

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

Introduced by David O'Byrne MP

Fact Sheet

This Bill introduces an offence for Industrial Manslaughter in the *Work Health and Safety Act 2012* (the Act) for the purposes of making Tasmanian workplaces safer. This offence is consistent with other jurisdictions and is designed to deter businesses and responsible persons within those businesses from engaging in negligent conduct that risks the lives of workers.

Tasmania is currently the only state that does not have, or has not committed to introducing, an offence for Industrial Manslaughter. This Bill adopts the approach used in Victoria. Like Victoria, the threshold for the Industrial Manslaughter offence introduced by this Bill is the test of criminal negligence. This model has been adopted due to its broader scope and demonstrated ability to lead to prosecutions.

In short, the offence introduced under this Bill can be triggered if a person (or a business/organisation) engages in conduct that is negligent, and such negligent conduct results in, or substantially contributes to, the death of a worker at the workplace.

The offence will only apply to employees with management or control of a workplace, and/or those who have certain specific health and safety duties under the Act. Importantly, this offence will not apply to volunteers or regular employees who may have other health and safety duties under the Act. This offence will also apply to body corporates including businesses, corporations, sole traders, unincorporated associations and the like.

The Bill establishes two specific defences to the Industrial Manslaughter offence. Firstly, it is a defence if the defendant can prove that they complied with all the health and safety duties owed by them in respect of the workplace and the worker. Secondly, it is a defence if the worker who dies was not lawfully at the workplace, 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.

If a court is not satisfied that a person is guilty of Industrial Manslaughter during proceedings, the Bill includes a provision that would allow the court to find a person guilty of the lesser Category 1 or Category 2 offences that already exist under the Act. Similar to Category 1 offences, the Workplace Health and Safety Regulator cannot accept written undertakings in relation to the contravention (or alleged contravention) of the Industrial Manslaughter offence.

Proceedings cannot be brought against a person under the Industrial Manslaughter offence if charges have been laid against that person under the Criminal Code for the same alleged conduct. However, consistent with other jurisdictions, the Bill removes any limitation period that may have applied to bringing proceedings for the new offence.

The commencement of the Bill will be from the day on which the Bill receives the Royal Assent and it will not apply retrospectively. The offence would still apply in a situation where a worker

is involved in a workplace incident prior to commencement of this Bill, but only if the resultant death of the worker occurs after the date of commencement.

The new offence carries serious maximum penalties to reflect the severity of the offence and the fact that negligent behaviour leading to the death of a worker at the workplace is manifestly unacceptable. The maximum penalty for the offence of Industrial Manslaughter under this Bill is 21 years imprisonment for an individual, or a fine not exceeding \$18,000,000 for a body corporate.