system/files/2024-03/PN12976_%20%20Industrial%20Manslaughter%20Review%20Report.pdf

⁴ Safe Work Australia, *Review of the model Work Health and Safety laws, Final report, December 2018*, https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

⁵ WorkSafe Queensland, *Best practice review of Workplace Health and Safety Queensland*, <https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland/best-practice-review-of-workplace-health-and-safety-queensland>

⁶ Explanatory notes, p 1.

⁷ Explanatory notes, p 1.

analysis and informed the development of a Decision Paper which was published in January 2024. The Decision Paper indicated that amendments to the ‘electrical equipment’ and ‘electrical installation’ definitions should be progressed immediately to reflect the current technological landscape in Queensland.⁸

In addition, in May 2023 the ES Act Review Final Report was published with public submissions invited in response to the remaining recommendations. Public submissions and further policy analysis informed an updated Government Response to the Final Report which was published in January 2024.⁹

1.2.2 WHS Act Review

Two recommendations implemented in the Bill relate to allowing health and safety representatives (HSRs) and entry permit holders (EPHs) to take photos, videos, measurements and to conduct tests at the workplace. This complements other WHS Act Review recommendations implemented through the *Work Health and Safety and Other Legislation Amendment Act 2024* to strengthen the role of HSRs, enhance representation of workers and clarify the powers of HSRs and EPHs.¹⁰

The WHS Act Review also recommended a review of the scope and application of industrial manslaughter provisions in the WHS Act.¹¹

1.2.3 Industrial Manslaughter Review

The Work Health and Safety Prosecutor (WHS Prosecutor) completed the Industrial Manslaughter Review in February 2024 and made three recommendations to improve and strengthen the industrial manslaughter offence and provide for alternative verdicts.¹²

The explanatory notes state that implementation of the Industrial Manslaughter Review recommendations will strengthen and modernise the industrial manslaughter offence and support recommendations for a nationally consistent industrial manslaughter framework in line with the Commonwealth’s Senate Standing Committee on Education and Employment report: *They never came home – the framework surrounding the prevention, investigation, and prosecution of industrial deaths in Australia*, and the Boland Review.¹³

1.2.4 Boland Review

The Bill proposes to amend section 31 of the WHS Act by introducing the fault element of negligence, in addition to recklessness, into the Category 1 offence. This would implement recommendation 23a of the Boland Review.¹⁴ The Bill also amends the Category 1 offence in the SRWA Act to include the fault element of negligence, as the Category 1 offence in the WHS Act is mirrored in the SRWA Act.¹⁵

⁸ Explanatory notes, p 2.

⁹ Explanatory notes, p 2.

¹⁰ Explanatory notes, p 2.

¹¹ Explanatory notes, p 2.

¹² Explanatory notes, p 2.

¹³ Explanatory notes, p 3, Commonwealth of Australia, The Senate, Education and Employment References Committee, *They never came home - the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, October 2018, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024170/toc_pdf/Theynevercamehome%e2%80%94theframeworksurroundingtheprevention,investigationandprosecutionofindustrialdeathsinaustralia.pdf;fileType=application%2Fpdf

¹⁴ Safe Work Australia, *Review of the model Work Health and Safety laws*, Final report, December 2018, p 15.

¹⁵ Explanatory notes, p 3.

1.2.5 Best Practice Review of Workplace Health and Safety Queensland

The BPR was commissioned following tragic fatalities that occurred at both Dreamworld and Eagle Farm in October 2016. The final report was delivered in July 2017 and contained 58 recommendations.¹⁶ The Bill proposes to give effect to recommendations 38(b) and (c) which were made in response to concerns about the quality of training of High-Risk Work (HRW) licence applicants by Registered Training Organisations (RTOs).¹⁷

1.3 Government consultation on the Bill

In addition to the consultations undertaken as part of the reviews noted on pages 1-3 of this report,¹⁸ targeted consultation was undertaken on a partial exposure draft of the Bill and a policy overview document detailing the remainder of the proposed amendments in January 2024. Consultation involved key stakeholders from registered unions, industry, electricity entities, peak bodies, and government agencies, with feedback incorporated into the Bill where appropriate.¹⁹

1.4 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.4.1 Legislative Standards Act 1992

Our assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified issues which are discussed below.

1.4.2 Human Rights Act 2019

Our assessments of the Bill's compatibility with the *Human Rights Act 2019* did not identify any incompatibilities. We find the Bill is compatible with human rights, and our analysis of the human rights which are engaged by the operation of this Bill are included below.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Electrical Safety and Other Legislation Amendment Bill 2024 be passed.

¹⁶ WorkSafe Queensland, Best practice review of Workplace Health and Safety Queensland, <https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland/best-practice-review-of-workplace-health-and-safety-queensland>

¹⁷ WorkSafe Queensland, Best practice review of Workplace Health and Safety Queensland, pp 80-82.

¹⁸ The ES Act Review, WHS Act Review, Industrial Manslaughter Review, Boland Review and BPR.

¹⁹ Explanatory notes, p 23.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Amendments to the Electrical Safety Act

The Bill proposes to amend the ES Act to:

- amend the definition of 'electrical equipment' to include 'prescribed electrical equipment' where the equipment is placing or may place persons or property at an electrical risk
- clarify that the definition of 'electrical installation' captures modern energy generation and storage systems
- clarify the ability of the Electrical Licensing Committee to include a condition or restriction in a licence as a form of disciplinary action
- clarify the ability of the Electrical Licensing Committee to change or remove a condition or restriction in a licence
- amend inspector powers to require the production of documents and answers to questions over longer timeframes in line with the WHS Act
- reflect the WHS Prosecutor's role under the ES Act
- remove a redundant requirement to keep information separately in the regulator's database for the Electrical Equipment Safety System (EESS) to reflect contemporary practice
- amend the definition of 'in-scope electrical equipment' to prescribe by regulation the voltage range of the equipment and where an item is not 'in-scope electrical equipment'
- clarify the definition of 'corresponding law' for application in the 'in-scope electrical equipment' framework by creating a head of power to prescribe corresponding laws
- clarify the replacement of a similar appliance in particular circumstances is not electrical installation work
- correct an error in section 32(3) of the ES Act where reference is made to the incorrect subsection.²⁰

2.1.1 Electrical equipment

Clause 5 of the Bill proposes to amend the definition of 'electrical equipment' to include equipment at extra low voltage where it meets a particular risk threshold and is prescribed by regulation. This threshold is met if the equipment is placing, or may place, persons or property at an electrical risk. The Department of State Development and Infrastructure advised that the voltage cut-offs for low voltage and extra low voltage are defined in Schedule 2 of the *Electrical Safety Act 2002* as:

- extra low voltage is voltage of 50V or less AC RMS, or 120V or less ripple-free DC
- low voltage is voltage greater than extra low voltage, but not more than 1,000V AC RMS or 1,500V ripple-free DC
- high voltage is voltage greater than low voltage.²¹

²⁰ Explanatory notes, pp 3-4.

²¹ Department of State Development and Infrastructure, Office of Industrial Relations, correspondence, 10 June 2024.

The Department added:

Currently, extra-low voltage falls outside of the framework. That is because, in the past, extra-low equipment were not things that people were concerned about in terms of electrical safety. Now we are seeing inventions that are within the extra-low-voltage space but are capable of a level of risk that meets the threshold that this act is built on.²²

The Bill proposes to introduce a head of power to prescribe extra low voltage equipment, where it meets the risk threshold, in the ES Regulation.²³ This is supported by the Master Electricians Australia (MEA) and the National Electrical and Communications Association (NECA), who each noted that the amendment will 'positively address our previously-raised concerns regarding high-risk extra low voltage (ELV) equipment.'²⁴

NECA submitted that the following equipment should be specifically included as prescribed items in the regulation:

- Battery Energy Storage Systems (BESS)
- Conversation equipment associated with ELV and LV supplies
- Off-power grid supplies to houses
- ES3 telecommunications data cabling and equipment.²⁵

The Department advised, that while the definition of electrical equipment is to be amended by the Bill, it does not seek to prescribe any items as prescribed electrical equipment,²⁶ adding that:

Following passage of the Bill, Government will consider which items may meet the electrical safety risk threshold for exploration of whether they warrant being prescribed electrical equipment.

In considering whether an item should be prescribed, Government will undertake due regulatory process which includes regulatory impact assessment and consultation with community, industry, registered unions, peak bodies and impacted government agencies.²⁷

Clause 5 of the Bill raised concerns from certain stakeholders about whether the testing of fire-related safety equipment was impacted by the proposed amendment. The Electrical Trades Union (ETU), MEA and the National Fire Industry Association of Australia Ltd (NFIA) each sought clarity and assurances on whether there were any unintended consequences of the clause relating to the performance of fire protection work. This fire protection work is currently regulated as licensed work under other legislation, which is referred to as the Queensland Building and Construction Commission (QBCC) Framework.²⁸

NFIA advised that the QBCC Framework is established under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) and the Queensland Building and Construction Commission Regulation 2018 (QBCC Regulations). The QBCC Framework regulates the performance of both 'wet'²⁹

²² Public briefing transcript, Brisbane, 10 June 2024, p 4.

²³ Explanatory notes, p 5.

²⁴ Submission 9, p 2 and Submission 14, p 2.

²⁵ Submission 14, p 3.

²⁶ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 19.

²⁷ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 19.

²⁸ See submissions 9, 10 and 12.

²⁹ 'Wet' Fire Protection refers to systems and equipment such as sprinkler systems, hydrants, and hose reels. Submission 10, p 3.

and 'dry'³⁰ fire protection work, so that only those with the appropriate licenses can lawfully perform that work.

NFIA further explained:

... the Bill gives rise to serious concerns that already-regulated Fire Protection work may either be unintentionally captured by these definitions or, as a consequence of the Bill, may be capable of being captured by future regulatory amendment. Such outcomes would be inconsistent with the Government's approach in establishing a specific licensing framework for this work under the QBCC Act.³¹

In response, the ETU stated:

... the NFIA has submitted that all 'building work' under the QBCC Act should be excluded from "electrical work" under the ES Act. The ETU does not support this as it will lead to electrical work been undertaken by unlicensed workers.

We also do not support the current licensing requirements for fire protection (electrical) work. The ETU requires 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 QBCC 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 0) appears to require a QBCC fire protection certify licence, which is not supported by the ETU.
- Installation and maintenance of fire alarm systems as a contractor.³²

The MEA also proposed that the Bill allow for licenced electrical contractors to inspect and test emergency lighting and to install and maintain fire alarm systems, advising that 'Licenced electrical workers are adequately trained to perform such tasks and would not require additional qualifications to be obtained.'³³

In considering whether items would be included as prescribed in the regulation, the department noted that the regulatory impact assessment process would: evaluate the effects on the community, workers, and businesses; and determine if existing licensing frameworks and industry processes are impacted or duplicated. They noted that several licensed industries already work with the electrical safety regulator in Queensland, using restricted electrical licenses and recognition of trade contractor licenses to prevent duplication, while ensuring electrically safe work by qualified individuals. If fire protection equipment becomes prescribed electrical equipment, similar methods will be considered to avoid duplicative frameworks and minimize industry impacts.³⁴

To assist with the concerns noted by the ETU, MEA and NFIA, the QBCC provided advice on the interaction between the definition of fire protection work under the QBCC Act and the definition of electrical work under the ESA.³⁵ QBCC stated:

³⁰ 'Dry' Fire Protection covers specialised Fire Protection systems and equipment which may have an extra low voltage (ELV) electrical component, for example. 'Dry' fire can refer to fire panels, detection systems, Emergency Warning & Intercommunication Systems (EWIS), cabling specific to Fire Protection, emergency lighting, and alarm systems, for instance. Submission 10, p 3.

³¹ Submission 10, pp 5-6.

³² Submission 12, p 2.

³³ Submission 9, p 3.

³⁴ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 13.

³⁵ Queensland Building and Construction Commission, correspondence, 16 July 2024, p 2.

Anyone carrying out fire protection work must be licensed, with the QBCC Act recognising fire protection licences and other licences or authorisations under the QBCC Act or another Act for fire protection work.³⁶

QBCC advised that the Queensland Building and Construction Commission Regulation 2018 provides various exemptions from both the definitions of 'fire protection work' and 'building work'. Exemptions from fire protection work include:

- work relating to certain fire protection equipment if it is electrical work under the ESA (portable firefighting appliance, fire door, fire shutter, fire damper assembly, fire or smoke wall, fire collar, fire penetration joint or seal, or emergency lighting)
- work performed by a person who holds an electrical mechanic licence, that is inspecting or testing emergency lighting systems.³⁷

Exemptions from building work are listed in Schedule 1 of the QBCC Regulation and include:

- electrical work under the ESA
- work performed by an electrical mechanic licensee for the inspection or testing of emergency lighting systems
- installation of a fire collar by an electrical worker licensed under the ESA, if that work is incidental to electrical work performed by the licensee.³⁸

Clause 5 of the Bill proposes to consequentially provide that extra low voltage equipment that forms part of a vehicle, including equipment that provides propulsion for a vehicle, can be prescribed electrical equipment.³⁹ The explanatory notes state that this will enhance Queensland's electrical safety legislative framework by increasing its responsiveness to risks posed by extra low voltage equipment that have previously been out of scope.⁴⁰ The equipment will thus be subject to supply chain duties contained in the ES Act. Broadly, these duties require designers, manufacturers, importers, suppliers, and installers to ensure the electrical safety of the electrical equipment they design, make, import, supply or install.⁴¹

The Bill's reference to vehicles in Clause 5, drew calls for clarification from the Queensland Bus Industry Council (QBIC), Motor Trades Association of Queensland (MTAQ) and the Electric Vehicle Council (ELV).⁴²

QBIC in a joint submission with the Bus Industry Confederation, raised concern that the Bill would prescribe electrical equipment even where it forms part of a vehicle.⁴³

MTAQ sought confirmation that the Bill would not allow the government to regulate work on electric vehicles, contending that service and repair work on electric vehicles must remain the responsibility of automotive technicians.⁴⁴

ELV stated that the definition and scope of prescribed electrical equipment as it related to vehicles, particularly electric vehicles and extra low-voltage equipment be clear to ensure it serves a regulatory

³⁶ Queensland Building and Construction Commission, correspondence, 16 July 2024, p 3.

³⁷ Queensland Building and Construction Commission, correspondence, 16 July 2024, p 3.

³⁸ Queensland Building and Construction Commission, correspondence, 16 July 2024, p 3.

³⁹ Explanatory notes, p 5.

⁴⁰ Explanatory notes, p 5.

⁴¹ Explanatory notes, p 5.

⁴² See submissions 1, 5 and 13.

⁴³ Submission 1, p 4.

⁴⁴ Submission 5, p 2.

purpose only and does not alter the qualifications required for automotive technicians who service and repair electric vehicles.⁴⁵

The department gave assurances that the amendments to electrical equipment do not impact or allow the prescription by regulation of automated vehicles such as electric cars, electric trucks and electric buses, which will remain outside of the scope of the framework.⁴⁶ Further, section 14(2) of the ES Act

... will continue to exclude low voltage equipment that forms part of a propulsion unit of a vehicle or is powered by the propulsion unit of a vehicle. Electric cars, buses and trucks are all powered by low voltage propulsion systems and therefore are unable to meet the definition of prescribed electrical equipment.⁴⁷

In further discussions about the regulation of electric vehicles and their associated parts, the Department advised that charging systems that are installed to charge vehicles, are within the remit of the electrical safety framework already. Where they are low-voltage installations, a licensed electrical mechanic is required to complete that work. The charger itself is also electrical equipment. It is just the car or the vehicle that sits outside of the framework and there are duties in terms of installing chargers already.⁴⁸ Regarding a vehicle:

... at the moment, under the definition of 'electrical equipment', section 14 of the Electrical Safety Act has a particular exclusion for parts that provide propulsion to a vehicle. Currently, everything up until the car itself is electrical equipment or part of an electrical installation. The car itself, because the electrical systems provide propulsion for that vehicle - so the battery, for instance - is excluded from the framework and is covered by international standards for importation into Australia.

Anything that currently plugs into a general purpose outlet socket, so into the wall, is electrical equipment currently so that is covered by our framework. In terms of plugging your car to charge it from your home installation, the lead that charges your car is currently covered.⁴⁹

Committee comment

We note the advice provided by the Department of State Development and Infrastructure regarding electric vehicles and their associated parts.

The department should maintain active consultation with motor vehicle industry stakeholders about: legislation and regulations that may impact on the repairing and servicing of electric vehicles; and best ensuring the safety, efficiency, and regulatory clarity for electric vehicles and all extra low-voltage equipment.

The Bill proposes to amend the 'electrical work' definition in Clause 8, to clarify which tasks are not electrical work and therefore do not need to be completed by a licensed electrical worker.⁵⁰

These changes seek to clarify which tasks are not electrical work and, therefore, do not need to be completed by a licensed electrical worker. The Bill seeks to clarify the connection and disconnection of prescribed electrical equipment with other extra low voltage equipment where the voltage does not exceed extra low voltage remains outside of the electrical licensing framework.⁵¹

⁴⁵ Submission 13, p 1.

⁴⁶ Public briefing transcript, Brisbane, 10 June 2024, p 2.

⁴⁷ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 2.

⁴⁸ Public briefing transcript, Brisbane, 10 June 2024, p 4.

⁴⁹ Public briefing transcript, Brisbane, 10 June 2024, p 4.

⁵⁰ Explanatory notes, p 26.

⁵¹ Explanatory notes, p 26.

Additionally, existing exclusions from the electrical work definition listed at section 18(2) of the ES Act will continue to apply. These exclusions include replacing of prescribed electrical equipment (or a component of prescribed electrical equipment) if that task can be safely performed by a person who does not have expertise in carrying out electrical work. Similarly, work on a non-electrical component of prescribed electrical equipment, if the person carrying out the work is not exposed to an electrical hazard, remains outside of the electrical licensing framework.⁵²

The Bill's Clause 8, 'Meaning of electrical work', was of contention for the Electrical Trades Union (ETU) which advocates strongly in favour of amendments to the definition of 'Meaning of electrical work' that are not contained in the Bill. The ETU submitted that the current legislation seemingly permits important work such as building or repairing ducts, conduits or troughs, cable tray work and above and underground cable installations to be performed under inadequate supervision.

They had concerns that there are employers who maintain that the definition of 'supervision' is met by merely being available to take a phone call. The ETU believes this is 'patently inadequate' and does not satisfactorily address the important and inherent safety risks associated with this work. They described how poorly installed and inadequately repaired ducts and conduits pose a risk of damage to cables and equipment as well as possible life-threatening situations to electrical workers and the general public who may subsequently be directed to perform work on it. The ETU believe that for this work to be excluded from the definition of electrical work, it needs to have the safety and protection of direct supervision from licenced electrical workers who can ensure the safe installation and repair.⁵³

These comments from the ETU were in relation to section 18(2)(e)(iii) of the *Electrical Safety Act 2002*, which provides that certain types of works are not defined as 'electrical work' if 'the work is done under the supervision of a person licensed to perform electrical installation work'. Section 18(2)(e) of the *Electrical Safety Act 2002* states that these types of work include: 'building or repairing ducts, conduits or troughs (channels) where electrical wiring will be or is installed'.

The Department responded that this matter was outside of the scope of the Bill. However, they advised that work has commenced to establish a working group to consider the definition of electrical work and ancillary terms such as 'supervision'. It is intended this group will consider the definition of electrical work and make recommendations to Government.⁵⁴

Committee comment

We note the concerns of the Electrical Trades Union regarding the definition of electrical work and their view that inadequate supervision of certain works can lead to unacceptable safety risks. The committee notes that these matters were considered by the ES Act Review and that there was an expectation by the ETU that relevant amendments were to be included in the Bill.

The committee supports the establishment of the working group that will further consider this issue. The committee also urges the Department to ensure that these consultations and considerations occur promptly and that the potential safety concerns identified to the committee by the ETU about inappropriate standards of supervision be appropriately investigated.

2.1.2 Meaning of electrical installation

Clause 7 of the Bill proposes to implement changes to the 'electrical installation' definition as the existing definition is no longer fit for purpose in the contemporary technological environment. The Bill

⁵² Explanatory notes, p 5.

⁵³ Submission 12, pp 1-2.

⁵⁴ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 16.

amends 'electrical installation' to clearly capture new and emerging energy generation and storage systems, previously not contemplated when the definition was drafted in 2002.⁵⁵

The changes would clarify that an electrical installation includes a group of permanently connected electrical equipment that is powered by a battery or other storage technology.⁵⁶

It also proposes to clarify that electrical installation includes a group of permanently connected electrical equipment that generates electricity, also providing that work on these generating systems is electrical installation work and therefore requires an electrical mechanic licence to complete. These amendments also mean the application of regulatory requirements contained in Part 6 (Electrical installations) of the ES Regulation, such as the need for work on these systems to be compliant with AS/NZS 3000:2018 Electrical Installations (Wiring Rules), more clearly apply.⁵⁷

MEA welcomed the amendments that integrate battery and other storage technology within the Act's definition in recognition of the rapid evolution towards electrification.⁵⁸

2.1.3 Disciplinary powers of the Electrical Licensing Committee

The Electrical Licensing Committee is empowered to take disciplinary action under section 109 of the ES Act against a holder of an electrical work licence and electrical contractor licence. Amongst other disciplinary actions, the Committee can suspend a licence for a period of time determined by the committee or until conditions decided by the committee are complied with. Typically, the condition is an identified training course, examination, or audit.⁵⁹

The ES Act Review identified that circumstances exist where the breach that the disciplinary action is responding to could be minor and therefore an immediate suspension unfairly impacts the livelihood of the worker. Further, some of the training courses the Committee determine to be appropriate as a disciplinary action requires the person to hold an active licence to undertake the course.⁶⁰

Clause 18 of the Bill provides that the committee may include or change a condition or restriction in a licence as a form of disciplinary action under section 109, without also requiring the suspension of the licence. The explanatory notes state that the intention of this amendment is to enable the Committee to deliver proportionate disciplinary action, reduce disproportionate impacts to licence holders and ensure the licence holder is able to complete the conditions as directed.⁶¹

Clause 18 also inserts a mechanism to allow for the Committee to change a condition or restriction in the licence on application by the person, or at the Committee's own initiative, to the benefit of the licence holder. This could include, for example, extending the amount of time for the licence holder to comply with a condition if there has been extenuating circumstances which meant the condition could not be complied with in the original timeframe. The Committee is also empowered to remove a condition or restriction in the licence where they are satisfied that the condition has been complied with; or the condition or restriction is no longer appropriate.⁶²

⁵⁵ Explanatory notes, p 6.

⁵⁶ Explanatory notes, p 6.

⁵⁷ Explanatory notes, p 6.

⁵⁸ Submission 9, p 2.

⁵⁹ Explanatory notes, p 7.

⁶⁰ Explanatory notes, p 7.

⁶¹ Explanatory notes, p 7.

⁶² Explanatory notes, p 7.

MEA proposed that there should be an avenue to overturn the Electrical Licensing Committee's decision in respect to changing or removing conditions or restrictions from a licence where it is deemed unreasonable.⁶³

The Department responded:

In line with natural justice principles, a person whose interests are affected by a disciplinary decision may apply to the Queensland Civil and Administrative Tribunal to externally review the decision (section 172 of the ES Act). The Bill provides that a *disciplinary decision* includes decisions of the Electrical Licensing Committee, under new section 121A ES Act, to change or remove conditions or restrictions from an electrical licence (see amended section 167 of the ES Act).⁶⁴

2.1.4 Inspectors power to require documents and answers to questions

Clause 20 of the Bill proposes amendments to section 141 of the ES Act to establish a compulsory process whereby a person must produce documents or answers to questions upon written notice by an inspector if an inspector has entered the place within 30 days.⁶⁵

The Queensland Law Society provided the following commentary about this proposed amendment:

- The “particular document” required to be produced should have sufficient nexus to the investigator’s powers.
- Unfortunately, section 141A abrogates the fundamental legal right to privilege against self-incrimination. This abrogation could significantly impact the individual.
- Further, while section 141(2) provides that the answers to questions or the information or documents provided are not admissible as evidence in another proceeding, in our view this does not provide adequate protection against the use of this information for other purposes that might prejudice the individuals.
- Following on from this, we note the presence of section 193 - Confidentiality of information. However, as we noted in our submissions with respect to the corresponding provision in the WHS Act, this section permits disclosure of documents or information in a number of other circumstances in subsection (2). The individual should be provided with advice about how their information is permitted to be used.⁶⁶

2.1.4.1 *Fundamental legislative principles – reversal of the onus of proof*

The current legislation provides that a person must not, without a reasonable excuse, refuse or fail to comply with requests for documents or to answer questions.⁶⁷ The proposed new process reverses the onus of proof, and evidential burden, onto the person to whom the request for documents or answers is made to demonstrate the reasonable excuse.⁶⁸

A person is required to comply with this process unless they have a reasonable excuse, which, under the Act, ‘does not include a matter of mere convenience.’⁶⁹ The Review of Queensland’s ES Act

⁶³ Submission 9, p 2.

⁶⁴ Department of State Development and Infrastructure, Office of Industrial Relations, correspondence, 26 June 2024, p 10.

⁶⁵ Explanatory notes, p 17.

⁶⁶ Queensland Law Society, correspondence, 16 July 2024, p 3.

⁶⁷ *Electrical Safety Act 2002*, s 141(1).

⁶⁸ Explanatory notes, p 17.

⁶⁹ *Electrical Safety Act 2002*, sch 2.

recommended that this change occur, to bring the ES Act in line with the operation of inspector powers under the WHS Act.⁷⁰

The explanatory notes seek to justify this amendment on the basis that providing documents and answering questions is in the interests of aiding investigations and ensuring that safety issues are appropriately addressed.⁷¹

Committee comment

We are satisfied that the amendments have sufficient regard to fundamental legislative principles, in the context of the onus of proof, particularly in circumstances where the amendments align with the WHS Act and are designed to promote safety.

2.1.5 Replacement of similar appliances

Clause 33 of the Bill clarifies that ‘electrical installation work’ does not include the replacement of similar appliances in particular circumstances. The explanatory notes state that this resolves ambiguity as to whether the replacement of similar appliances is electrical installation work and avoids the unintended consequences of restricting the replacement of similar appliances to licensed electrical mechanics.⁷²

The Bill provides that several circumstances must be met when replacing the appliance for the replacement to be considered ‘similar’ and therefore not ‘electrical installation work’. These circumstances are prescribed at Part 3, Division 3A of the ES Regulation by the Bill and include for example, that the similar appliance must have the same voltage rating; the current and power ratings of the similar appliance must not be greater than the old appliance; and the similar appliance must perform the same function in the same way as the old appliance.⁷³

2.2 Amendments to the WHS Act and SRWA Act

Parts 4 and 5 of the Bill propose amendments to the WHS Act and SRWA Act to:

- include negligence as a fault element of the Category 1 offence in the WHS Act and the SRWA Act
- expand the scope of the industrial manslaughter offence to capture negligent conduct leading to the death of individuals (e.g., bystanders/other persons) to whom a health and safety duty is owed
- remove ambiguity around whether multiple parties in a contractual chain can be charged with the crime of industrial manslaughter
- provide for alternative verdicts for industrial manslaughter and Category 1 offences
- allow HSRs and EPHs to take photos, videos, measurements and to conduct tests at the workplace

⁷⁰ Explanatory notes, p 8. See also RL Williams, *Review of Queensland’s Electrical Safety Act 2002*, Report, December 2021, pp 104-106, Recommendation 64.

⁷¹ Explanatory notes, p 17.

⁷² Explanatory notes, p 6.

⁷³ Explanatory notes, pp 6-7.

- ensure the regulation-making power allows regulations to be made to provide the Work Health and Safety Regulator with the ability to regulate the quality of authorisation training delivered by RTOs in Queensland
- clarify the interaction of provisions in the WHS Act and Work Health and Safety Regulation 2011 (WHS Regulation) with the *Commonwealth National Vocational Education and Training Regulator Act 2011* (the NVETR Act) through the use of exclusionary and displacement provisions for the purposes of sections 10 and 11 of the NVETR Act to ensure the concurrent operation of the WHS Act, WHS Regulation and the NVETR Act in relation to their respective purposes.

2.2.1 Category 1 negligence offence

Currently under the WHS Act, a person commits a Category 1 offence if they have a health and safety duty and, without reasonable excuse, expose an individual to whom they owe a duty to a risk of death, or serious injury or illness and are reckless as to the risk.⁷⁴

The Boland Review found that the threshold of reckless conduct is contributing to a low number of successful Category 1 prosecutions across WHS jurisdictions and recommended an additional fault element of gross negligence, or equivalent, be included in the Category 1 offence in the model WHS Act (Recommendation 23a).⁷⁵

Clause 42 of the Bill includes ‘negligence’ in the Category 1 offence, rather than ‘gross negligence’. This is consistent with the terminology used in the industrial manslaughter offence in the WHS Act and means that the existing standard of criminal negligence will apply to both offences.⁷⁶

Clause 38 of the Bill also proposes to amend the SRWA Act to include the fault element of negligence in Category 1 offence for consistency across the mirrored offence frameworks.⁷⁷

The explanatory notes state that the intention is that Category 1 offences will address the most serious breaches where there is a high level of risk of serious harm and the duty holder was reckless or negligent in their conduct. Category 2 offences involve less culpability as there is a no fault element and apply in circumstances where there is a high level of risk of serious harm from a failure to comply with a WHS duty.⁷⁸

The Consultative Committee for Work-Related Fatalities and Serious Incidents commented on the differences between recklessness and negligence, stating:

Recklessness does not cover, ‘Oh, I didn’t know’ or ‘I wasn’t sure’ or ‘I didn’t look that up,’ whereas for the negligence bit there is an obligation. If you want to import and distribute electrical equipment in Australia and sell it to people, there are obligations on you. If you say, ‘I didn’t know that,’ it is not technically reckless, but it is negligent if you want to be in that line of business and not know what the rules are.⁷⁹

Queensland Council of Unions (QCU) and the Queensland Nurses and Midwives’ Union (QNMU) noted their support for this amendment.⁸⁰

The QCU submitted that ‘The amendment aligns Queensland’s WHS Act with the model laws which have included the fault element of negligence since April 2022’ and that, ‘This is consistent with the

⁷⁴ Explanatory notes, p 9.

⁷⁵ Explanatory notes, p 9.

⁷⁶ Explanatory notes, p 10.

⁷⁷ Explanatory notes, p 10.

⁷⁸ Explanatory notes, p 10.

⁷⁹ Public hearing transcript, Brisbane, 8 July 2024, p 21.

⁸⁰ See submissions 6 and 3.

object of the WHS Act to maintain and strengthen the national harmonisation of laws relating to WHS and to facilitate a consistent national approach to WHS in Queensland.⁸¹

QNMU stated that the introduction of alternative verdicts for Category 1 offences and Category 2 offences for industrial manslaughter (if not satisfied beyond reasonable doubt) 'will create a more fulsome framework that supports alternative verdicts for the most serious offences in the WHS Act'.⁸² Further adding:

The inclusion of negligence as a fault element of the category 1 offence in the WHS Act, in addition to the existing element of reckless conduct, is also supported. This will ensure greater accountability so that employers who engage in negligent conduct that leads to serious harm are subject to the same significant penalties as the reckless conduct category 1 offence.⁸³

The LGAQ, however, do not support inclusion of negligence as a fault element in the Category 1 offence, instead viewing the application of the highest penalty for one off instances of negligence as disproportionate. They view this as a significant shift from the current fault element of recklessness. The LGAQ stated that the amendments have been rushed and may result in unintended consequences.⁸⁴

The Department stated:

Adding negligence to the Category 1 offence is intended to lower the threshold for conviction for Category 1 offences. The amendment will improve the prospect of successful Category 1 prosecutions when workers are exposed to the risk of serious injury or death as a result of a person's serious misconduct. The overall aim is to provide further deterrence and improve work health and safety outcomes at workplaces.⁸⁵

2.2.2 Expansion of scope of offence to capture the death of other persons

Currently, the industrial manslaughter offence is limited to negligent conduct causing the death of workers. Clause 42 of the Bill proposes to expand the scope of the industrial manslaughter offence in the WHS Act to capture the negligent deaths of individuals (that is, workers and 'bystanders' or other persons). The Bill provides that it will be an offence if the negligent conduct of persons conducting a business or undertaking (PCBU) or senior officer causes the death of an individual to whom the PCBU or senior officer owes a health and safety duty.⁸⁶

This could include, for example, a member of the public killed by the collapse of scaffolding onto a public area or a visitor to a warehouse who is struck and killed by a forklift.⁸⁷

The Bill's addition of 'other persons' into the industrial manslaughter offence will bring Queensland's industrial manslaughter laws in line with other jurisdictions in Australia and will mean that negligent work-related deaths of 'other persons' can be treated with the same level of seriousness as the negligent death of workers.⁸⁸

⁸¹ Submission 6, p 5.

⁸² Submission 4, p 3.

⁸³ Submission 4, p 3.

⁸⁴ Submission 2, pp 4-5.

⁸⁵ Department of State Development and Infrastructure, correspondence, 26 June 2024, pp 2-3.

⁸⁶ Explanatory notes, p 10.

⁸⁷ Explanatory notes, p 10.

⁸⁸ Explanatory notes, p 10.

The penalties for offences involving ‘other persons’ will be the same as the current penalties for fatalities involving workers, that is, a maximum custodial sentence for an individual of 20 years and a maximum fine for a body corporate of \$10 million.⁸⁹

The QCU, Consultative Committee for Work-Related Fatalities and Serious Incidents and QNMU each provided their support for these proposed amendments. QCU advised that ‘The Industrial Manslaughter offence in Queensland is limited to the death of a worker only’ and ‘The death of bystanders and visitors (other persons) is no less important than the death of workers’,⁹⁰ adding that:

Queensland’s existing 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’.⁹¹

In reference to Clause 42 of the Bill, the Deputy Chair of the Consultative Committee for Work-Related Fatalities and Serious Incidents, Mr Sean O’Connor, provided the committee with details of the death of his sister, Kerryn O’Connor, in 2017. Kerryn was tragically electrocuted while handling an electrical appliance with a hidden failure. The electrical pump wasn’t designed, manufactured, or tested to Australian standards and an internal, hidden fault caused the outer metal casing of the pump to become live, killing Kerryn instantly.⁹²

Mr O’Connor said:

The differences or the gaps in the legislation that are proposed to be closed here are the gaps that he slipped through, effectively. When you aligned the Work Health and Safety Act and the Electrical Safety Act at the time of the offence and the prosecution and everything, because my sister was not a worker and he was a business and he did not kill a worker—he killed a customer—the penalties were not applicable to him. He got a little bit of something, but if he had given that same thing to his storeperson and they plugged it into the wall and died then he would be in jail. However, she was a customer so it was not applicable. The changes outlined in the bill close that gap and we are strongly in support.⁹³

QNMU submitted that health workers are not immune from serious injuries and fatalities in the workplace and expressed broad support for the proposed changes to the industrial manslaughter provisions.⁹⁴

Other stakeholders, however, were opposed to the amendments contained in Clause 42 of the Bill.⁹⁵ QLS, HIA, MEA and NECA each raised objections to the proposed expanding of the scope of the industrial manslaughter offence. QLS advised that ‘a person who causes the death of a bystander or a person other than a worker can already be charged with other offences that carry the same potential penalties.’⁹⁶

HIA concurred with QLS in saying that the:

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

⁸⁹ Explanatory notes, p 10.

⁹⁰ Submission 6, p 8.

⁹¹ Submission 6, p 6.

⁹² Work Safe Queensland, Consultative Committee for Work-Related Fatalities and Serious Incidents members, <https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland/work-health-and-safety-board-and-committees/consultative-committee-for-work-related-fatalities-and-serious-incidents-members>

⁹³ Public hearing transcript, Brisbane, 8 July 2024, p 19.

⁹⁴ Submission 3, p 3.

⁹⁵ See submissions 11, 9, 8 and 14.

⁹⁶ Submission 11, pp 2-3.

law. Incorporating industrial manslaughter provisions within safety laws is inconsistent with the overall, proactive objective of safety legislation.⁹⁷

MEA and NECA each submitted that the amendment would be disproportionately unfair to the directors of small and medium entities (SMEs) 'due to their involvement in business operations, as compared with directors of large corporations.'⁹⁸ These stakeholders further advised their concerns that in other jurisdictions, small companies had been disproportionately targeted by industrial manslaughter provisions and that 'Larger corporations are better resourced to respond through lawyers...'.⁹⁹

The department responded that the Criminal Code's limitations hinder prosecuting corporations for manslaughter due to challenges in establishing corporate criminal responsibility. However, sections 244, 245, and 251 of the WHS Act allow an organisation to be held accountable for the conduct of its employees or officers, enabling the prosecution of offences. Bystanders account for a significant portion of Queensland's notified fatalities, with 24% occurring from January 2020 to December 2022.¹⁰⁰

The department continued:

Expanding the scope of industrial manslaughter to individuals will ensure that duties owed to bystanders are considered with the same level of seriousness in the work health and safety framework as that owed to workers.¹⁰¹

2.2.2.1 Right to Liberty and security of a person

The right to liberty specifies that people should not be arbitrarily deprived of their liberty.¹⁰²

Clause 42 of the Bill proposes to introduce alternative convictions for industrial manslaughter and in doing so, expands who may be considered a victim of this crime, which in turn expands liability for such crimes to other persons who may not have direct interaction in the events which lead to the death in question.¹⁰³

The Statement of Compatibility notes:

Capturing the deaths of 'other persons' in the industrial manslaughter offence that applies to senior officers potentially limits a defendant's right to liberty. The offence has a maximum custodial sentence of 20 years for individuals.

The amendments to introduce alternative convictions for industrial manslaughter also potentially limit an individual's right to liberty. If an individual is found not guilty beyond reasonable doubt of industrial manslaughter, they can be found guilty of an alternative offence.¹⁰⁴

In discussing the Bill's potential limitation on section 29(1) of the HRA, the Statement of Compatibility advises:

The purpose of the limitation is to protect the lives of other persons who are owed duties under the WHS Act. The expanded scope to capture the deaths of 'other persons' in the industrial manslaughter offence will ensure that negligent deaths of other persons can be dealt with by the courts in the same manner as the negligent death of workers. This will allow sentencing judges to have the appropriate scope to

⁹⁷ Submission 8, p 1.

⁹⁸ Submission 9, p 1 and Submission 14, p 4.

⁹⁹ Submission 9, p 4 and Submission 14, p 4.

¹⁰⁰ Department of State Development and Infrastructure, correspondence, 26 June 2024, pp 6-7.

¹⁰¹ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 7.

¹⁰² *Human Rights Act 2019*, s 29.

¹⁰³ Explanatory notes, pp 10-12.

¹⁰⁴ Statement of Compatibility, p 8.

adequately deal with the worst examples of individual behaviour by senior officers that leads to the death of other persons who are owed a health and safety duty and is in line with community expectations.¹⁰⁵

The statement of compatibility suggests that any limitation is justified in the Bill's objective of prioritising the right to life, and that the Bill aims to communicate to Queenslanders the importance that the State seeks to place in protecting the right to life, and the rights which inform its protection, such as the right to health services.¹⁰⁶

Committee comment

We are satisfied that in these circumstances, and at this time, the potential limitation of section 29(1) of the *Human Rights Act 2019* is a legitimate means of achieving the objective of this Bill. However, the committee notes that the assessment of this limitation should remain a priority, especially as technology and processes evolve to facilitate more efficient investigations in relation to these charges.

2.2.3 Multiple parties in a contractual chain can be charged with the crime

Clause 42 of the Bill also proposes to remove ambiguity around the culpability of multiple parties in a contractual chain in response to concerns raised during the Industrial Manslaughter Review that the current wording "carrying out work for the business or undertaking" limits the application of the offence because it needs to be proven beyond reasonable doubt that the worker died in the course of carrying out work for the PCBU who has been charged with the offence.¹⁰⁷

QCU advised of their support for Clause 42's amendments to sections 34C and 34D of the WHS Act, stating that they:

... aim to remove any doubt and clarify that multiple parties in a contractual chain can be charged with the crime of Industrial Manslaughter, including a designer, manufacturer, importer, supplier, or a PCBU that installs, constructs or commissions plant or structures in circumstances where their negligent conduct has caused the death of any person that they owe a WHS duty to. 30. The amendments clarify that duty holders under section 19 and sections 20 to 26 of the WHS Act may be liable for Industrial Manslaughter.¹⁰⁸

2.2.4 Alternative verdicts to industrial manslaughter

Currently, there is no alternative verdict to industrial manslaughter in the WHS Act. In deciding whether to take a case of industrial manslaughter, the WHS Prosecutor must consider whether a jury is likely to be satisfied beyond reasonable doubt that the person is guilty of an industrial manslaughter offence, otherwise the outcome can result in the defendant being acquitted despite evidence of culpability in the offence. The Explanatory Notes state that this situation can cause distress for the family, friends, and community of the person fatally injured.¹⁰⁹

Clause 42 of the Bill also proposes to amend the WHS Act to provide for alternative verdicts of a Category 1 or Category 2 offence. This ensures that where a verdict of industrial manslaughter cannot be reached, the courts have the ability to find the defendant guilty of an alternative offence where this is supported by the evidence.¹¹⁰

¹⁰⁵ Statement of Compatibility, p 8.

¹⁰⁶ HRA, s 37.

¹⁰⁷ Explanatory notes, p 11.

¹⁰⁸ Submission 6, p 10.

¹⁰⁹ Explanatory notes, p 11.

¹¹⁰ Explanatory notes, p 12.

For the purpose of alternative offences to industrial manslaughter, the limitation period for prosecutions for Category 1 and 2 offences, in section 232 of the WHS Act, will not apply. This is to ensure that alternative verdicts can be made even if the prosecution for industrial manslaughter commenced after the limitation period for prosecutions for the alternative offences.¹¹¹

The alternative verdict framework provided in the Bill aims to support the work of the Office of the WHS Prosecutor in seeking the highest penalties available under the WHS Act for the most egregious circumstances involving work-related fatalities or the risk of fatality, serious injury or illness. Higher penalties can be sought with the knowledge that where the jury is not satisfied beyond reasonable doubt that the defendant is guilty of the offence they have been charged with, the offender can be found guilty, where the evidence supports it, of an alternative offence rather than being acquitted.¹¹²

The department advised that it did not envisage consecutive prosecutions for industrial manslaughter and Category 1 and 2 offences as the Bill:

... does not allow consecutive prosecutions for industrial manslaughter and Category 1 and 2 offences, but rather provides for alternative verdicts.

In some cases, a jury may not consider there is sufficient evidence, beyond reasonable doubt, to convict a person of the crime they have been charged with. Rather than that person simply being acquitted and facing no consequences for a serious crime, when an alternative verdict is available, the jury may instead convict the person of a less serious crime. For example, a jury may not be able to find beyond reasonable doubt that a person committed murder but may consider that the evidence is sufficient to convict the person of an alternative verdict of manslaughter.¹¹³

The proposed amendments contained in Clauses 42 and 43 are supported by the QCU, however, opposed by HIA and QLS.

QCU submitted:

It is in the public interest, and the interest of every worker in Queensland, that PCBUs accused of Industrial Manslaughter do not evade the consequences of breaching their duty of care under the WHS Act on technical grounds. Alternative verdicts will assist in achieving this.¹¹⁴

HIA submitted that alternative verdicts for industrial manslaughter 'may signify an unwarranted expansion of prosecutorial powers'¹¹⁵ and that:

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.¹¹⁶

QLS stated that 'Removing a limitation period can significantly prejudice the defence', and that 'It is in the best interests of all parties that investigations should be pursued and finalised at the earliest opportunity.'¹¹⁷

The Department responded to the concerns of the HIA and QLS stating:

The industrial manslaughter offence deals with the most egregious circumstances that result in work-related deaths of workers and 'other persons'. The limitation is considered necessary, proportionate, and justifiable given the seriousness of the offence and the objective of bringing offenders to justice.

¹¹¹ Explanatory notes, p 12.

¹¹² Explanatory notes, p 12.

¹¹³ Department of State Development and Infrastructure, correspondence, 15 July 2024, p 1.

¹¹⁴ Submission 6, p 11.

¹¹⁵ Submission 8, p 4.

¹¹⁶ Submission 8, p 4.

¹¹⁷ Submission 11, p 2.

Disapplying the limitation periods is consistent with the approach adopted for alternative verdicts in the Commonwealth's industrial manslaughter offence which will commence on 1 July 2024.¹¹⁸

2.2.4.1 Fundamental legislative principles – administrative power

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review.¹¹⁹ The Bill proposes to include the new section 34E in the WHS Act to allow a person charged on an indictment with industrial manslaughter,¹²⁰ to alternatively be convicted of a Category 1 or 2 offence, even if the limitation period for the alternative offences have ended before proceedings for industrial manslaughter have commenced.¹²¹

The proposed removal of limitation periods for Category 1 and 2 offences as alternative convictions for industrial manslaughter raises the fundamental legislative principle of administrative power, which includes that there must be an end to liability to prosecution or proceedings at a reasonable point.¹²²

Committee Comment

The explanatory notes justify the removal of limitation periods on the basis that the amendments seek to ensure the accused does not escape punishment on technical grounds such that a court could find an accused guilty of an alternative verdict even if the prosecution for industrial manslaughter was commenced outside the limitation period for the alternative verdict.

We are satisfied that the inclusion of alternative offences has sufficient regard to the rights and liberties of individuals, namely, that it is a proper delegation of administrative power.

2.2.4.2 Fundamental legislative principles – natural justice

The WHS Act does not currently contain any alternative verdicts for industrial manslaughter. The explanatory notes suggest this may lead to a defendant being acquitted if a jury is not convinced beyond a reasonable doubt that the person is guilty.¹²³ The explanatory notes provide that the addition of alternative verdicts is consistent with industrial manslaughter provisions in other Australian jurisdictions,¹²⁴ however, the removal of limitation periods in relation to the commencement of proceedings raises the possibility that a person may have to defend themselves from a charge at an indeterminate point in time in the future.¹²⁵

The removal of limitation periods for those alternative charges is purportedly designed to ensure that accused persons are not able to escape punishment 'in the event that a Court finds evidence that supports conviction for an alternative offence'.¹²⁶ The explanatory notes seek to rely on s 567(2) of the *Criminal Code 1899*, by allowing alternative convictions to be recorded as a joinder of charges, but the proposed new section does not set out the process by which the alleged charges would be listed.¹²⁷

¹¹⁸ Department of State Development and Infrastructure, correspondence, 26 June 2024, pp 14-15.

¹¹⁹ LSA, s 4(3)(a). See also OQPC, *Notebook*, p 18.

¹²⁰ WHS Act, ss 34C and 34D.

¹²¹ Bill, cl 42 (inserts new s 34E into WHS Act).

¹²² OQPC, *Notebook*, p 18.

¹²³ Explanatory notes, p 12.

¹²⁴ Explanatory notes, pp 12, 19 and 24. See, for example, *Work Health and Safety Act 2020* (WA); *Work Health and Safety Act 2011* (Cth).

¹²⁵ Explanatory notes, p 19.

¹²⁶ Explanatory notes, p 20.

¹²⁷ *Criminal Code 1899*, s 567(2); Explanatory notes, p 20.

Committee comment

We are satisfied that the inclusion of alternative offences in the WHS Act has sufficient regard to the rights and liberties of individuals defending charges under the industrial manslaughter provisions of the Bill, but the clause should be amended to properly reflect the process of a joinder of charges that the explanatory notes seek to rely on. The committee recognise there may be benefit in clarity being provided as to how an alternative verdict under S34E could be found by the court.

2.2.5 Best Practice Review of Workplace Health and Safety Queensland

The BPR recommended the establishment of an approval framework in the WHS Regulations which will allow the WHS Regulator to prescribe minimum training standards and enforce compliance for RTOs delivering training that supports authorisation by the WHS Regulator in Queensland.¹²⁸

Clauses 44 and 45 of the Bill propose changes to support the establishment of the regulatory approval framework by:

- making clear that authorisation training quality falls within the remit of the WHS Act
- ensuring the concurrent operation of both Queensland’s regulatory approval framework and the NVETR Act in relation to their respective purposes. This will be achieved by limiting the application of the NVETR Act to the extent that it would render inoperative Queensland’s regulatory approval framework where it is inconsistent with the NVETR Act by:
 - excluding certain provisions of the regulatory approval framework (State authorisation provisions) from the application of section 9(1) of the NVETR Act to the extent only that section 9(1) would otherwise prevent those State authorisation provisions from continuing to apply to certain RTOs providing authorisation training, assessment, or instruction
 - declaring that all provisions of the WHS Act and any regulations made under the WHS Act (including provisions enacted or amended after commencement) are displacement provisions for the NVETR Act generally
- making clear that the regulation-power allows regulations to be made providing for the RTO approval process and the setting of training, assessment or instruction standards required for an authorisation to be prescribed in detail within the WHS Regulation.¹²⁹

QNMU noted their support of the Bill’s Clauses 44 and 45, advising that ‘QNMU welcomes this change and acknowledge this was a key recommendation from the 2017 Best Practice Review of Workplace Health and Safety Queensland review.’¹³⁰

2.2.6 Power of health and safety representatives and entry permit holders to take photos, videos, measurements and conduct tests

During the WHS Act Review, stakeholders queried what activities fell within the term ‘inquiring’ in relation to the EPH’s role of inquiring into a suspected contravention of the WHS Act.

Several activities considered common in workplace inquiries were identified as not being explicitly permitted by the WHS Act. Examples included information-gathering activities, such as using a smartphone to take photos or videos or using a noise meter or a dust monitor.¹³¹

¹²⁸ Explanatory notes, p 13.

¹²⁹ Explanatory notes, pp 13-14.

¹³⁰ Submission 4, p 3.

¹³¹ Explanatory notes, p 12.

As recommended by the WHS Act Review, Clause 46 of the Bill provides that EPHs and HSRs may take photos, videos, and take measurements or conduct tests at the workplace when performing their duties.¹³²

While the WHS Act Review contemplated extending HSR and EPH powers to include taking samples, the Bill instead provides for an HSR or EPH to conduct tests. This achieves the intent of the WHS Act Review recommendation by enabling an HSR or EPH to conduct tests for health and safety issues, such as noise and dust levels, without compromising matters such as site preservation, chain of custody and removal of evidence, property protection, and compensation requirements if any damage were to occur.¹³³

These amendments are supported by the QCU, QNMU and the Consultative Committee for Work-Related Fatalities and Serious Incidents, however, they are opposed by the QLS, LGAQ, MEA and HIA.¹³⁴

QCU submitted that the amendment:

... will ensure that HSRs and EPHs can effectively identify hazards, inspect suspected contraventions, and collect evidence to assist with the timely resolution of WHS issues. They will also remove any doubt that the current practice of HSRs and EPHs is lawful and within the scope of their powers and functions to protect workers and other persons against harm to their health, safety, and welfare.¹³⁵

QNMU noted that they 'consider the proposed safeguards within the Bill to be relevant and appropriate.'¹³⁶

The Deputy-Chair of the Consultative Committee for Work-Related Fatalities and Serious Incidents, said that regarding documenting a suspected contravention of the WHS Act:

I do not care whose phone the photo came off. If it is a significant piece of evidence in a prosecution and if having that kind of power stops people from thinking they can get away with it by thinking, 'In the early morning I'll fix that up so it doesn't look too bad,' then I would support it.¹³⁷

HIA noted their opposition to this proposed amendment to allow EPHs and HSRs to take photos and videos, submitting that the proposed measures fail to consider the negative impact on safety culture, as they may lead to the misappropriation of materials and create confrontational situations through video recording, potentially resulting in psychosocial hazards for workers and others. HIA believe it is crucial to implement strong protections for both employers and workers, including the right to refuse recordings.¹³⁸

LGAQ also commented on the lack of prohibition on an EPH posting images and videos on social media or through electronic means.¹³⁹

MEA stated their concern that 'this provision effectively gives unfettered access to the workplace through allowing additional scrutiny with hindsight and extra personnel oversight.'¹⁴⁰

¹³² Explanatory notes, p 13.

¹³³ Explanatory notes, p 13.

¹³⁴ See submissions 2, 3, 6, 8, 11, and Public hearing transcript, Brisbane, 8 July 2024, p 21.

¹³⁵ Submission 6, p 13.

¹³⁶ Submission 3, p 3.

¹³⁷ Public hearing transcript, Brisbane, 8 July 2024, p 21.

¹³⁸ Submission 8, p 2.

¹³⁹ Submission 2, p 4.

¹⁴⁰ Submission 9, p 6.

QLS submitted:

If the photos or videos are used inappropriately (for example, publicly shared), there could be significant considerations for the individuals involved.¹⁴¹

QLS also recommended that specific information and training be provided to HSR or an EPH to ensure compliance in regard to the evidence that they would be able to gather under the amendment.¹⁴²

In response, the Department said:

The Bill provides clear circumstances when these rights can be exercised to ensure they are not used indiscriminately e.g. specifying that photos and videos can only be taken of the relevant worker at their workplace.

In addition to the privacy safeguards included in the Bill, existing protections in the WHS Act, including confidentiality and use and disclosure of information requirements, will limit the potential misuse of information collected.¹⁴³

The Department added:

The Office of Industrial Relations intends to publish comprehensive guidance to ensure HSRs, EPHs and other individuals who may be impacted (e.g. a worker whose photograph is taken) understand their rights and responsibilities about these new powers.¹⁴⁴

Committee Comment

We are satisfied that the amendments provided in Clause 46 of the Bill improve the ability of health and safety representatives and entry permit holders to document suspected contraventions of the WHS Act.

We are also satisfied that the Office of Industrial Relations will publish comprehensive guidance to ensure that health and safety representatives, entry permit holders and other individuals who may be impacted (e.g. a worker whose photograph is taken) understand their rights and responsibilities about these new powers.

2.3 Other matters considered

The Consultative Committee for Work-related Fatalities and Serious Incidents noted their support for the Bill, stating that the ‘proposed inclusions and amendments outlined in the Bill are integral to advancing electrical safety in Queensland’.¹⁴⁵ The Consultative Committee also submitted that they strongly advocate for further legislative changes that include the mandatory installation of safety switches in all residential, commercial, and industrial buildings, along with Australia’s adoption of amendments to the Australian and New Zealand Wiring Rules to align with New Zealand’s standards.

The Consultative Committee strongly voiced their support for enhancing safety in Queensland schools by implementing safety switches and reducing the circuit threshold from 30mA to 10mA. Additionally, they believe that the mandatory de-energisation of buildings before any work on roofs or within ceiling spaces is crucial for ensuring safety.¹⁴⁶

¹⁴¹ Submission 11, pp 1-2.

¹⁴² Submission 11, p 2.

¹⁴³ Department of State Development and Infrastructure, correspondence, 26 June 2024, pp 8-9.

¹⁴⁴ Department of State Development and Infrastructure, correspondence, 26 June 2024, p 14.

¹⁴⁵ Submission 3, p 1.

¹⁴⁶ Submission 3, p 2.

The Consultative Committee provided further details on the electrical standards in New Zealand schools:

... for safety switches they went to 10 milliamps because if anybody is going to stick anything in a power point it is a schoolkid. That change was made to the wiring rules in 2014 specifically for New Zealand. In Queensland and Australia, we maintain 30 milliamps.¹⁴⁷

... with an electric shock or death by electrocution it is the amount of current that runs through your heart if you touch something and you complete the circuit. Safety switches at 30 milliamps kick in just an absolute fraction before irreversible damage to the heart is done. There is a number of medical studies on how much it takes to do irreparable damage to the heart muscles. Ten milliamps is just reducing that threshold.¹⁴⁸

Committee Comment

We note the significant advocacy provided by the Consultative Committee for Work-related Fatalities and Serious Incidents. Members of the Consultative Committee have either suffered the loss of a loved one or have been seriously injured through a work-related incident. They volunteer their time to best ensure that other Queenslanders do not suffer the loss that they or their families have endured, and the committee commends them for their important work.

We encourage the Department to further investigate the additional matters raised by the Consultative Committee in regard to: mandatory installation of safety switches; a reduction on the threshold of circuits within schools; and the mandatory de-energisation of buildings before any work is commenced on a roof or within a ceiling space.

¹⁴⁷ Public hearing transcript, Brisbane, 8 July 2024, p 19.

¹⁴⁸ Public hearing transcript, Brisbane, 8 July 2024, p 20.

Appendix A – Submitters

Sub #	Submitter
1	Queensland Bus Industry Council
2	Local Government Association of Queensland
3	Consultative Committee for Work-related Fatalities and Serious Incidents
4	Queensland Nurses and Midwives' Union
5	Motor Trades Association of Queensland
6	Queensland Council of Unions
7	CONFIDENTIAL
8	Housing Industry Association Pty Ltd
9	Master Electricians Australia
10	National Fire Industry Association of Australia Ltd
11	Queensland Law Society
12	Electrical Trades Union Queensland and the Northern Territory
13	Electric Vehicle Council
14	National Electrical and Communications Association

Appendix B - Officials at public departmental briefing on 10 June 2024

Department of State Development and Infrastructure

Office of Industrial Relations

- Andrea Fox, Executive Director, Policy and Workplace Services
- Kirsty McLean, Manager, Electrical Safety Policy
- Janine McPherson, Director, Work and Electrical Safety Policy

Appendix C - Witnesses at public hearing on 8 July 2024

Electrical Trades Union

- Peter Ong, State Secretary
- Robert Wheshler, Electrical Tradesperson

Master Electricians Australia

- Kate Raymond, CEO
- Chris Lehmann, GM Advocacy, Membership & Partnerships

Queensland Council of Unions

- Nate Tosh, Legislation and Policy Officer

Queensland Law Society

- Kate Brodnik, Special Counsel, Legal Policy
- Patrick Quinn, Deputy Chair - QLS Criminal Law Committee

Consultative Committee for Work-related Fatalities and Serious Incidents

- Sean O'Connor, Deputy Chair

National Fire Industry Association of Australia Ltd

- Shannon Fogarty, Director, Member Workplace Support

National Electrical and Communications Association

- Neil Roberts, Director, Policy, Technical & Safety

Appendix D - Abbreviations and acronyms

Abbreviation/acronym	Definition
BESS	Battery Energy Storage Systems
Boland Review	Review of the Model Work Health and Safety Laws
BPR	Best Practice Review of Workplace Health and Safety Queensland
Consultative Committee	Consultative Committee for Work-Related Fatalities and Serious Incidents
EES	Electrical Equipment Safety System
ELV	extra low voltage
EPHs	entry permit holders
ES Act	Electrical Safety Act 2002
ES Act Review	Review of <i>Queensland's Electrical Safety Act 2002</i>
ES Regulation	Electrical Safety Regulation 2013
ETU	Electrical Trades Union
EVC	Electric Vehicle Council
EWIS	Emergency Warning & Intercommunication Systems
HRW	High-Risk Work
HSRs	health and safety representatives
Industrial Manslaughter Review	Review to examine the scope and application of the industrial manslaughter provisions in the WHS Act
MEA	Master Electricians Australia
MTAQ	Motor Trades Association of Queensland
NECA	National Electrical and Communications Association
NFIA	National Fire Industry Association of Australia Ltd
NVETR Act	<i>National Vocational Education and Training Regulator Act 2011 (Clth)</i>
PCBU	Persons conducting a business or undertaking
PD Act	<i>Plumbing and Drainage Act 2018</i>
QBCC	Queensland Building and Construction Commission
QBCC Act	<i>Queensland Building and Construction Commission Act 1991</i>
QBIC	Queensland Bus Industry Council
QBCC Regulations	Queensland Building and Construction Commission Regulation 2018
QCU	Queensland Council of Unions
QNMU	Queensland Nurses and Midwives' Union
RTOs	Registered Training Organisations
SMEs	small and medium entities
SRWA Act	<i>Safety in Recreational Water Activities Act 2011</i>
WHS Act	<i>Work Health and Safety Act 2011</i>
WHS Act Review	Review of the <i>Work Health and Safety Act 2011</i>

WHS Board	Work Health and Safety Board
WHS Prosecutor	Work Health and Safety Prosecutor
WHS Regulation	Work Health and Safety Regulation 2011



Statement of Reservation
LNP Members of the
Clean Economy Jobs, Resources and Transport Committee

Whilst most submitters were broadly supportive of the Bill there are some implications the Opposition would like to mention.

The Queensland Law Society raised some concerns regarding the additional powers that will be granted to Workplace Health and Safety Inspectors.

Clause 20 of the Bill amends section 141 of the Electrical Safety Act 2002 in relation to the power for an investigator to compel the production of documents and answers to questions on behalf of the regulator.

The current legislation provides that a person must not, without a reasonable excuse, refuse or fail to comply with requests for documents or to answer questions.

The proposed new process reverses the onus of proof, and evidential burden, onto the person to whom the request for documents or answers is made to demonstrate the reasonable excuse.

The Queensland Law Society also expressed concern regarding the changes to sections 68 and 118 of the Work Health and Safety Act. Those changes allow health and safety representatives and entry permit holders to take videos and photos of suspected contraventions of the Act and in other limited cases.

While the QLS considers there is some utility in allowing those people to take photos and videos, there are significant risks of misuse, whether intended or otherwise, and do not consider the Bill or the current provisions of the Act have addressed those.

There is nothing in the Bill to suggest when the video or image is required to be deleted. For example, if it was taken and given to the employer or an investigator then there should be an explicit requirement for it to be deleted.

The LNP will always support improvements to workplace health and safety as when a worker goes to work, we expect that worker to return home safely at the end of their working day.

We are all aware how beholden this Miles Labor government is to the union movement and the Opposition and the QLS are concerned about overreach.

As stated earlier this bill was largely supported by submitters however this Bill does raise Fundamental Legislative Principle and privacy issues that do need to be highlighted.

Pat Weir MP
Member for Condamine
Deputy Chair

Bryson Head MP
Member for Callide

Trevor Watts MP
Member for Toowoomba North

31st July 2024