

25 September 2017

Committee Secretary  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane QLD 4000

*via email: [FAC@parliament.qld.gov.au](mailto:FAC@parliament.qld.gov.au)*

Dear Committee Secretary

### **Work Health and Safety and Other Legislation Amendment Bill 2017**

Thank you for the opportunity to provide a submission on the Work Health and Safety and Other Legislation Amendment Bill 2017 (**Bill**). In this submission, due to time constraints, we confine our comments to the proposed offences of industrial manslaughter set out in the Bill.

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 40,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD strongly supports effective laws that promote work health and safety (WHS), and guard against workplace injuries and fatalities.

We have concerns, however, with the proposed introduction of the new industrial manslaughter offences, given the overlap with existing criminal and WHS offences and inconsistency with fundamental legislative principles.

Under existing Queensland law, senior officials of a company can be held criminally responsible for workplace deaths.

The provisions of the Work Health and Safety Act 2011 (Qld) (**WHS Act**) and the Criminal Code Act 1899 (Qld) (**Criminal Code**) sanction persons culpable of a fatality occurring at or in the course of work.

Under the WHS Act, a person conducting a business or undertaking, and its officers (if any), may be prosecuted for engaging in conduct, without reasonable excuse, that recklessly exposes a person to whom a duty is owed to a risk of death or serious injury or illness.

Under the Criminal Code a person can be charged with manslaughter and prosecuted for a work-related fatality.

While we note concerns regarding the adequacy of the Criminal Code's application to corporations, we consider that it is inappropriate to seek to address the issues through new offences. Deficits in the manslaughter offence under the Criminal Code should be remedied directly through appropriate amendments to that statute, or through improved resourcing of investigative and regulatory bodies, and not indirectly through additional regulation purporting to sanction the same acts and omissions.

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The AICD is concerned that proposed new industrial manslaughter offences in the Bill contravenes fundamental legislative principles as it fails to provide any right of defence, reasonable excuse or relief in relation to proposed new offences of industrial manslaughter.

The absence of defence and relief provisions render the offences unfair and unjust. This is particularly so as the standard of proof applicable to proposed industrial manslaughter offences is merely negligence and the maximum penalties are extremely high (ie 20 years imprisonment for an individual or 100,000 penalty units for a body corporate).

On the basis of these significant concerns, the AICD does not support the proposed offences of industrial manslaughter set out in the Bill.

The AICD has also noted concerns raised in submissions from the Australian Industry Group, the Australian Chamber of Commerce and Industry and others on the negative impact of the Bill on national harmonisation of WHS laws. The AICD shares these concerns.

We hope our comments will be of assistance to you. If you would like to discuss any aspect of this submission, please contact Lysarne Pelling, Senior Policy Adviser, on (02) 8248 2708 or [lpelling@aicd.com.au](mailto:lpelling@aicd.com.au).

Kind regards



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