

## Where are we up to with industrial manslaughter?

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This table looks at the status of industrial manslaughter legislation in each State and Territory (as well as the Commonwealth) and shows the various differences as well as, where possible, whether the existing offence or proposed offence sits within WHS legislation or within the existing criminal legislation.

State/Territory	Status
Australian Capital Territory	<p>Industrial manslaughter is a criminal offence in the Australian Capital Territory.</p> <p>The offence came into effect in 2004 following amendments to the <i>Crimes Act 1900</i> (ACT) with the passing of the <i>Crimes (Industrial Manslaughter) Amendment Act 2003</i> (ACT).</p> <p>There are two industrial manslaughter offences, depending on whether an employer or a senior officer is charged. This offence does not apply to workers.</p> <p>The maximum penalty for each offence is 2,000 penalty units or 20 years' imprisonment, or both. Currently this results in maximum fines of \$320,000 for individuals and approximately \$1.6 million for corporations. When a corporation is found guilty of the offence, courts can also order it to do any of the following: publicise the offence, notify specific people about the offence or carry out projects in the public interest.</p> <p>For a finding of guilt, the prosecution must prove the following elements:</p> <ul style="list-style-type: none"> <li>• a worker dies in the course of employment or when providing services in relation to an employer; or is injured during the course of employment or providing services in relation to an employer and later dies</li> <li>• the employer or senior officer's conduct causes the death of the worker, and</li> <li>• the employer or senior officer is <b>reckless</b> about causing serious harm to the worker or any other worker of the employer by the conduct; or is <b>negligent</b> about causing the death of the worker or any other worker of the employer by the conduct.</li> </ul> <p>For the purposes of the industrial manslaughter offence, a "worker" includes an employee, an independent contractor, an outworker, an apprentice or trainee and a volunteer.</p> <p>"Serious harm" is defined as harm (including the cumulative effect of more than one harm) that:</p> <ul style="list-style-type: none"> <li>• endangers, or is likely to endanger, human life, or</li> <li>• is, or is likely to be, significant and longstanding.</li> </ul> <p>The offence of industrial manslaughter has not been prosecuted by ACT authorities.</p>

However, the offence of criminal manslaughter was prosecuted in a workplace setting in 2018 when a crane driver was charged for a workplace accident at an ACT construction site. The case is ongoing.

Any prosecution for the offence in the ACT will be investigated and prosecuted by the Police and the DPP.

## New South Wales

Industrial manslaughter is not currently an offence in NSW.

In 2018, the Labor opposition announced it would introduce industrial manslaughter as an offence if elected. However, it lost the 2019 election.

The Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, recently stated that NSW will not introduce industrial manslaughter and will instead focus on targeting “risky work practices” in new legislation. On 12 November 2019, the *Work Health and Safety Amendment (Review) Bill 2019* was introduced by the NSW Government, which seeks to clarify in a drafting note that when a person dies at a workplace, it may constitute manslaughter under the *Crimes Act 1900* (NSW) in certain circumstances. The Bill also seeks to make several other amendments to the *Work Health and Safety Act 2011* (NSW) in response to the National Review into the Model WHS Laws.

The SafeWork NSW compliance policy and prosecution guidelines provides that in circumstances where a death has occurred as a result of a breach of the law, Police and SafeWork NSW should consider whether the case might justify a charge of manslaughter under the *Crimes Act 1900* (NSW). This carries a maximum penalty of 25 years’ imprisonment.

## Queensland

Industrial manslaughter is a criminal offence in Queensland.

Queensland introduced industrial manslaughter in 2017 when the *Work Health and Safety and Other Legislation Amendment Act 2017* (Qld) amended the *Work Health and Safety Act 2011* (Qld). It also introduced the offence of industrial manslaughter into the *Electrical Safety Act 2002* (Qld) and Safety in *Recreational Water Activities Act 2011* (Qld).

There are two offences for industrial manslaughter, depending on whether a person conducting a business or undertaking (PCBU) or a senior officer is charged. This offence does not apply to workers.

The maximum penalty for a PCBU is 20 years’ imprisonment for an individual or 100,000 penalty units for a body corporate. Currently, this results in a maximum fine of \$13,345,000 for a body corporate.

For a finding of guilt, the prosecution must prove the following elements:

- a worker dies in the course of carrying out work or is injured in the course of carrying out work and later dies
- the PCBU or senior officer causes the death, and
- the PCBU or senior officer is negligent about causing the death of the worker by the conduct (applying the “criminal negligence” standard).

In October 2019, the first industrial manslaughter prosecution was commenced against a PCBU following a fatality that occurred in May 2019. The charges relate to an alleged failure to ensure safe systems of work for the movement of mobile plant, and an alleged failure to provide adequate supervision of workers. We provided more detail about this active prosecution in our [recent alert](#).

Any prosecution for the offence in Queensland will be investigated by SafeWork

Queensland and prosecuted by the newly appointed Work Health and Safety Prosecutor or the DPP.

Further detail regarding the Queensland changes was included in our [2017 article](#) about the reforms.

<b>Northern Territory</b>	<p>Industrial manslaughter will be an offence in the Northern Territory on a date to be set by Government Gazette (likely 2020).</p> <p>On 27 November 2019, the <i>Work Health and Safety (National Uniform Legislation) Amendment Bill 2019</i> was passed. The Bill amends the <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> (NT) to include the offence of industrial manslaughter.</p> <p>For a finding of guilt, the prosecution must prove the following elements:</p> <ul style="list-style-type: none"> <li>• the person has a health and safety duty</li> <li>• the person intentionally engages in conduct</li> <li>• 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</li> <li>• the person is reckless or negligent about the conduct breaching the health and safety duty and causing the death of that individual.</li> </ul> <p>The maximum penalty is life imprisonment for an individual or a fine of approximately \$10.2 million for a body corporate.</p> <p>Any prosecution for the offence in the Northern Territory will be investigated and prosecuted by NT WorkSafe. However, before proceedings are initiated, NT Worksafe must obtain the consent of the DPP.</p>
<b>South Australia</b>	<p>Industrial manslaughter is not currently an offence in South Australia.</p> <p>Various bills seeking to introduce the offence have been introduced without success. The most recent was the <i>Work Health and Safety (Industrial Manslaughter) Amendment Bill 2019</i>, a private members bill introduced by the Greens.</p> <p>The maximum penalties proposed in the Bill included 20 years' imprisonment for individuals and a maximum fine of \$1 million for corporations. However, the Bill did not pass Parliament, and there have been no further updates.</p> <p>However, the DPP has successfully prosecuted a Company Director under criminal manslaughter laws following a fatal trucking incident in 2014. In that case, the boss of the trucking company, Peter Francis Colbert, was convicted and sentenced to ten-and-a-half years' imprisonment (<i>R v Colbert</i> [2017] SASFC 29). It was found that Colbert was aware that the truck's brakes were defective and took few steps to address the high risk of death or serious harm presented by the faulty brakes.</p>
<b>Tasmania</b>	<p>Industrial manslaughter is not currently an offence in Tasmania.</p> <p>In 2018, the Labor opposition announced it would introduce industrial manslaughter laws if elected, but was unsuccessful at the 2018 election. No further updates have occurred.</p>
<b>Victoria</b>	<p>Industrial manslaughter will be an offence in Victoria from 1 July 2020, or earlier by Government proclamation.</p> <p>On 26 November 2019, the <i>Workplace Safety Legislation (Workplace Manslaughter and Other Matters) Bill 2019</i> was passed by the Victorian Parliament. The Bill amends the <i>Occupational Health and Safety Act 2004</i> (Vic.) (OHS Act) to include</p>

offences of industrial manslaughter. The Bill is expected to receive royal assent and become law in the coming months. The offences are likely to commence operation from 1 July 2020, unless an earlier date is set by the Government.

For a finding of guilt, the prosecution must prove the following elements:

- the company or officer's conduct is "criminally negligent"
- the conduct constitutes a breach of an existing duty under the OHS Act, and
- the conduct "causes" the death of a person at or near a workplace.

The maximum penalty for a senior officer is 20 years imprisonment, while the maximum penalty for a body corporate is \$16,222,000.

Any prosecution under the proposed changes will be investigated and prosecuted by WorkSafe Victoria and the DPP.

Further detail regarding the Victorian proposal was included in our [2018 article](#) about the proposed reforms and in our [2019 article](#) after the Bill was introduced.

<p><b>Western Australia</b></p>	<p>Industrial manslaughter is not currently an offence in Western Australia.</p> <p>However, on 27 November 2019 the <i>Work Health and Safety Bill 2019</i> was introduced to the WA Parliament. The Bill seeks to repeal the <i>Occupational Safety and Health Act 1984</i> (WA), introduce laws largely based around the Model Work Health and Safety Laws and to introduce two new industrial manslaughter offences.</p> <p>The two proposed offences are described as a "crime offence" and a "simple offence". Both offences are linked to the existing WHS duties but require additional elements to be satisfied by the prosecution.</p> <p>The "crime offence" will apply where a PCBU engages in conduct "knowing that the conduct is likely to cause the death of [an] individual" and "in disregard of the likelihood of death". This offence carries a maximum penalty of 20 years' imprisonment and a \$5 million fine for an individual as well as \$10 million for a body corporate.</p> <p>The "simple offence" does not require the prosecution to establish that the PCBU knew the relevant conduct was likely to cause a death, only that the PCBU's conduct caused the death. This offence carries a maximum penalty of 10 years' imprisonment and a fine of \$2.5 million for an individual, as well as a fine of \$5 million for a body corporate.</p> <p>Both offences may also be committed by officers of a PCBU. To be found guilty of either offence, it must be established that the PCBU committed the offence and that the PCBU's conduct was either "attributable to any neglect on the part of the officer" or was engaged in with the officer's "consent or connivance".</p>
<p><b>Commonwealth</b></p>	<p>Industrial manslaughter is not currently a Commonwealth offence. This means the offence does not currently apply to workers of the Commonwealth or to Commonwealth PCBUs. It also does not apply to workers of PCBUs or PCBUs who are "non-Commonwealth licensee" and are therefore subject to the <i>Work Health and Safety Act 2011</i> (Cth) and regulated by Comcare.</p> <p>However, even if the Commonwealth does not introduce a new industrial manslaughter offence, workers and PCBUs ordinarily covered by the Commonwealth WHS legislation and regulated by Comcare may still be subject to the new offence in some jurisdictions.</p>

For example, in the ACT because the offence sits within the *Crimes Act 1900* (ACT), not WHS laws, it may still apply to workers and PCBUs ordinarily covered by the Commonwealth WHS legislation. In 2004, the Commonwealth attempted to pass legislation to exclude Commonwealth employers and employees from the ACT industrial manslaughter laws (although the Bill didn't attempt to exclude non-Commonwealth licensee employers and employees). However, the Bill never made it through the Senate.

Workers and PCBUs ordinarily covered by the Commonwealth WHS legislation may also be subject to the offence of industrial manslaughter in Queensland as it was also introduced into the *Electrical Safety Act 2002* (Qld).

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