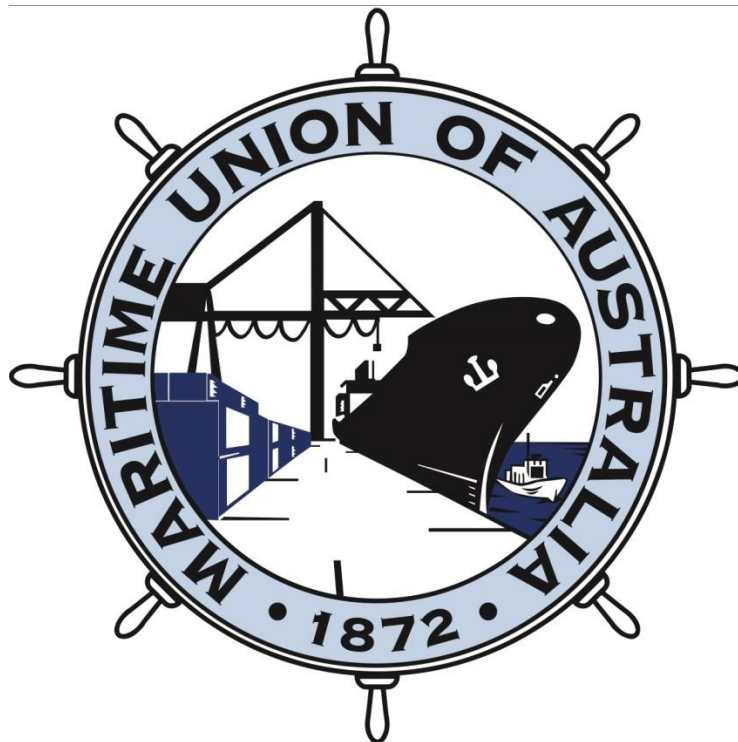


Maritime Union of Australia Submission:

Inquiry into the NT WHS Amendment Bill 2019:

Industrial Manslaughter provisions



8 October 2019

Economic Policy Scrutiny Committee

This response has been prepared and submitted
on the basis that it is a public document

Submitted by email: EPSC@nt.gov.au

Paddy Crumlin, National Secretary

Maritime Union of Australia

A Division of the Construction, Forestry, Maritime, Mining and Energy Union
365 Sussex St, Level 2, Sydney, NSW, 2000

Paddy.crumlin@mua.org.au

Andy Burford, Northern Territory Branch Secretary,

Maritime Union of Australia

A Division of the Construction, Forestry, Maritime, Mining and Energy Union
Stokes Hill Wharf, Darwin NT 0800

andy.burford@mua.org.au

For inquiries contact: andy.burford@mua.org.au

Website: www.mua.org.au

Background

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services (tugs, mooring services, pilot vessels), port operations and maintenance and commercial diving sectors of the Australian maritime industry.

In the Northern Territory, the MUA members work in the Port of Darwin as stevedores and port workers, in coastal shipping delivering essential goods to regional communities, in the offshore oil industry, as divers and on inshore workboats. The MUA is an affiliate of Unions NT.

Other submissions

The MUA supports the submission of Unions NT.

Summary

The MUA is very supportive of the efforts to introduce penalties for industrial manslaughter into the *Work Health & Safety (National Uniform Legislation) Act 2011* [**“the Act”**]. Too often workers die at work and the responsible employers receive little or no penalty.

We thank the Committee for the opportunity to make a submission on the proposed amendments to the Act. However, we have some significant concerns with how the proposed amendment is drafted. We cannot support the legislation in its current form because it would introduce the possibility for workers to incur significant penalties in situations that have arisen in the course of their work which they do not control. Moreover, the WHS Acts are nationally uniform legislation. It would be preferable if the uniformity of the WHS system nationally could be maintained as far as possible through using the Queensland provisions, which we support.

Ensuring Workers are not penalised

The MUA is strongly opposed to the aspects of the Bill which would amend the Act to allow workers to be prosecuted for Industrial Manslaughter. The MUA believes this comes about by a combined reading of Items 4(2), 34B of the Bill and s.28(b) of the Act.

There are only two other laws in other States creating an offence of Industrial Manslaughter in Australia- ss.34A-34D of the *Work Health & Safety Act 2011* (Q.) [**“the Queensland Act”**] and ss.49A-49E of the *Crimes Act 1900* (A.C.T.) [**“the ACT Act”**].

Neither of these laws provides for employees to fall within the scope of persons who might be prosecuted. In the Queensland Act, two persons may be prosecuted for industrial manslaughter: The Person Conducting the Business or Undertaking (s.5) [“PCBU”] or a “Senior Officer” of a PCBU.

Under the ACT Act, an “employer” or “senior officer” of the employer can be prosecuted, however it is not possible to prosecute an employee under these provisions. Significantly, the MUA understands no prosecutions of any kind have been undertaken under these provisions in their 18 year life span.

The MUA apprehends that the reluctance in these jurisdictions to allow the prosecution of employees for industrial manslaughter is the practical fact that the vast bulk of employees will have little, if any determinative control over a worksite or business.

There is also the pragmatic fact that employees do not derive a direct financial benefit from the operation of a worksite or business. The motivation to cut corners on safety in order to enhance profit is non-existent for employees and needs no deterrent effect that Industrial Manslaughter create.

Finally, there are already sufficient and proportionate offences in place for employees who breach their duty under s.28 of the Act. They include:

- A Category 2 offence under the Act (s.32)
- A Category 3 offence under the Act (s.33)
- The theoretic possibility, subject to DPP discretion, of being charged with manslaughter under s.160 of the NT *Criminal Code Act 1983*.

In all the circumstances, the MUA is strongly opposed to the change apparently made by the Bill which would make employees amenable to being charged with the proposed crime of Industrial Manslaughter.

With respect, the MUA submits that the Northern Territory Parliament ought to just copy the well thought out, carefully considered and thoroughly scrutinized provisions of the Queensland Act. The legislation is a national scheme. Adopting these would maintain legislative harmony across the jurisdictions and may prompt more State governments to make the same changes to maintain harmony across State and Territory lines.

The MUA understands that the Victorian State government intends to introduce Industrial manslaughter legislation to its model Act by the end of this year.