

Consultation paper: Industrial Manslaughter

February 2024

Acknowledgement of Country

SafeWork NSW acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this document.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Consultation paper: Industrial Manslaughter

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Purpose of this consultation paper

The purpose of this consultation paper is to seek feedback from the public on how the NSW Government should implement an industrial manslaughter offence. Your feedback will help inform these reforms which will hold corporations and other responsible parties accountable and ensure that justice continues to be served for workers.

SafeWork NSW is conducting the consultation and will carefully consider all feedback received.

Have your say

We invite you to read this consultation paper and share your views. This consultation is an opportunity to ensure that the NSW industrial manslaughter offence meets the needs and expectations of workers.

To provide feedback, you can:

- **complete the survey** on the NSW Government's Have Your Say website
- **upload a written submission** to the NSW Government Have Your Say website haveyoursay.nsw.gov.au/industrial-manslaughter
- **email a written submission** to whspolicy@customerservice.com.au
- **post a written submission to:**

Industrial Manslaughter Consultation
Policy, Strategy and Governance
SafeWork NSW
92-100 Donnison Street
Gosford, NSW 2250

The closing date for submissions is 5pm Monday 18 March 2024.

All submissions will be published on the NSW Government *Have Your Say* website after the closing date unless you request otherwise. When lodging your submission, you can request that all or part of your submission remain confidential. You should give a reason for requesting confidentiality.

Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

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Introduction

Background

Workplace deaths are an avoidable tragedy that should unite us all in the shared belief that every worker has the right to a safe and secure workplace. The prevention of workplace fatalities is a top priority for the NSW Government.

The Government is serious about preventing workplace injuries and fatalities. It wants workers in this State to have healthy, safe and productive working lives and go home safely to their families at the end of the day.

NSW is a party to the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA), agreed to by jurisdictions in 2008. Under the IGA, NSW adopted the harmonised work health and safety regime, which has been in place since 1 January 2012.

Safe Work Australia (**SWA**) is the agency responsible for developing national policy relating to work health and safety (**WHS**). SWA is a tripartite decision-making body, established under the *Safe Work Australia Act 2008* (Cth). It consists of the Commonwealth and each state and territory, two members representing the interests of workers and two members representing the interests of employers, and the CEO of SWA.

The model work health and safety (**WHS**) laws consist of the model WHS Act, model WHS Regulation and model codes of practice, developed by SWA in 2011 following extensive consultation.

SWA does not regulate WHS laws, the Commonwealth, states and territories are responsible for implementing, regulating and enforcing WHS laws in their respective jurisdictions. The model laws have now been implemented in all jurisdictions except Victoria. There are some differences in the approaches across the jurisdictions to make sure the legislation is consistent with relevant drafting protocols and other laws and processes but overall, WHS laws are largely harmonised.

The model *Work Health and Safety Act 2011* (**WHS Act**) creates a framework with obligations on PCBU's (Persons Conducting a Business or Undertaking), workers and unions and the regulator. This framework aims to manage risk in workplaces by requiring that risks to health and safety be eliminated, or otherwise minimised, through an assessment of the risks and use of control measures to create a safer workplace. The *NSW Work Health and Safety Act 2011* (**NSW WHS Act**) enables workplaces in NSW to manage health and safety issues.

Reviews of WHS legislation and industrial manslaughter

In 2018, a review of the model WHS laws was undertaken by Ms Marie Boland (the **Boland Review**), who made 34 recommendations for modifications to the model WHS framework. Recommendation 23b of the Boland Review was to include an industrial manslaughter offence in the model WHS Act.

In addition to the Boland Review, there was the 2018 Senate Inquiry into industrial deaths, *They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, which also highlighted the devastating impact that workplace fatalities have on families, colleagues and communities of deceased workers.

Both the Senate Inquiry Report and the Boland Review recommended the introduction of an industrial manslaughter offence, as it was considered that the current penalty framework is not an adequate deterrent to prevent unnecessary workplace deaths.

Recent amendments to the model WHS Act

On 28 February 2023, WHS Ministers agreed to amend the model WHS Act to include a jurisdictional note and model penalty amounts for the offence of industrial manslaughter. The model WHS Act was subsequently amended to include a jurisdictional note for the offence of industrial manslaughter and specifies model penalties for the offence.

The jurisdictional note allows states and territories to create or retain an existing offence for industrial manslaughter without it being viewed as a departure from the model WHS laws.

The jurisdictional note clarifies that the offence of industrial manslaughter is in addition to the existing offence under section 31 (Gross negligence or reckless conduct – Category 1) and addresses conduct by a person that represents a gross deviation from the reasonable standard of care resulting in a workplace fatality.

NSW Government commitment

On 19 October 2023 the NSW Government announced its intention to develop an industrial manslaughter provision within the NSW WHS Act, to strengthen the existing laws, to act as a deterrent to those persons conducting a business or undertaking (**PCBUs**) who may be cutting corners and taking risks when it comes to worker safety, and to ensure those liable are held accountable in the event of a fatal workplace incident. The offence also seeks to provide some justice for the families who lost loved ones at work.

Current regulatory framework for prosecuting workplace deaths in NSW

In NSW, workplace deaths are prosecuted under existing offences in the WHS Act. Currently, the most serious offence under the WHS Act is the Category 1 offence.

The Category 1 offence is committed when a person who owes a WHS duty engages in conduct that exposes a person to whom that duty is owed to a risk of death or serious injury or illness, while being reckless or grossly negligent.

A Category 1 offence carries the highest penalty imposed by the WHS Act. An individual is liable to imprisonment for up to five years and/or a fine of \$399,479, or an individual as a person conducting a business or undertaking (PCBU) or an officer is liable to imprisonment for up to five years or a fine of up to \$798,383; a corporation is liable to a fine of up to \$3,992,492.

The model WHS laws impose sanctions that relate to the culpability of the offender. As a result, the Category 1 to 3 offences arise from the exposure of individuals to risk by a duty holder, regardless of the consequence. This means it is not necessary to wait for a serious injury or fatality before a duty holder can be prosecuted.

Additionally, under certain circumstances, workplace deaths may be prosecuted as manslaughter under the *Crimes Act 1900*. A note to this effect is in the WHS Act.

Jurisdictional comparison

Seven Australian jurisdictions (WA, NT, ACT, VIC, QLD SA and the Commonwealth) have already introduced an industrial manslaughter offence within their own WHS laws. The Commonwealth's industrial manslaughter offence will commence on 1 July 2024 and South Australia's industrial manslaughter offence will commence by proclamation, which is expected to be in mid-2024. An industrial manslaughter offence has already commenced in the remaining five jurisdictions.

Jurisdictions differ on key elements within their industrial manslaughter provisions, including where the offence provisions can be found, who can be held liable, who is protected, the fault element that must be proven, and the applicable penalty.

NSW is in the minority of jurisdictions without a dedicated offence for industrial manslaughter. As a result, NSW has the opportunity to review other jurisdictions' models to determine which type or elements would best be suited to NSW and its existing criminal laws.

A summary of the approach taken in each jurisdiction which has an industrial manslaughter offence is at **Appendix A**.

Proposed elements for an industrial manslaughter provision in the NSW WHS Act

The introduction of an industrial manslaughter offence to the NSW WHS Act will ensure that WHS laws strongly deter workplace activity which risks workers' lives.

There are key elements that need to be included in an industrial manslaughter offence. These elements as proven by the experience of other jurisdictions will guide the offence's effectiveness and operation. The elements are set out below:

1. Who can commit the offence of industrial manslaughter
2. Who is covered by the industrial manslaughter offence
3. What test should be used to establish industrial manslaughter
4. Penalties and defences
5. Type of offence, and statutory limitation.

These elements are discussed below with reference to existing models and feedback is sought. Potential options for an NSW industrial manslaughter offence are also presented with reference to the elements of the offence.

Element 1: Who can commit the offence of industrial manslaughter

This element is about who should be held to account.

Option 1 – use of existing definitions within the WHS Act

Currently, under the model laws and in the WHS Act, for a person to commit a category 1, 2 or 3 offence, the person must have a health and safety duty.

A number of health and safety duties are imposed by the WHS Act, including the primary duty of care held by a Person Conducting a Business or Undertaking (PCBU), who must ensure, so far as reasonably practicable, the health and safety of workers, and other persons is not put at risk by the business or undertaking.

This option includes that a person would commit an industrial manslaughter offence when:

- A person has a health and safety duty; and
- A person is a PCBU or an officer of a PCBU. An officer of a PCBU also holds a health and safety duty under section 27 of the WHS Act to exercise due diligence to ensure

that the PCBU complies with any duty or obligation under the WHS Act. Under the model laws, in NSW and all other States and Territories' laws 'Officer' means:

- (a) *an officer within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth other than a partner in a partnership, or*
- (b) *an officer of the Crown within the meaning of section 247, or*
- (c) *an officer of a public authority within the meaning of section 252, other than an elected member of a local authority acting in that capacity.*

Section 9 of the Corporations Act 2001 of the **Commonwealth meaning of officer**

(1) ***An officer of a corporation*** (other than a CCIV) is:

- (a) *a director or secretary of the corporation; or*
- (b) *a person:*
 - (i) *who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or*
 - (ii) *who has the capacity to affect significantly the corporation's financial standing; or*
 - (iii) *in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or*
- (c) *a receiver, or receiver and manager, of the property of the corporation; or*
- (d) *an administrator of the corporation; or*
- (e) *an administrator of a deed of company arrangement executed by the corporation; or*
- (f) *a restructuring practitioner for the corporation; or*
- (g) *a restructuring practitioner for a restructuring plan made by the corporation; or*
- (h) *a liquidator of the corporation; or*
- (i) *a trustee or other person administering a compromise or arrangement made between the corporation and someone else.*

These definitions have been adopted across the majority of jurisdictions.

Option 2 – introduction of new definition/s of who may commit an industrial manslaughter offence

Queensland has introduced alternative definitions of *executive officer* and *senior officer* for their industrial manslaughter offence only but have maintained the definition of officer for all other provisions.

Section 34A Work Health and Safety Act 2011 (QLD)

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

senior officer, of a person conducting a business or undertaking, means —

- (a) if the person is a corporation — an executive officer of the corporation; or
- (b) otherwise — the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

In Queensland, a person is not a senior officer if they simply provide advice for the consideration of decision-makers or are only involved in the administration of a business process. There is a large amount of overlap between the definition of 'officer' and 'senior officer' so that a person who meets the definition of 'senior officer' under the QLD industrial manslaughter provisions will often also be an 'officer' under the remainder of the WHS Act. It is our understanding that these additional definitions for 'senior officer' and 'executive officer' have been included, to enable the industrial manslaughter provisions to also apply to a person who does not hold a health and safety duty under the WHS Act.

The additional definitions help to distinguish between a (sometimes overlapping) class of persons who are 'officers' with a health and safety duty to exercise due diligence under section 27 of the WHS Act and a class of persons who are 'senior officers' who will be found to have committed industrial manslaughter if their negligent conduct causes the death of a worker - whether or not they have a health and safety duty under the WHS Act.¹ This issue is discussed further under 'element 3' in this paper below.

Consistent with the current exception for volunteers under the WHS Act, the proposed offence of industrial manslaughter is not intended to apply to volunteers under any of the models proposed. This means that a volunteer will not commit industrial manslaughter for a failure to comply with a health and safety duty, unless the duty is under section 28, which relates to duties owed by workers, or section 29 which relates to duties owed by other persons at the workplace. This exemption is designed to ensure that voluntary participation at the senior officer level is not discouraged.

Question 1: Provide your opinion on using existing definitions within the WHS Act or other definition options?

Element 2: Who is covered by the industrial manslaughter offence

This element is closely linked to Element 1, in that it relates to when a person would commit an industrial manslaughter offence.

¹ Page 17, [Report Template \(parliament.qld.gov.au\)](http://parliament.qld.gov.au)

Option 1

Most jurisdictions who have introduced an industrial manslaughter offence, have not limited it to workers. The benefit of extending this to others in workplace such as customers in a shop or restaurant, visitors to entertainment venues or theme parks, visitors to construction sites allows for a penalty where these persons are fatality injured. A PCBU or officer of a PCBU could be convicted of industrial manslaughter.

In this option, a person would commit an industrial manslaughter offence when:

- the person's conduct causes the death of a *worker* or an *individual* to whom the duty is owed in the workplace, noting that in this part, the person's conduct causes death if it substantially contributes to the death.

Option 2

In this option, a person would commit an industrial manslaughter offence when a worker who is fatally injured in the course of carrying out work for the business or undertaking.

Question 2: Should the industrial manslaughter offence cover workers and others in the workplace? Please explain your reasons.

Element 3: What test should be used to establish industrial manslaughter

In all jurisdictions apart from Queensland, a person must have an existing health and safety duty under the WHS Act to commit the offence of industrial manslaughter. There are some variations between what must be established for industrial manslaughter to have been committed, but essentially, the following are required:

- The person is a person who can commit the offence of industrial manslaughter or has a health and safety duty (see Element 1 above).
- The person intentionally engages in conduct.
- The conduct breaches the health and safety duty.
- The conduct causes the death of an individual to whom the duty is owed (see Element 2 above as to which individuals this provision might cover). A person's conduct causes death if the conduct substantially contributes to the death.
- The person is reckless or grossly negligent about causing the death of that individual.

A person acts recklessly when they have actual knowledge of the risk and consciously TAS

No offence of industrial manslaughter legislated. disregard it.

A person is grossly negligent when their conduct involves such a great falling short of the standard of care required of a reasonable person, causing the death of a person, that it merits criminal punishment.

To establish a corporation's state of mind, it is sufficient to show that the body corporate's board of directors or an authorised person of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the conduct or if a corporate culture existed that encouraged or tolerated the conduct.

In NSW the Category 1 offence under the NSW WHS Act requires proof of either recklessness or gross negligence.

Under the QLD industrial manslaughter provisions, an industrial manslaughter offence may be committed by a person who does not necessarily hold a health and safety duty - a PCBU or senior officer will commit the offence of industrial manslaughter if the PCBU or senior officer's conduct causes the death of the worker and the PCBU or senior officer is negligent about causing the death of the worker by the conduct.

Question 3: Provide your opinion on the test that should apply to prove that industrial manslaughter has been committed?

Question 4: Are there other elements that should be proved to establish that an industrial manslaughter offence has been committed?

Element 4: Penalties and Defences

The penalties in the Model WHS laws for an industrial manslaughter offence are:

- for an individual, 20 years imprisonment for an individual; and
- for a body corporate, a monetary penalty of \$18 million.

There is no monetary penalty for an individual who commits industrial manslaughter.

These penalties reflect the seriousness of the offence and are designed to help prevent workplace deaths by creating a strong deterrent for organisations and individual officers against breaching their WHS duties.

Some jurisdictions who have brought in the industrial manslaughter offence prior to the WHS model law provisions, have included different penalties (see the table at the end of this paper for details).

QLD, ACT, SA and WA all provide for a penalty of up to up to maximum 20 years imprisonment, which mirrors the model law. The recent Commonwealth industrial manslaughter laws, provide for a penalty of up to 25 years imprisonment but have mirrored the monetary penalty in the model laws. Victoria also provides for up to 25 years. The NT provides a penalty for up to life imprisonment.

The monetary penalty for a body corporate for industrial manslaughter varies across jurisdictions. SA and the Commonwealth provide for a fine of up to \$18 million, however QLD \$15.5 million, WA up to \$10 million, Victoria up to \$19.2 million and ACT provide for up to \$16.5 million. It should be noted that each jurisdiction has its own manslaughter penalties under their criminal laws².

In addition, a work health and safety undertaking (also referred to as an ‘enforceable undertaking’) cannot be accepted for a contravention or alleged contravention that is industrial manslaughter. This aligns with the existing arrangements regarding the Category 1 offence and with other jurisdictions who have introduced an industrial manslaughter offence.

All existing defences available for the offence of manslaughter including self-defence, will be available for industrial manslaughter.

Question 5: Should the NSW WHS penalties align with the model WHS penalties for industrial manslaughter? If no, what penalties would you consider appropriate and why?

Element 5: Type of Offence

It is proposed that in NSW, industrial manslaughter would be an indictable offence, as the proposed penalty for an individual. Due to the significance of the penalty, the defendant should be entitled to a trial by jury.

Making this offence indictable will ensure consistency with the treatment of other serious offences under the *Criminal Procedures Act 1986*, which outlines relevant procedural

² In NSW under the Crimes Act 1900, the maximum penalty is 25 years imprisonment for manslaughter.

legislation for such serious offences. It will also ensure consistency with the existing offence of manslaughter under the *Crimes Act 1900* and the Category 1 offence in the WHS Act.

The option of a trial by jury is a fundamental democratic right for individuals accused of serious criminal offences, particularly those carrying a substantial term of imprisonment as a potential outcome.

It is proposed that a defendant may be found guilty of an alternative offence, such as a Category 1 or Category 2 offence.

It is proposed that the industrial manslaughter offences would not be subject to a two-year statute of limitations. This is consistent with other jurisdictions and recognises the likely added complexity of investigating and prosecuting offences as serious as industrial manslaughter.

Question 6: Do you agree that a person charged with industrial manslaughter may be convicted of a Category 1 or a Category 2 offence, as an alternate to the industrial manslaughter offence?

If so, should the existing two-year statute of limitations apply to the alternate Category 1 or Category 2 offence?

Question 7: Do you agree that the industrial manslaughter offence should not be subject to a two-year statute of limitations?

Feedback on proposed key elements

This paper is seeking specific feedback on the proposed key elements that the NSW industrial manslaughter offence would include. The information and detail provided within this paper should guide and assist in the development of your submission. Further, the jurisdictional comparison provided in **Appendix A** has also been provided to assist in the delivery of feedback.

Discussion questions

The following questions have been developed to guide your feedback and the comments within your submission:

Question 1: Provide your opinion on using existing definitions within the WHS Act or other definition options?

Question 2: Should the industrial manslaughter offence cover workers and others in the workplace? Please explain your reasons.

Question 3: Provide your opinion on the test that should apply to prove that industrial manslaughter has been committed?

Question 4: Are there other elements that must be proved to establish that an industrial manslaughter offence has been committed?

Question 5: Should the NSW WHS penalties align with the model WHS penalties for industrial manslaughter?

If no, what penalties would you consider appropriate and why?

Question 6: Do you agree that a person charged with industrial manslaughter may be convicted of a Category 1 or a Category 2 offence, as an alternate to the industrial manslaughter offence?

If so, should the existing two-year statute of limitations apply to the alternate Category 1 or Category 2 offence?

Question 7: Do you agree that the industrial manslaughter offence should not be subject to a two-year statute of limitations?

Next steps

SafeWork NSW will carefully consider and assess all feedback received in response to this paper. This feedback, along with any other relevant information, will inform the development of a future industrial manslaughter offence for NSW.

Appendix A - Jurisdictional analysis

Jurisdiction	Elements	Scope and Exclusions	Penalties
QLD Industrial manslaughter legislated since 23 October 2017: sections 34C and 34D of the <i>Work Health and Safety Act 2011</i>	<ul style="list-style-type: none"> A worker dies, or is injured and later dies, in the course of carrying out work for the PCBU; the PCBU or senior officer's conduct causes the death of the worker, in that their action or inaction substantially contributes to the death; the PCBU or senior officer is negligent about causing the death of the worker, in that the action or inaction departs so far from the standard of care required to avoid danger to life, health and safety that it deserves criminal punishment. A WHS undertaking (enforceable undertaking) cannot be accepted for a contravention or alleged contravention of a category 1 offence or 2 offence (if results in death of an individual), or for an industrial manslaughter offence (part 2A). <p>Defences: Industrial manslaughter is subject to the same guidelines and standards as criminal manslaughter and criminal negligence under the Criminal Code (Qld) 1899 and the same defences for criminal manslaughter are also available, excluding the defence of 'accident'.</p> <p>Examples of defences include ignorance of the law, mistake of fact, extraordinary emergencies or insanity.</p>	<p>Applies to PCBUs and senior officers (as defined under the Qld Act).</p> <p>Offence cannot be committed by volunteers, nor does it apply where someone other than an employee or worker dies. A separate industrial manslaughter offence was implemented for the mining and resource sector in 2020.</p> <p>Category 1 and industrial manslaughter offences are commenced by way of complaint in the Magistrates Court, before proceeding to committal for sentence or trial in the District Court.</p> <p>The decision to commence proceedings by way of indictment is made by the Qld Work Health and Safety Prosecutor. However, consent from the Director of Public Prosecutions to proceed with a prosecution on indictment is obtained subsequent to a committal order and prior to the presentation of an indictment in the District Court.</p> <p>The limitation period (2 years) does not apply to an industrial manslaughter offence (part 2A).</p>	<p>Max 20 years' imprisonment for an individual or \$15.5 million for a body corporate.</p> <p>A fine is not an option for an individual.</p>

Jurisdiction	Elements	Scope and Exclusions	Penalties
<p>ACT</p> <p>Industrial Manslaughter is now an offence in the ACT under s 34A of the <i>Work Health and Safety Act 2011</i> since 11 August 2021.</p> <p>Previously industrial manslaughter legislated since 2004: sections 49C and 49D <i>Crimes Act 1900</i> (ACT) and ACT Criminal Code 2002 Part 2.5 (for attribution of conduct to corporation).</p>	<p>A person commits an offence if:</p> <ul style="list-style-type: none"> ▪ The person conducts a business or undertaking, or is an officer of a PCBU ▪ the person has a health and safety duty and engages in conduct, and ▪ the conduct causes the death of a worker, or ▪ an injury to a worker and the injury later causes the death of a worker or the death of another person; and ▪ the person is reckless or negligent about causing the death of the worker or other person by the conduct. 	<p>Commonwealth employers and employees make up some of the ACT working population and are regulated under Commonwealth law.</p> <p>It is an indictable offence.</p> <ul style="list-style-type: none"> ▪ Recklessness can be attributed to a corporation where it expressly, tacitly or impliedly authorised or permitted the conduct (corporation or agent) or if a corporate culture existed that encouraged or tolerated the conduct. ▪ Defendant may be found guilty of an alternative offence – i.e., a category 1 or category 2 offence. ▪ WHS undertaking cannot be accepted for a contravention or alleged contravention of a category 1 offence or an IM offence. ▪ No limitation period of an industrial manslaughter offence (offences within WHS Act have a 2-year period of limitations). <p>All defences in ACT criminal law are available.</p>	<p>Max 20 years' imprisonment for an individual.</p> <p>\$16.5 million for a body corporate.</p>

Jurisdiction	Elements	Scope and Exclusions	Penalties
<p>VIC</p> <p>Workplace manslaughter laws passed Parliament on 29 October 2019 and commenced on 1 July 2020: <i>Workplace Safety Legislation Amendment (Workplace Manslaughter and other matters) Act 2019</i>.</p> <p>The offence is contained under s 39G of the <i>Occupational Health and Safety Act 2004</i>.</p>	<p>A corporation or officer commits the offence of workplace manslaughter if they engage in conduct that:</p> <ul style="list-style-type: none"> ▪ Is negligent; ▪ Constitutes a breach of an applicable duty the person owes to another person; and ▪ Causes the death of that other person. <p>Negligent conduct includes an act or omission that involves:</p> <ul style="list-style-type: none"> ▪ A great falling short of the standard of care that would have been taken by a reasonable person in the same circumstances; and ▪ A high risk of death, serious injury or illness. <p>The 'negligent' test is based on the existing common law test for criminal negligence.</p> <p>The conduct of the organisation or person charged with the workplace manslaughter must have caused the death of the victim – can occur if the death of a person occurs after some time after the relevant conduct.</p> <p>Note: the provisions relating to this element of the offence are different depending on whether the relevant person is a PCBU or an officer of a PCBU.</p>	<p>Applies to organisations and self-employed persons who hold specified duties under the OH&S Act. Includes officers of body corporates, partnerships, and unincorporated bodies or associations if their organisation holds specified duties under the OHS Act.</p> <p>The offence of workplace manslaughter does not apply to a volunteer or an employee, unless the employee is also an officer of an organisation.</p> <p>Is an indictable offence with no statutory limitation period.</p> <p>The workplace manslaughter provisions do not operate retrospectively.</p> <p>WorkSafe have carriage of a workplace manslaughter prosecution until accused is committed for trial. Office of Public Prosecutions takes the matter to trial.</p>	<p>Maximum penalty of 25 years imprisonment for a company officer or a fine of 100,000 penalty units (currently \$19.2 million) for a body corporate.</p>

Jurisdiction	Elements	Scope and Exclusions	Penalties
TAS No offence of industrial manslaughter legislated.	The former Labor Government promised to introduce the offence prior to the March 2018 election. The current Liberal Government has not introduced the offence.	-	-
NT Industrial manslaughter introduced as an offence under the WHS Act as of 1 February 2020: clause 34B of the <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> , introduced by the <i>Work Health and Safety (National Uniform Legislation) Amendment Act 2019</i> .	A person commits the offence of industrial manslaughter if: <ul style="list-style-type: none"> ▪ The person has a health and safety duty; and ▪ The person is a person conducting a business or undertaking or an officer of a person conducting a business or undertaking; and ▪ The person intentionally engages in conduct; and ▪ The conduct breaches the health and safety duty and causes the death of an individual to whom the health and safety duty is owed; and ▪ The person is reckless or negligent about the conduct breaching the health and safety duty and causing the death of that individual. <ul style="list-style-type: none"> • Strict liability applies to subsection (1)(a) and (b) – highlighted above. • Does not apply to volunteers. An enforceable undertaking cannot be accepted for a contravention or alleged contravention that is industrial manslaughter.	It is an indictable offence. The Regulator may bring proceedings for industrial manslaughter only with the consent of the Director of Public Prosecutions (DPP). The DPP must consent to the industrial manslaughter charge after reviewing the evidence produced by the investigation. The DPP must be satisfied that there is a reasonable prospect of conviction, which means the evidence needs to be adequate to persuade a jury beyond reasonable doubt.	Life imprisonment for an individual; or 65 000 penalty units, \$10,075,000 under 2019-20 penalty unit rate.

Jurisdiction	Elements	Scope and Exclusions	Penalties
<p>WA</p> <p>Industrial manslaughter was introduced as an offence on 31 March 2022. <i>The Work Health and Safety Act 2020</i> (WA) passed the upper House in October 2020 and received assent on 10 Nov 2020 (section 30A).</p>	<p>A PCBU or officer of a PCBU commits industrial manslaughter if they:</p> <ul style="list-style-type: none"> • Have a health and safety duty; and • Engage in conduct that causes the death of an individual and which constitutes a failure to comply with the person's health and safety duty; and • Do so knowing the conduct is likely to cause death or serious harm to an individual, and in disregard of that likelihood (appears to be slightly different to a recklessness test) <p>Serious harm is defined as illness or injury that endangers (or is likely to endanger) the individual's life, or results (or is likely to result) in a permanent injury or harm to the individual's health.</p> <p>Note: the provisions relating to this element of the offence are different depending on whether the relevant person is a PCBU or an officer of a PCBU.</p>	<p>Corporations and individuals can be prosecuted. Officers can be charged for crimes committed by a PCBU in certain circumstances, including when the PCBU's conduct was attributable to the officer's neglect, or engaged in with the officer's consent or connivance.</p> <p>A WHS undertaking cannot be accepted for a contravention or alleged contravention that is industrial manslaughter or a Category 1 offence.</p> <p>An industrial manslaughter offence may be brought after the 2-year limitation period for all other offences under the WHS Act.</p> <p>The DPP must bring an industrial manslaughter charge. Extended limitation periods apply for the regulator to bring other offences if the DPP declines to bring an IM offence or withdraws it.</p> <p>A person charged with a crime of industrial manslaughter may be convicted of a Category 1, Category 2 or a Category 3 offence in the alternative.</p>	<p>Up to 20 years imprisonment and a fine of \$5 million for individual and a maximum \$10 million fine for a body corporate.</p>

Jurisdiction	Elements	Scope and Exclusions	Penalties
<p>SA</p> <p>The South Australian government introduced its <i>Work Health and Safety (Industrial Manslaughter) Amendment Bill</i> (the Bill) to Parliament on 31 August 2023.</p> <p>On 29 November 2023, the Bill passed the South Australian Parliament.</p> <p>Section 30A will be inserted into the <i>Work Health and Safety Act 2012</i>. The new laws will commence on proclamation. SafeWork SA has stated this will be mid-2024.</p>	<p>Industrial manslaughter only applies when all components of the offence are proven.</p> <p>A PCBU or an officer of a PCBU commits an industrial manslaughter offence if:</p> <ul style="list-style-type: none"> • The person has a health and safety duty; and • The person engages in conduct that breaches that duty; and • The conduct causes the death of an individual to whom that duty is owed; and • The person engages in the conduct with gross negligence or is reckless as to the risk to an individual of death or serious injury or illness. <p>Conduct, for the purpose of this section, causes the death of an individual if it substantially contributes to the death.</p>	<p>Is a major indictable offence.</p> <p>Industrial manslaughter offences will not be subject to a 2-year statute of limitation for bringing legal proceedings as is the case for other offences within the WHS Act.</p> <p>An alternative verdict of guilt for a Category 1, Category 2 or Category 3 offence under the WHS Act will be available.</p> <p>Alternative verdicts will only be available if an industrial manslaughter prosecution is commenced within the same limitation period that applies to a lower category offence (generally this is 2 years).</p> <p>If an industrial manslaughter prosecution is brought after the expiry of that limitation period, no alternative verdict will be available.</p> <p>A WHS undertaking cannot be accepted for a contravention or alleged contravention that is industrial manslaughter or a Category 1 offence.</p>	<p>Individuals face a maximum penalty of 20 years imprisonment, and an offence committed by a body corporate is a maximum of \$18 million.</p>

Jurisdiction	Elements	Scope and Exclusions	Penalties
<p>CTH</p> <p>The Commonwealth Government introduced the <i>Fair Work Legislation Amendment (Closing Loopholes) Bill 2023</i> to Parliament on 4 September 2023, which includes an industrial manslaughter offence. It was passed by both Houses on 7 December 2023 and assented to on 14 December 2023. The industrial manslaughter offence will commence on 1 July 2024 under section 30A of the <i>Work Health and Safety Act 2011</i>.</p>	<p>A person commits an industrial manslaughter offence if:</p> <ul style="list-style-type: none"> • The person is a PCBU or an officer of a PCBU; and • The person has a health and safety duty; and • The person intentionally engages in conduct; and • The conduct breaches the health and safety duty; and • The conduct causes the death of an individual; and • The person is reckless, or negligent, as to whether the conduct would cause the death of an individual. <p>Conduct, for the purpose of this section, causes the death of an individual if it substantially contributes to the death.</p>	<p>An alternative verdict of guilt for a Category 1 or a Category 2 offence under the WHS Act will be available.</p> <p>No limitation period in relation to alternative verdicts, but the person may only be found guilty of an alternative verdict if they have been accorded procedural fairness in relation to that finding of guilt.</p>	<p>Individuals face a maximum penalty of 25 years imprisonment, and an offence committed by a body corporate is a maximum of \$18 million.</p> <p>No substitution of pecuniary penalty for imprisonment.</p>

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