

CLAUSE NOTES

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

Clause 1: Short Title

Sets out the short title of the Act.

Clause 2: Commencement

The Act will commence on the day on which it receives Royal Assent.

Clause 3: Principal Act

Provides that a reference to the “Principal Act” in this Act is a reference to the *Work Health and Safety Act 2012*.

Clause 4: Definitions

Amends the Definitions of the Principal Act to include a definition of industrial manslaughter offence.

Clause 5: New Division 4A in Part 2

This clause inserts a new Division in Part 2 the Principal Act. The new Division establishes the new offence of industrial manslaughter and contains 4 sections as follows:

Section 29A sets out the objects for the new Division. These objects are inserted to provide context and guidance on what the creation of the industrial manslaughter offence aims to achieve.

Section 29B contains some definitional matters in relation to the new offence. It defines what is considered negligence for the purposes of the new offence and what is considered negligence in relation to a body corporate. The definition of negligence is based on the common law standard of criminal negligence.

Section 29C creates the offence of industrial manslaughter.

A person commits an industrial manslaughter offence if they are a PCBU or officer as defined, and owe a health and safety duty to an individual who either dies or is injured and later dies, that the conduct of the person caused the death of the individual and the person is negligent about causing the death of the individual. This is in line with the harmonised legislation and

has consistency with other jurisdictions noting that no two jurisdictions are precisely the same.

Under **subsection (1)(a)**, an offence can only apply to a “person conducting a business or undertaking” or an “officer” both of which are defined in the Principal Act.

Under **subsection (1)(b) and (c)**, the death of an individual is tied to a health and safety duty owed to that person, which can include a worker or bystander at the workplace placing the death within the context of the work health and safety legislative scheme and consistent with the harmonised law’s objectives. It also captures where an individual dies or where they are injured or contract an illness and later causes death in line with general principles of causation.

Subsection 1(d) provides for negligent conduct as the fault element of the jurisdiction, noting the definition included and the need to be consistent with other jurisdictions.

The **penalties** for the new offence are consistent with other jurisdictions and intended to deter organisations and officers from breaching their work health and safety duties, and encourage them to allocate appropriate resources and training to improve workplace safety. The maximum 21 year term of imprisonment is consistent with indictable offences including manslaughter in the Criminal Code in Tasmania. As the maximum term of imprisonment exceeds 3 years, this penalty ensures that the new offence is a crime.

Subsection (2) clarifies that a person causes a death if the persons actions substantially contributing to the death.

Subsection (3) 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.

Section 29D ensures that the current exceptions for other offences apply to the new offence. This includes exceptions for volunteers and unincorporated associations.

Clause 6: Section 216 amended

Section 216(2) is amended to restrict an undertaking being accepted for a contravention or alleged contravention of an industrial manslaughter offence. This is consistent with the seriousness of the offence and treatment of a Category 1 offence.

Clause 7: Section 231 amended

Section 231(1) is amended to include an industrial manslaughter offence and permits a person to make a written request to the Regulator (WorkSafe) for a prosecution to be brought where there are reasonable grounds arising.

A new subsection (1A) is being inserted to clarify that coronial reports and proceedings may for the basis of a written request to the Regulator (WorkSafe) under this section.

Clause 8: Section 232 amended

Section 232 is amended to include that limitation periods do not apply for proceedings for an industrial manslaughter offence, to be consistent with other criminal proceedings and allowing time for complex investigations and prosecutions to proceed.

This amendment also clarifies that dual prosecutions do not proceed under the Criminal Code for the same conduct.

Clause 9: Repeal of Act

This clause repeals the Amendment Act on the first anniversary of the day on which it receives the Royal Assent.