

# Electrical Safety and Other Legislation Amendment Bill 2024

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations, and Minister for Racing, make this statement of compatibility with respect to the Electrical Safety and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

The Bill amends the *Electrical Safety Act 2002* (ES Act) to implement a suite of recommendations from the *Review of Queensland's Electrical Safety Act 2002*. The Bill will:

- amend the definition of 'electrical equipment' to capture prescribed extra low voltage equipment where the item is placing or may place persons or property at an electrical risk;
- clarify the definition of 'electrical installation' captures 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 *Work Health and Safety Act 2011* (WHS Act);
- reflect the Work Health and Safety 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 to reflect contemporary practice;
- amend the definition of 'in-scope electrical equipment' to prescribe by regulation the voltage range of the equipment and items that are 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 that the replacement of similar appliances in particular circumstances is not electrical installation work; and
- correct an error in section 32(3) of the ES Act where reference is made to the incorrect subsection.

***Amendments to the Work Health and Safety Act 2011 and Safety in Recreational Water Activities Act 2011 (SRWA Act)***

The Bill amends the WHS Act and SRWA Act to:

- implement two recommendations of the WHS Act Review that will allow health and safety representatives (HSRs) and entry permit holders (EPHs) to take photos, videos, measurements and conduct tests at the workplace to assist in fulfilling their roles under the WHS Act (Recommendations 3D and 11(c) of the *2022 Review of the Work Health and Safety Act 2011* (WHS Act Review)).
- implement recommendation 23a from the *2018 Review of the model work health and safety laws* which proposes to include negligence as a fault element of the Category 1 offence in the WHS Act. For consistency, this amendment has also been made to the SRWA Act which mirrors elements of the WHS Act.
- implement three recommendations of the *Review to examine the scope and application of the industrial manslaughter provisions in the Work Health and Safety Act 2011*, namely to:
  - expand the scope of the industrial manslaughter offence in the WHS Act, beyond the death of workers, to capture the deaths of bystanders ('other persons') to whom a health and safety duty is owed (Recommendation 1);
  - remove ambiguity around the culpability of multiple parties in a contractual chain in relation to the industrial manslaughter offence (Recommendation 2); and
  - introduce alternative verdicts for the industrial manslaughter offence of either a Category 1 offence or a Category 2 offence (Recommendation 3).

The following table sets out the statutory alternative verdicts being introduced in the Bill:

<b>Offence</b>	<b>Alternative verdict</b>
Industrial manslaughter (WHS Act only)	Category 1 Category 2
Category 1	Category 2

Amendments in the Bill will disapply any limitation periods that apply to alternative verdicts for industrial manslaughter. This means that if a prosecution is commenced for industrial manslaughter outside the limitation period for a Category 1 or 2 offence to commence, the court can still return an alternative verdict.

The Bill also implements recommendation 38 of the *2017 Best Practice Review of Workplace Health and Safety Queensland*. The Bill will:

- 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 Registered Training Organisations (RTOs) in Queensland; and

- 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.

## Human Rights Issues

### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered the rights protected by Part 2 of the *Human Rights Act 2019* (HR Act). In my opinion, the human rights relevant to the Bill are:

- Right to life (section 16, HR Act).
- Right to property (section 24, HR Act).
- Right to privacy and reputation (section 25);
- Right to the protection of families and children (section 26);
- Right to liberty and security of person (section 29); and
- Rights in criminal proceedings (section 32);

### Human rights promoted by the Bill

#### *Right to life (section 16, HR Act)*

The Bill delivers improvements in electrical and workplace safety. For example:

- including a power to prescribe extra low voltage equipment that is placing or may place persons or property at electrical risk by regulation. This will subject this equipment to additional safety and supply chain requirements aimed to improve the standard of this equipment and improve safety in the community; and
- the establishment of an approval process under the WHS Act to deliver particular training. This will improve the standard of training and therefore the skills of those undertaking the training which will improve the level of safety at workplaces.

### *Amendments to the Work Health and Safety Act 2011*

The industrial manslaughter amendments and the amendments allowing HSRs and EPHs to take photos, videos, measurements or conduct tests generally, support and promote human rights, in particular the right to life.

The object of the WHS Act is to secure the health and safety of workers and workplaces, including by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant (section 3(1)(a) WHS Act). The amendments to the WHS Act in the Bill strengthen and enhance the WHS legislative framework, consistent with the object of the WHS Act.

In particular, the Bill promotes the right to life by amending the industrial manslaughter offence to include negligent conduct of a person conducting a business or undertaking (PCBU) or a senior officer that causes the death an individual to whom a health and safety duty is owed under the WHS Act. Currently the industrial manslaughter offence in the WHS Act only applies in circumstances where a worker dies.

Providing the ability to impose higher penalties in circumstances when persons other than workers are fatally injured at a workplace due to the negligent conduct of the business or undertaking or senior officers provides a strong incentive for duty holders to protect the health and safety of all persons they currently have a duty to protect.

The penalties for the expanded scope of the industrial manslaughter offence will remain the same, that is, a maximum custodial sentence for an individual of 20 years and a maximum fine for a body corporate of \$10 million.

The amendments to introduce alternative verdicts for industrial manslaughter and Category 1 offences promotes the right to life by ensuring that for the most egregious circumstances involving work-related fatalities or the risk of fatality or serious injury or illness, the highest penalties available under the WHS Act can be sought. In circumstances where the jury is not satisfied beyond reasonable doubt that the defendant is guilty of the offence they have been charged with, alternative verdicts allow the offender to be found guilty of an alternative offence where the evidence supports it. Without alternative verdicts a defendant may be acquitted.

## **Human rights potentially limited by the Bill**

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

#### *Property rights (section 24, HR Act)*

##### (a) the nature of the right

The right to property protects the rights of all people to own property (alone or with others) and that a person must not be arbitrarily deprived of the person's property. Property includes real or personal property (e.g., land, chattels, money). Deprivation is not defined by the HR Act, but in this context is considered to include the substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of their property (including disposing of it, transferring it, or deriving profits from it).

The right to property is relevant to amendments to section 14 of the ES Act contained in the Bill. These amendments expand the definition of 'electrical equipment' to include 'prescribed electrical equipment'. Accordingly, the Bill inserts a new section 14A defining 'prescribed electrical equipment' as extra low voltage equipment that is placing or may place persons or property at electrical risk and is prescribed by regulation. In practice these amendments provide that the Minister may prescribe an item of extra low voltage equipment by regulation where it is placing or may place persons or property at electrical risk. As a result, this brings the item within the existing regulatory framework for 'electrical equipment' which includes

supply chain duties, incident notification requirements and licensing requirements for the completion of particular work involving the equipment.

Human rights may be limited to the extent that where an item is prescribed as prescribed electrical equipment it may deprive a person of the ability to perform particular work on the equipment where it meets the definition of electrical work and the person does not hold the appropriate electrical work license. As a result, the amendment may also affect the person's ability to derive profits from work on the equipment, if they do not hold the appropriate license, and involvement in the supply chain of the equipment if they do not comply with the relevant duties and regulatory requirements. Finally, by being captured under the electrical equipment regulatory framework, the prescribed electrical equipment will be brought within the electrical equipment recall framework, which provides the Minister the ability to instigate a recall of an item of electrical equipment if the Minister considers that electrical equipment is placing or may place persons or property at electrical risk.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the limitation on the right to property by limiting work that work can be undertaken on 'prescribed electrical equipment' without the appropriate electrical work license is to ensure the protection of persons and property from electrical risk. Achieving this purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose whether the limitation helps to achieve the purpose.

Bringing particular extra low voltage equipment which is placing or may place persons or property at electrical risk (prescribed electrical equipment) within the scope of the ES Act will require designers, manufacturers, importers, suppliers and installers to ensure the electrical safety of the electrical equipment they design, make, import, supply or install. The amendments will also bring 'prescribed electrical equipment' into the scope of the electrical work and licensing framework. This framework applies a risk-based approach ensuring that work posing significant risk and demanding specialist knowledge to undertake safely is only undertaken by licensed electrical workers. In line with the purpose of the ES Act, these changes are intended to minimise the electrical risks associated. This limitation in relation to property rights helps to achieve the purpose preventing persons from being killed or injured and property from being damaged or destroyed by electricity.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The Bill is considered to achieve the purpose of the limitations in relation to the right to property without unreasonably restricting human rights and is considered necessary due to the lack of less restrictive, reasonably available alternatives.

This method of prescribing items ensures that items that are prescribed have been appropriately considered, including regulatory impacts on the community and industry, this includes on each occasion considering the limitation of the property right against the necessity of the regulation.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Prescription of items as prescribed electrical equipment is a discretionary power conferred on the Minister. In practice, the Minister must be satisfied that the item is placing or may place, persons or property at an electrical risk before prescribing the item in Regulation. The making of subordinate legislation includes consultation with affected parties, where appropriate, and is subject to the Executive Council scrutiny.

On the balance, the limitation of the property right posed when an item is prescribed as ‘prescribed electrical equipment’ is outweighed by the application of the regulatory framework aiming to prevent destruction and damage to other property and death of those in the community.

- (f) any other relevant factors

Nil.

### ***Amendments to the Work Health and Safety Act 2011***

#### ***Right to privacy and reputation (section 25, HR Act)***

The amendments to the WHS Act (sections 68, 118, 148 and 271) to enable HSRs and EPHs to take photos, videos, measurements and conduct tests may limit the right to privacy.

- (a) the nature of the right

A person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual’s private life more generally. In a workplace context, this could apply to a person in their capacity as a worker, or a member of the public visiting a workplace, such as a school or health care facility. An interference with the right to privacy is permissible provided it is not arbitrary or unlawful. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to the legitimate policy objective.

The Bill will allow an HSR or an EPH to take a photo or video at the workplace where there is a risk or hazard to the health or safety of workers in the HSR’s work group, or where it is directly relevant to the suspected contravention the WHS entry permit holder is inquiring about.

However, an HSR or EPH must not take a photo or video of person who is not a worker at the workplace. A further safeguard prohibits the use of livestreaming when an HSR or EPH takes a photo or video.

In addition, the Bill notes that there may be other relevant laws for regulating the taking of photos and videos; for example:

- the *Corrective Services Act 2006* which prohibits taking a photo of a prisoner in a Corrective Services facility or any part of a Corrective Services facility; and

- the Criminal Code which prohibits visually recording a person in circumstances where a reasonable adult would expect to be afforded privacy, for example a person being helped to dress or use a toilet such as may be the case in hospitals or aged care settings.
- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The potential limit on the right to privacy and reputation to allow HSRs and EPHs to take photos and videos at the workplace is for the reasonable and valid use of technology to assist them in performing their statutory role. Allowing an HSR or EPH to capture such images is intended to facilitate resolution of work health and safety issues and enable suspected contraventions of the WHS Act to be addressed by the relevant PCBU.

Existing safeguards in the WHS Act, as well as in the Bill, seek to allow an HSR or EPH to take such photos or videos for the legitimate policy objective established in the WHS Act without unnecessarily compromising a person's right to privacy or reputation. Enabling the use of technology in a manner to protect the health and safety of workers, with appropriate safeguards to protect privacy and reputation, is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments enabling HSRs and EPHs to take photos or videos at the workplace limit the right to privacy and reputation only to the extent necessary to achieve the purpose of the HSR recording a risk or hazard to the health or safety of workers in the HSR's work group or the EPH making an inquiry into a suspected contravention.

The limitation on the right to privacy and reputation is mitigated by safeguards. For example, the Bill clarifies that an HSR and EPH are not permitted to take a photo or video of any person who is not a worker at the workplace, and further, is only permitted to take photos and videos of workers relevant to the hazard or risk, or the suspected contravention. There are also existing safeguards in the WHS Act about how HSRs and EPHs must exercise their duties and powers under the WHS Act.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The Bill is considered to balance the policy intent of the providing HSRs and EPHs additional powers to undertake their duties without unreasonably restricting the right to privacy and reputation. There is no less restrictive way or reasonably available alternative that still achieves the policy intent.

To ameliorate the impact of the limitation on human rights, safeguards to protect the privacy of personal information have been incorporated in the amendments. In addition, other relevant laws and guiding principles, such as the *Privacy Act 1988* (Cwlth), also set out additional requirements for the collection, use and disclosure of personal information.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

On balance, the limitation on the right to privacy and reputation is considered reasonable and justifiable given the vital role of HSRs and EPHs for protecting the health and safety of workers, as well as the existing safeguards both in the WHS Act and other relevant laws that ensure potential risks are mitigated.

- (f) any other relevant factors

The WHS Act has been silent on the use of technology by HSRs and EPHs to capture photos and videos at the workplace. By including amendments which clarify the circumstances in which an HSR or EPH can take a photo or video, and highlighting their obligations in relation to protecting people's privacy, the Bill improves the current legislative regime.

***Right to liberty and security of a person (section 29, HR Act)***

- (a) the nature of the right

Section 29(1) of the HR Act states that every person has the right to liberty. This right to liberty means that people must not be arrested and detained, unless provided for by law. Their arrest and detention must also not be arbitrary.

The concept of arbitrariness carries a human rights meaning of capriciousness, unpredictability and unreasonableness in the sense of not being proportionate to the legitimate aim sought.

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. An alternative verdict of a Category 1 offence for an individual carries a maximum custodial sentence of 5 years. Penalties for the other alternative verdict of a Category 2 offence do not include a custodial sentence.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 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.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves the purpose by providing that the industrial manslaughter offence captures the death of ‘other persons’ and that the same maximum sentence applies as for fatalities involving workers. This reflects that industrial manslaughter is the most serious offence under the WHS Act where negligent conduct can cause a person to lose their life. The Bill sends a strong message that the ramifications of this conduct are severe and individuals who engage in this conduct will face very serious consequences.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Expanding the scope of the industrial manslaughter offence is the only way of achieving the purpose of the Bill.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is a very serious matter to deprive a person of their liberty and the State must ensure that persons are deprived of their liberty only where it is lawful and not arbitrary.

It is also a legitimate function of the criminal justice system in a democratic society as part of its judicial function, to impose appropriate sentences on individuals convicted of a crime, which may include the imposition of punishment by way of imprisonment.

The limitation on the right to liberty is appropriate and justifiable in ensuring that criminally negligent conduct leading to the death of other persons, is subject to the same penalties that apply to criminally negligent conduct leading to the death of workers.

- (f) any other relevant factors

Nil.

***Rights in criminal proceedings (section 32, HR Act)***

- (a) the nature of the right

Rights in criminal proceedings under section 32 of the HR Act includes the requirement that a person charged with a criminal offence has the right to be tried without unreasonable delay.

Consistent with the current industrial manslaughter offence, there will be no limitation period for industrial manslaughter prosecutions involving the death of ‘other persons’.

The absence of limitation periods for industrial manslaughter prosecutions could potentially limit a person’s right to be tried without unreasonable delay. Parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage

them. Where no limitation period applies it could be difficult for a person to defend themselves years after the fact.

Under section 232 of the WHS Act, proceedings for Category 1 and 2 offences under the WHS Act may be taken within two years after the offence first comes to the notice of the WHS Prosecutor, or within one year after a coronial report or coronial inquiry. Disapplying limitation periods for alternative verdicts to industrial manslaughter could also potentially limit a person's right to be tried without reasonable delay.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that in circumstances where an investigation into the death of an 'other person' takes a significant period of time to complete, a prosecution can still be brought for industrial manslaughter.

The industrial manslaughter offence can involve complex investigations that can take a substantial period of time to complete. The most recent industrial manslaughter conviction on 25 March 2022 was for an offence committed nearly three years earlier, in July 2019. It is consistent with expectations of a free and democratic society that the WHS regulator undertake thorough investigations into work-related deaths and that the WHS Prosecutor can bring proceedings against alleged offenders for the most serious offences under the WHS Act.

Similarly, the purpose of disapplying limitation periods for alternative verdicts to industrial manslaughter is to ensure that if a complex and lengthy investigation results in an industrial manslaughter prosecution commencing outside the limitation period that applies to Category 1 or 2 offences, it will not impact the ability of the court to bring an alternative verdict. If limitation periods are not disappplied, a person could be acquitted on technical grounds.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves its purpose of providing the ability to bring prosecutions for the industrial manslaughter offence, regardless of the time it takes to complete what can be a complex and lengthy investigation process.

The limitation achieves its purpose by providing that alternative verdicts can still be made even when an industrial manslaughter prosecution is brought after the limitation periods that normally apply to Category 1 and 2 offences.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no options that would be less restrictive on the right to be tried without unreasonable delay.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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.

- (f) any other relevant factors

Nil.

## Conclusion

In my opinion, the Electrical Safety and Other Legislation Amendment Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that it is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act. Additionally, it is likely to promote the right to life by addressing electrical risk posed by particular extra low voltage equipment and expanding the scope of industrial manslaughter in the WHS Act to include negligent conduct of a PCBU or a senior officer that causes the death an individual to whom a health and safety duty is owed under the WHS Act.

**GRACE GRACE MP**  
MINISTER FOR STATE DEVELOPMENT AND INFRASTRUCTURE  
MINISTER FOR INDUSTRIAL RELATIONS AND  
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