

TASMANIA

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**WORK HEALTH AND SAFETY AMENDMENT  
(INDUSTRIAL MANSLAUGHTER) BILL 2024**

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**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 30A inserted  
30A. Industrial manslaughter
5. Section 34 amended (Exceptions)
6. Section 216 amended (Regulator may accept WHS undertakings)
7. Section 232 amended (Limitation period for prosecutions)
8. Repeal of Act



**WORK HEALTH AND SAFETY AMENDMENT  
(INDUSTRIAL MANSLAUGHTER) BILL 2024**

*(Brought in by David James O'Byrne MP, Member for  
Franklin)*

**A BILL FOR**

**An Act to amend the *Work Health and Safety Act 2012* to  
provide for the offence of industrial manslaughter**

Be it enacted by Her Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**1. Short title**

This Act may be cited as the *Work Health and  
Safety Amendment (Industrial Manslaughter) Act  
2024*.

**2. Commencement**

This Act commences on the day on which this  
Act receives the Royal Assent.

**3. Principal Act**

In this Act, the *Work Health and Safety Act  
2012*\* is referred to as the Principal Act.

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\*No. 1 of 2012

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 4

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**4. Section 30A inserted**

After section 30 of the Principal Act, the following section is inserted in Division 5:

**30A. Industrial manslaughter**

- (1) A person commits an offence, in respect of a workplace, if –
- (a) the person engages in conduct that is negligent; and
  - (b) the conduct results in, or substantially contributes to, the death of an individual who is a worker at the workplace; and
  - (c) the person –
    - (i) is a responsible person, under subsection (2), in respect of the workplace; and
    - (ii) has a health and safety duty in respect of the workplace or the worker.

Penalty: In the case of –

- (a) an offence committed by an individual, a term of imprisonment not exceeding 21 years; or

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 4

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- (b) an offence committed by a body corporate, a fine not exceeding \$18 000 000.
- (2) For the purposes of subsection (1), a person is a responsible person in respect of the workplace if the person –
  - (a) is conducting the business or undertaking at a place that results in the place, within the meaning of section 8, becoming a workplace; or
  - (b) is a person with management or control of a workplace, within the meaning of section 20; or
  - (c) has a duty under Division 3, or section 27, in respect of the workplace; or
  - (d) is a person of a prescribed class in respect of the workplace.
- (3) For the avoidance of doubt, subsection (1) applies to the death of an individual regardless of whether that individual was carrying out work at the time at which the conduct, to which the alleged offence relates, occurred.
- (4) Despite subsection (3), it is a defence in proceedings for an offence against

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 4

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subsection (1), in respect of a workplace,  
if the defendant establishes –

- (a) that the defendant complied with all the health and safety duties that applied to the defendant in respect of the workplace and the relevant worker; or
  - (b) that –
    - (i) the worker was not present at the workplace lawfully; and
    - (ii) the defendant did not know, and could not reasonably be expected to know, that the worker was present at the workplace; and
    - (iii) had the defendant known that the worker was present at the workplace, the defendant would not have engaged in the conduct that resulted in, or substantially contributed to, the death of the worker.
- (5) If, in proceedings for an offence against subsection (1) (the *prosecuted offence*), the court –

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 5

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(a) is not satisfied that a person is guilty of the prosecuted offence; and

(b) is satisfied that the person is guilty of a Category 1 offence, or Category 2 offence, (the *alternative offence*) –

the court may find the person not guilty of the prosecuted offence, but guilty of the alternative offence, regardless of whether the limitation period, under section 232, for the alternative offence has expired.

(6) This section applies to the death of an individual that occurs after the commencement of this section, regardless of when the conduct that is alleged to have resulted in, or substantially contributed to, the death occurred.

**5. Section 34 amended (Exceptions)**

Section 34 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) “An unincorporated” and substituting “Subject to subsection (4), an unincorporated”;

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 6

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(b) by inserting the following subsection after subsection (3):

(4) Subsection (2) does not apply to an offence under section 30A.

**6. Section 216 amended (Regulator may accept WHS undertakings)**

Section 216(2) of the Principal Act is amended by inserting “an offence against section 30A or” after “is”.

**7. Section 232 amended (Limitation period for prosecutions)**

Section 232 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “this Act” first occurring and substituting “this Act, other than an offence against section 30A,”;

(b) by inserting the following subsections after subsection (2):

(3) Proceedings for an offence against section 30A may be brought at any time.

(4) Despite subsection (3), proceedings for an offence against section 30A may not be brought against a person if –

*Work Health and Safety Amendment (Industrial Manslaughter)*  
*Act 2024*  
*Act No. of 2024*

s. 8

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- (a) charges have been laid against the person under the *Criminal Code*, in respect of the same conduct that is alleged to be a contravention of section 30A; and
- (b) those charges have not been withdrawn or dismissed.

**8. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.