

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"> • 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 • the employer or senior officer's conduct causes the death of the worker, and • the employer or senior officer is reckless about causing serious harm to the worker or any other worker of the employer by the conduct; or is negligent about causing the death of the worker or any other worker of the employer by the conduct. <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"> • endangers, or is likely to endanger, human life, or • is, or is likely to be, significant and longstanding. <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, which is expected to be introduced this month. It is unclear which legislation is being referred to in this media release.

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).

The offence has not yet been prosecuted.

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.

Northern Territory

Industrial manslaughter is not an offence in the Northern Territory yet, but the Territory appears on track to introduce it by the end of this year. This follows a review conducted by Tim Lyons entitled *Best Practice Review of Workplace Health and Safety in the Northern Territory* in which he recommended the introduction of an

	<p>industrial manslaughter offence mirroring his recommendations in Queensland.</p> <p>Following examination of the Lyons review, the <i>Work Health and Safety (National Uniform Legislation) Amendment Bill 2019</i> (NT) was introduced to Parliament on 19 September 2019. If passed, it will insert industrial manslaughter into the <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> (NT).</p> <p>For a finding of guilt, the prosecution must prove the following elements:</p> <ul style="list-style-type: none"> • the person has a health and safety duty • the person intentionally engages in conduct • 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. <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 would be investigated and prosecuted by NT WorkSafe. However, before proceedings are initiated, NT Worksafe must obtain the consent of the DPP.</p>
South Australia	<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] SASCF 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>
Tasmania	<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>
Victoria	<p>Industrial manslaughter is not currently an offence in Victoria.</p> <p>In 2018, the Victorian Government announced that it will amend the <i>Occupational Health and Safety Act 2004</i> (Vic) to include the offence of industrial manslaughter.</p> <p>The most significant step the Government has taken regarding industrial manslaughter is the creation of the Workplace Manslaughter Implementation Taskforce. However, no recent updates regarding the likely timeframe for the introduction of the Bill to Parliament have been provided.</p> <p>Based on media releases in 2018, the likely maximum penalties for the offence will be 20 years' imprisonment for individuals and a maximum fine of approximately \$16 million for corporations.</p>

Details regarding the elements of the offence have not been released. However, the Premier's announcement on 26 May 2018 suggested the offence would be based around the negligence framework, with public comments made at the time suggesting it would be committed where a person's or a corporation's negligence causes the death of an employee, other worker or a member of the public.

Any prosecution under the proposed changes would likely 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 reform.

<p>Western Australia</p>	<p>Industrial manslaughter is not currently an offence in Western Australia.</p> <p>At the annual Labor conference on 24 August 2019, it was confirmed the Government is planning to introduce an industrial manslaughter offence and that a bill to introduce the offence will be introduced to Parliament by the end of 2019.</p> <p>Based on the August 2019 announcement, two new offences are proposed— industrial manslaughter class one and industrial manslaughter class two. The maximum penalty for the class one offence will be 20 years' imprisonment and the maximum penalty for the class two offence will be 10 years' imprisonment. A maximum penalty of approximately \$10 million will apply for body corporates (presumably for the class one offence).</p> <p>No further details regarding the elements that must be satisfied to establish the proposed offences or who will investigate and prosecute it have been released.</p>
<p>Commonwealth</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> <p>For example, in the ACT because the offence sits within the <i>Crimes Act 1900</i> (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.</p> <p>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 <i>Electrical Safety Act 2002</i> (Qld).</p>