

17 June 2024

Our ref: KB:IL

Committee Secretary
Clean Economy Jobs, Resources
and Transport Committee
Parliament House
George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Electrical Safety and Other Legislation Amendment Bill 2024

The Queensland Law Society (QLS) appreciates the opportunity to provide a submission to the inquiry considering the Electrical Safety and Other Legislation Amendment Bill 2024 (**Bill**).

Due to time constraints, QLS has been unable to conduct an exhaustive review of the Bill. This submission highlights a few issues for the Committee's consideration which have been raised by members of our Industrial Law Committee. Unfortunately, we have been unable to fully interrogate these issues, but we hope our comments below will draw the Committee's attention provisions within the Bill that require further consideration before the legislation is passed.

Amendments to ss 68 and 118 of *Work Health and Safety Act 2011*

Sections 68 and 118 of the *Work Health and Safety Act 2011* (QLD) (**WHS Act**) are amended by the Bill to allow:

1. a health and safety representative (**HSR**) to take photos and videos at a part of the workplace to record a risk or hazard to the health and safety of workers in the work group.
2. a WHS entry permit holder (**EPH**) to take photos and videos directly relevant to the suspected contravention of the WHS Act.

It is intended that these people will be able to use their smartphone or other portable device to take the photos or videos.

While there are some restrictions on the reasons for, and use of, the photos and videos, we are concerned these will not provide adequate safeguards against breaches of privacy principles

and laws, or other misuses of this material, whether intentional or otherwise. If the photos or videos are used inappropriately (for example, publically shared), there could be significant considerations for the individuals involved.

The amendments currently include references to other laws such as the *Corrective Services Act 2006*, the *Criminal Code* and s 271 of the *Privacy Act 1988* (Cth); however, it seems unreasonable to expect a HSR or an EPH to have a comprehensive understanding of what their obligations under these laws are. Instead, specific information and training should be provided to ensure compliance.

This guidance should include how and where the material is stored, who has access to it and when it needs to be deleted. We note the Privacy Act Review¹ recommendations around collection, use and disclosure being fair and reasonable and suggest these recommendations be considered in a context where the workers are likely to have little control over the how the photos and videos are handled. In addition, specific direction will be needed where an individual is identifiable in the images or footage.

While a HSR or an EPH cannot livestream the footage, there is no express prohibition on uploading this to a particular platform. Our members consider an express prohibition should be considered.

Finally, we are aware of the work undertaken in relation the regulation of workplace surveillance. Clear and consistent guidelines and practices should be developed to ensure individuals and workplaces are able to identify and comply with their rights and obligations.

Amendments to industrial manslaughter offence provisions

Removing the limitation period for of category 1 & 2 offences

The Bill amends the WHS Act to provide for alternative verdicts of a Category 1 or Category 2 offence. In doing so, the Bill also provides that the limitation period for prosecutions for Category 1 and 2 offences, in section 232 of the WHS Act, will not apply, so that alternative verdicts can be made even if the prosecution for industrial manslaughter commenced after the limitation period for prosecutions for the alternative offences.

We have some concerns about the reasonableness of this proposal. Removing a limitation period can significantly prejudice the defence. It is in the best interests of all parties that investigations should be pursued and finalised at the earliest opportunity.

Amendments to extend industrial manslaughter to bystanders

The Bill expands 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. Currently, the offence relates to the death of a 'worker'.

QLS has previously expressed concern about the introduction of industrial manslaughter offences given existing offences in the work health and safety legislation and *Criminal Code* capture the same conduct that the industrial manslaughter offence does.

¹ Australian Government Attorney-General's Department, *Privacy Act Review*, Report 2022, accessed via: https://www.ag.gov.au/sites/default/files/2023-02/privacy-act-review-report_0.pdf

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We note one of the policy reasons for these amendments is to make the Queensland laws consistent with other jurisdictions that have now enacted similar offences. We query whether there is sufficient justification, at a practical level, to expand an offence when 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.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au [REDACTED]



Rebecca Fogerty
President

