

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

(Brought in by the Leader of the Opposition, Dean Winter MP)

A BILL FOR

An Act to amend the Work Health & Safety Act 2012

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 & Safety Amendment (Safer Workplaces) 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 & Safety Act 2012 is referred to as the Principal Act.

4. Section 4 amended (Definitions)

Section 4 of the Principal Act is amended by inserting the following definition after the definition of *import*:

industrial manslaughter offence — see section 29C(1);

5. Part 2, Division 4A inserted

After section 29 of the Principal Act, the following Division is inserted in Part 2:

Division 4A – Industrial manslaughter

29A. Objects of Division

The objects of this Division are—

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

29B. Interpretation of Division

- (1) For the purposes of this Division –
 - (a) a person engages in conduct if the person fails to perform an action, on or after the commencement of this Division, even if the obligation for the person to engage in the conduct arose before the commencement of this Division; and
 - (b) conduct is negligent if the conduct involves –
 - (i) a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in; and
 - (ii) a high risk of death, serious injury or serious illness.
- (2) For the purposes of subsection (1)(b)(i), the standard of care to be applied under that section in respect of a body corporate is the standard of care that would have been taken by a reasonable body corporate in the circumstances in which the conduct was engaged in.
- (3) In determining whether conduct engaged in by a body corporate is negligent for the purposes of this Division –
 - (a) what matters is the conduct engaged in by, or on behalf of, the body corporate; and
 - (b) it does not matter whether –
 - (i) the conduct is, or is not, conduct imputed to the body corporate under section 244; or
 - (ii) any of the body corporate's officers were involved in all or any part of the conduct.

29C. Industrial manslaughter

- (1) A person commits an industrial manslaughter offence if –
 - (a) the person is –
 - (i) a person conducting a business or undertaking; or
 - (ii) an officer of a person conducting a business or undertaking; and
 - (b) an individual to whom the person owes a health and safety duty –
 - (i) dies; or
 - (ii) is injured and later dies; and
 - (c) the person engages in conduct that causes the death of the individual; and
 - (d) the person –
 - (i) is negligent about causing the death of the individual by the conduct; or
 - (ii) is reckless as to the risk to the individual of death or serious injury or illness.

Penalty: In the case of –

- (a) an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking— a term of imprisonment not exceeding 21 years; or
- (b) an offence committed by a body corporate - a fine not exceeding \$18 000 000.

- (2) For the purposes of this section, conduct causes the death of an individual if the conduct substantially contributes to the death.
- (3) A person who is indicted for, but found not guilty of, an industrial manslaughter offence may be convicted of Category 1 offence, a Category 2 offence or a Category 3 offence, if the evidence in the proceedings on the indictment establishes that the person committed the other offence.

29D. Exceptions

Section 34 applies to this Division as if a reference in that section to this Division were a reference to Division 4A and this Division.

6. Section 216 amended (Regulator may accept WHS undertaking)

Section 216 of the Principal Act is amended by omitting subsection (2) and inserting the following subsection:

- (2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is—
 - (a) an industrial manslaughter offence; or
 - (b) a Category 1 offence.

7. Section 231 amended (Procedure if prosecution is not brought)

Section 231 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “an industrial manslaughter offence,” after “constitutes”;
- (b) by inserting after subsection (1) the following subsection:
 - (1A) For the avoidance of doubt, a person may take into account a coronial report or proceedings at a coronial inquiry or inquest when considering if an act, matter or thing constitutes an offence for the purposes of making a written request under subsection (1).

8. Section 232 amended (Limitation period for prosecutions)

Section 232 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) This section does not apply to proceedings for an industrial manslaughter offence.
- (4) Despite subsection (3), proceedings for an industrial manslaughter offence may not be brought against a person if –
 - (a) charges have been laid against the person under the Criminal Code, in respect of the same conduct that is alleged to constitute the industrial manslaughter offence; and

(b) those charges have not been withdrawn or dismissed.

9. Repeal of Act

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