



QUEENSLAND
FARMERS'
FEDERATION

Review of Industrial Manslaughter Provisions in Queensland

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Work Health and Safety Prosecutor

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The united voice of
Queensland agriculture

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Our members

- Canegrowers
- Cotton Australia
- Queensland Fruit & Vegetable Growers
- Nursery & Garden Industry Queensland
- eastAUSmilk
- Australian Cane Farmers Association
- Queensland United Egg Producers
- Turf Queensland
- Queensland Chicken Meat Council
- Pork Queensland
- Bundaberg Regional Irrigators Group
- Burdekin River Irrigation Area
- Central Downs Irrigators Ltd
- Fairburn Irrigation Network
- Mallowa Irrigation
- Pioneer Valley Water Co-operative Ltd
- Theodore Water Pty Ltd
- Eton Irrigation
- Queensland Oyster Growers Association
- Lockyer Water Users Forum

About the Queensland Farmers' Federation



The Queensland Farmers' Federation (QFF) is the united voice of agriculture in Queensland.

We are a member-based organisation representing the interests of peak agriculture industry organisations (both state and national). Through our members, QFF represents more than 13,000 primary producers across the cotton, cane, horticulture, dairy, nursery and garden, poultry, pork, and intensive animal industries.

We unite the sector to engage in a broad range of economic, social, environmental, and regional issues through advocacy, policy development, and project activity. We work with the government of the day on behalf of industry, farmers, and the community to provide powerful representation and contribution to the policy direction, sustainability, and future growth of Queensland's agriculture sector.

Our Council of member representatives and policy committees set the strategic priorities for policy development and advocacy, while our Executive Board ensures our corporate governance.

QFF draws on the expertise and industry knowledge of our members, and through our commitment to collaboration and considered policy development, we lead Queensland's agriculture sector towards a strong future, ensuring our members are ahead of the game and have a voice at the table on the issues that matter to their members.

Submission

QFF welcomes the opportunity to provide comment on the Review of Industrial Manslaughter Provisions in Queensland.

We provide this submission without prejudice to any additional submission from our members or individual farmers.

Background

The Best Practice Review of Workplace Health and Safety 2017 was undertaken following the tragic incidents at Dreamworld and Eagle Farm Racecourse in 2017. This comprehensive review consulted with a variety of industry, union and academic agencies to conduct a thorough and detailed review of the Workplace Health and Safety Act 2011. A key change resulting from this review was the introduction of Industrial Manslaughter (IM) charges in the state of Queensland and the amendment of s.23 of the Criminal Code which would prevent liable PCBU's from instigating the 'accident' defence during a prosecution under this charge.

Recommendation 31 of the Best Practice was put in place following these changes, to allow review of the Act and assess the viability of the current provisions. R.31 states

"That the Minister consider establishing a review to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted."

In response to this, late 2023 the department announced an internal review upon Industrial Manslaughter provisions, in particular the below points of inquiry:

- Whether any amendments to Part 2A of the WHS Act are warranted including: Amendments to Part 2A to capture the death of bystanders at a workplace, in addition to workers.
- Whether the crime currently captures the actions of principal contractors subcontractors, developers or procurers of services who engage workers at a workplace, or if amendment is necessary to clarify or capture the duties of those persons.
- Whether alternatives to the crime should be included, similar to alternative verdicts available for specific crimes in the Criminal Code 1886.

Whilst QFF recognises the need to continually maintain and improve workplace health and safety standards in Queensland, revisions to these laws of such a high penalty nature, must be done with the utmost care and through considerable consultation with industry and the wider public. QFF also recognises the need to create a direct improvement in the WHS culture across Australia (including within policy makers) and the attitude towards proactive health and safety management.

QFF can appreciate reviews and changes to legislation which are driven by data, however the department has provided no data for which these recommendations would be necessary at the present time. As such, QFF is hesitant to agree with any amendments to section 2A, in particular those which would create even higher penalties in this space. It is crucial to acknowledge that potential legislative changes, in particular in the work health and safety space, can have a number of unintended impacts across different industries and the viability of regional businesses. Want to ensure there is not a misdirected approach against simply improving WHS standards across the board. To address the reviews terms of reference, QFF have provided the below points and recommendations.

Existing terminology and definitions

Queensland is one of a few states that already have specific industrial manslaughter laws in place. The provisions for maximum penalties are in line with other states such as Victoria, NSW, ACT and WA. These penalties allow for up to 20 years imprisonment for an individual and \$10 million fine for a corporation. These laws and penalties were introduced in response to the tragic incidents at dreamworld and aim to hold company executives and employers accountable for potentially 'negligent' conduct causing the death of a worker.

This distinction of negligence vs gross negligence is an important aspect that should remain legislated, as the severity of the offence and its terms should be in line with the level of potential criminal punishment. QFF would support the change in terminology to 'gross negligence' in QLD legislation, similar to NSW IM laws, to further underline the distinction between reckless conduct charges and industrial manslaughter in category 1 offences. Additionally, it is important recklessness must remain a legislated fault element option. Other states such as Victoria, do not make the distinction for this offense as 'gross' and this can allow for too much interpretation for any level of negligence to be prosecuted. Already, this legislation reinforces the gravity of legal responsibility and

civil liability on welfare of workers, but it is also important it remains fair and separated from lesser offences by its legislated terminology.

Bystanders and alternative verdicts

QFF does not endorse the inclusion of bystanders or non-worker individuals in the proposed Queensland Industrial Manslaughter legislation. The primary responsibility for incidents under this clause lies within the construction and mining sectors. Aligning with the ACT legislation, which focuses solely on workers and excludes bystanders, QFF contends that bystanders should not fall under the purview of Section 2A of the Act. This is particularly pertinent when considering instances involving trespassing or the neglected responsibility and reasoning of members of the public, especially in cases involving agricultural properties stretching over often significant land area.

In the event of implementation of this clause, it is very important for the department to assume responsibility for effectively communicating this evolving legislation, ensuring that PCBU's and senior officers are well-informed about their expanding liabilities. This would include information regarding liability and responsibilities surrounding:

- Individuals present on the property for project related purposes regarding on-farm renewable energy projects i.e. shared land use wind farms etc
- Individuals engaging in recreational activities, such as pigging, camping etc on farm property
- Considerations for the availability of first aid facilities
- Minimum fencing and signage requirements for large properties
- Minimum emergency response training required on farm.

The burden of proof will rest with the PCBU, and hard evidence will be needed during defence in potential industrial manslaughter cases, hence it is imperative stakeholders are educated on what additional preventative and proactive actions may be necessary. While PCBU's need to be aware of the increased risk profile, the department will also need to consider that which is reasonably practicable for different businesses across different industries. What are reasonably practicable safety measures for a construction company operating in a densely populated city area, potentially posing risks to bystanders, will markedly differ from what is considered reasonably practicable for a cattle farmer managing property spanning thousands of hectares.

Given the exemption of the 'accident' defence in industrial manslaughter, it is difficult to offer alternative verdicts under Criminal Code 1886. However, under a guilty IM conviction, alternative outcomes should be offered at the judge's discretion.

Queensland WHS changes

Workplace health and safety is a multifaceted issue that encompasses various dimensions of occupational well-being. It involves not only the physical aspects of a work environment but also extends to mental health, training, and the overall welfare of the workforce. Workforce shortages in all industries can exacerbate workplace health and safety challenges by stretching existing personnel thin, increasing the risk of fatigue, and potentially compromising safety protocols. It is crucial to

avoid instilling fear amongst small businesses with changing legislation, especially during challenging times imposed upon a farmer by market pricing fluctuations and workforce shortages. The strain due to labour shortages, the absence of breaks, insufficient staff, and diminished joy in the work contribute to mental fatigue and, consequently, hinder profitability. With the multitude of health and safety ongoing in QLD at the moment under the WHS reforms, it is important to maintain a reasonable, safe and fair approach to managing businesses. Under the current proposed reforms¹, QFF would not support:

- Health and Safety Representatives being given extensive new powers including cease-work directions, additional access to business WHS information and mandatory notification of events, incidents and enforcement notices.
- The relaxation of workplace right-of-entry powers for WHS officers and the allowance for information (i.e. potentially including photographic and digital footage) to be used for broader general public safety purposes without permission.
- Increased union power by the regulator, including increased ability to disclose confidential business information with unions and other regulators under a broader set of circumstances.

Keeping the health and safety of employees front of mind and prioritising regular, active oversight of WHS matters is crucial for all businesses, and there is always a need for these employers to be held accountable, however there is also a balance required to avoid the 'blame game' through the hierarchy of responsibility. Businesses should be supported to be able to continue to operate safely and improve on site operations, with the government aiding in the implementation of additional proactive measures rather than solely punitive measures. This would include, most importantly, WHS education programs for businesses, including legal advice, robust safety protocols and preventive strategies to avoid potential legal consequences. It is also important to create an environment where a positive relationship can be fostered between employers and employees, not create a divide.

Summary

QFF calls on the department to consider this matter carefully to ensure unintended consequences are not caught up in any changes to be implemented and ensure that the ongoing viability of regional and rural businesses is considered. It is important that businesses are supported to continue to build meaningful and effective improvements to farm safety through access to education, training and accident prevention measures and supporting the enablement of a positive relationship between employees and employers. Legislation and penalties must be equally supported by an investment in education, training and prevention.

Yours sincerely

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