

Work Health & Safety Amendment (Safer Workplaces) Bill of 2024

Factsheet

The Work Health and Safety (Safer Workplaces) Bill ('the Bill') amends the Work Health & Safety Act 2012 ('the Act') to introduce an industrial manslaughter offence to Tasmania.

The first industrial manslaughter offence was legislated in the Australian Capital Territory (ACT) in 2004. In the years following, all other jurisdictions have taken action to legislate for industrial manslaughter– Queensland (2017), the Northern Territory (2019), Victoria (2020), Western Australia (2022), and South Australia and the Commonwealth (2023). The NSW Government have now introduced a bill to Parliament to do the same.

Tasmania is the only remaining state that does not have an industrial manslaughter offence or has legislation before its Parliament.

In the last decade (2013-2022) in Tasmania there have been 85 recorded work-related fatalities. 60 were workers and 25 were bystanders.

The Bill aims to create safer workplaces and prevent workplace fatalities in Tasmania. The Bill will hold a business or individual responsible for the death of a person due to negligent conduct in the workplace.

The Bill introduces a maximum penalty of 21 years jail for an individual or up to \$18 million in fines for a body corporate. While the penalty for this offence is substantial, it is justified where an officer's negligent conduct causes a workplace fatality, consistent with other manslaughter offences.

The objects included give an overview of the intent of the clauses and guidance on interpretation. The objects outlined are:

- (a) to prevent workplace deaths; and
- (b) to deter persons who owe certain duties under Part 2 from breaching those duties; and
- (c) to reflect the severity of conduct that places life at risk in the workplace.

There is a definition of negligence included as legal guidance suggests that this creates a clear set of criteria for assessment of the conduct of an accused person. The definition incorporated is the common law standard of criminal negligence.

The Bill includes definition of conduct to include both acts or omissions, noting that most safety breaches arise through an omission to do something.

There will be a new definition and section 30A inserted to create an industrial manslaughter offence where an officer or Person Conducting a Business or Undertaking (PCBU) causes the death through negligent or reckless conduct of a worker or a bystander to whom a health and safety duty is owed.

The offence incorporates elements from other jurisdictions with the intention of being consistent, easily understood and avoiding complex legal tests.

By creating an offence in the Act, it will address the limitation of the criminal law when dealing with breaches of work health and safety duties. The creation of industrial manslaughter as a separate offence in WHS legislation ensures that prosecutions can extend to the highest level of a

corporation. It will also reflect public expectations that workplace deaths should be treated with the same seriousness as other deaths under the law.

The Bill applies to duty holders being a PCBU and an officer, which is consistent with the Act's obligations and definitions. The definitions of Officer (s.4) and PCBU (s.5) in the Act state that they include people at the highest level of the organisation (for example, directors). It also includes people who participate in making decisions that affect a substantial part of the organisation's business, or who have the capacity to affect significantly the organisation's financial standing.

There is not an intention to capture middle management or senior workers who do not have the power and resources to improve safety. The responsibility for safety should not be abrogated by pushing this down the line to those who do not have the training, resources, control, authority within the business or legal duty.

The Bill allows for alternative verdicts to be applied if the elements of industrial manslaughter are not established in court but the elements of an alternative offence (a Category 1, Category 2 or Category 3 offence) are established as part of those proceedings. This is consistent with other jurisdictions.

The Bill does not allow for undertakings to be accepted by the Regulator, which is consistent with treatment of a Category 1 offence under the Act at present.

The Bill incorporates the current exceptions for other offences relating to volunteers and unincorporated associations.

As the Bill creates a criminal offence, the limitation periods for proceedings have been removed to be consistent with the Criminal Code and to allow sufficient time for complex and time-consuming investigations to be undertaken. Limitation periods have not been set by other jurisdictions and no limitation period for the crime of manslaughter under the Criminal Code exists. The Bill does not allow for proceedings if the same conduct is proceeding as a charge under the Criminal Code.