

# Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

*Introduced by David O'Byrne MP*

## Clause notes

### Clause 1: Short Title

Specifies the name of the name of the Act.

### Clause 2: Commencement

Specifies that the Act commences on the day on which the Bill receives the Royal Assent.

### Clause 3: Principal Act

Specifies that the Act being amended by the Bill is the *Work Health and Safety Act 2012*.

### Clause 4: Section 30A inserted

This clause inserts a new Section (Section 30A) into the Principal Act that includes an offence of Industrial Manslaughter. Details of the subclauses as part of this offence are as follows:

#### *Clause 4, subclause (1)*

This subclause provides that a person commits the offence of Industrial Manslaughter if the person engages in conduct that is negligent, and this conduct results in (or substantially contributes to) the death of a worker at that workplace. It also provides that a person must be a 'responsible person' (defined in the following subclause) and have a health and safety duty in respect of the workplace or the worker. Consistent with other jurisdictions, the maximum penalty for this offence is 21 years imprisonment (for an individual) or a \$18,000,000 fine (for a body corporate).

#### *Clause 4, subclause (2)*

This subclause provides that only 'responsible persons' can only be liable for Industrial Manslaughter. Specifically, this means the offence can only be applied to:

- a. A 'person conducting a business or undertaking' (which is based on the existing definition used in the Principal Act and includes employers, sole traders, businesses, corporations, State and Local Governments); or
- b. A person with some degree of management or control of the workplace, such as a manager or senior officer; or
- c. A person who has a specific duties under the Principal Act, under Division 3 or Section 27; or
- d. A member of a class of persons specified in the *Work Health and Safety Regulations*, which enables groups of other people to be specified in the regulations as a 'responsible person' for the purpose of the offence.

*Clause 4, subclause (3)*

This subclause clarifies that the offence may still apply even if a worker was not specifically carrying out work at the time of a workplace incident. In a practical sense, this ensures that workers who lawfully attend their workplace outside their specific working hours (such as before or after a shift, or during a meal break, for example) are still considered to be workers for the purposes of the Industrial Manslaughter offence.

*Clause 4, subclause (4)*

This subclause introduces two specific defences against the offence of Industrial Manslaughter. The first defence that may apply is if the defendant has complied with all health and duties that were owed to the worker and to the workplace. The second defence that may apply is if the worker who dies was at the workplace unlawfully, and the defendant was reasonably unaware that the worker was at the workplace, and that if the defendant had known this, then they would not have engaged in the conduct that caused the death of the worker.

*Clause 4, subclause (5)*

This subclause provides an alternative defence for circumstances where if the court is not satisfied that a defendant is guilty of Industrial Manslaughter, the court can then consider if that defendant is guilty of the existing Category 1 or Category 2 offences in the Principal Act (regardless of whether the relevant limitation period for these alternative offences have lapsed).

*Clause 4, subclause (6)*

This subclause provides that the offence of Industrial Manslaughter may still apply even if the negligent conduct resulting in (or substantially contributing to) the death of a worker occurs before the date of commencement, but only if the death of that worker occurs after the commencement date.

**Clause 5: Section 34 amended**

This clause provides that unincorporated associations are included within the scope of the Industrial Manslaughter offence while ensuring the existing exception for volunteers, under section 34(1) of the Principal Act, applies to the new offence.

**Clause 6: Section 216 amended**

This clause provides that the Regulator (WorkSafe Tasmania) cannot accept a written undertaking in instances of a contravention (or alleged contravention) of the Industrial Manslaughter offence. This is consistent with other jurisdictions and the current treatment of Category 1 offences under the Principal Act.

**Clause 7: Section 232 amended**

This clause provides that the offence of Industrial Manslaughter is not subject to a limitation period. It also provides that the offence does not apply to a person who has been charged for an offence under the Criminal Code for the same alleged conduct (such as Culpable Homicide, for example).

**Clause 8: Repeal of Act**

This standard self-repeal clause provides that the amendment Act automatically repeals on the first anniversary of the date of the commencement. This only occurs after the amendments have been incorporated into the Principal Act and does not ‘undo’ the amendments made under this Bill.