

Article Information

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Employment Relations Podcast #33 - National WHS Update: Industrial Manslaughter Laws and the Prohibition of Insurance

Industrial manslaughter may soon be an offence in almost all Australian jurisdictions. Recent amendments in certain jurisdictions have also introduced the recommendation of the 2019 Boland Review to prohibit insurance and indemnities for WHS penalties. In this episode of Employment Law for the Time Poor, join Emily Haar, Partner, and Joseph Hyde, Associate, for a review of the current status of these provisions, with a particular focus on the South Australian proposed industrial manslaughter legislation.

With Labor governments having been recently elected in South Australia, New South Wales, as well as federally, the issue of industrial manslaughter is back on the agenda.

South Australia, New South Wales, and Tasmania are the only remaining States that have not yet expressly legislated for this offence. However, public consultation on South Australia's draft *Work Health and Safety (Industrial Manslaughter) Amendment Bill* has finished, with the Government now considering the feedback that was provided. The recently elected NSW Labor Government had attempted to introduce industrial manslaughter legislation in 2021. While there is no current Bill before parliament, it is likely to be on the Parliamentary agenda.

At the Commonwealth level, the national model WHS laws are planned to be amended to include the offence of industrial manslaughter, following Australia's WHS ministers agreeing to the move in late February 2023.



The offence generally captures negligent or reckless conduct of a person conducting a business or undertaking (**PCBU**) or its officers that breaches health and safety duties and causes the death of a person to whom a duty was owed. However, the details of the offence vary slightly in each jurisdiction.

| Jurisdiction | Law in force | Law being considered | Maximum penalties | Elements of offence | Prohibition against insurance |
|--------------|--------------|----------------------|---|--|--------------------------------|
| SA | | ✓ | Body corporate: \$15 million. Individuals: 20 years | Would apply to officers or individuals acting as PCBUs who engage in reckless or grossly negligent conduct causing the death of an individual to whom a health and safety duty is owed . | Not presently included in Bill |
| Vic | ✓ | | Body corporate: nearly \$18.5 million. Individuals: 25 years imprisonment. | Negligent conduct by persons, including an employer and its officers , which breaches a duty and which causes the death of an employee or member of the public | ✓ |
| Qld | ✓ | | Body corporate: \$14.375 million. Individuals: 20 years imprisonment. | A PCBU or a senior officer's conduct negligently causes the death of a worker . Includes where a worker is injured carrying out work and later dies. | X |

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|-----|---------------------------------------|--|--|---|
| WA | ✓ | Body corporate: \$10 million. Individuals: 20 years imprisonment and/or \$5 million fine. | A PCBU engages in conduct that constitutes a failure to comply with their health and safety duty, knowing it is likely to cause the death or serious harm to another person, and causes the death of an individual . Officers may also be charged but additional elements of the offences must be proven. | ✓ |
| NT | ✓ | Body corporate: just over \$10.5 million. Individuals: life imprisonment. | A PCBU or officer intentionally engages in conduct that breaches their health and safety duty and causes the death of an individual to whom that duty was owed , and is reckless or negligent about the conduct and causing the death of that individual. | X |
| ACT | ✓ | Body corporate: \$16.5 million. Individuals: 20 years imprisonment. | A PCBU or officer engages in conduct that breaches their health and safety duty and causes the death of an individual to whom that duty was owed , and is reckless or negligent about the conduct. | X |
| NSW | ✓ (No current Bill before Parliament) | | Note to Division 5 states: <i>"In certain circumstances, the death of a person at work may also constitute manslaughter under the Crimes Act 1900 and may be prosecuted under that Act. See section 18 of the Crimes Act 1900, which provides for the offence of manslaughter, and section 24 of that Act, which provides that the offence of manslaughter is punishable by imprisonment for 25 years."</i> | ✓ |
| Tas | No current provision | | | X |
| Cth | ✓ | Body corporate: \$18 million. Individuals: 20 years imprisonment. | | ✓ (Commences on a date to be fixed by proclamation or otherwise 22 September 2023) |

Victoria, Queensland, and the Northern Territory adopt a penalty unit system, meaning the maximum penalties will

increase each year.

Tasmania is currently the only jurisdiction whose government has not expressed their intention to introduce the offence. There have been recent calls for Tasmania to introduce industrial manslaughter laws, on International Worker's Memorial Day (28 April 2023), Unions called on the Parliament to commit to introducing the offence. Unions Tasmania secretary Jessica Munday says that "*Tasmania is now out of step with the rest of Australia.*"

The prohibition of insurance and indemnities for work health and safety penalties was recommended in the Marie Boland Review of the Model WHS Laws published in February 2019, and also the Senate Inquiry into industrial deaths published in October 2018.

This prohibition has been implemented in the recent *Work Health and Safety Amendment Act 2023* (Cth), as well as in NSW, Victoria and WA.

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