

# Workplace Manslaughter in Australia and New Zealand

VICTORIA			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Occupational Health and Safety Act 2004 section 39G</i></p> <p>Commenced 1 July 2020</p>	<ul style="list-style-type: none"> <li>• Negligent conduct which constitutes a</li> <li>• Breach of an OHS duty (except duty owed by employees); and</li> <li>• Causes death</li> </ul> <p>Negligence = Great falling short of the standard of care that would have been taken by reasonable person in the circumstances, and involves a high risk of death or serious injury/illness</p> <p><b>Who is liable?</b></p> <ul style="list-style-type: none"> <li>• A Corporation may be liable directly for example, through its rules, policies, practices, conduct etc), or through conduct of employees, agents or contractors acting within scope of authority.</li> <li>• Officers of Corporations may be liable (via section 144 <i>OHS Act</i>) if failure to take reasonable care. Will consider officer's knowledge, ability to affect decisions, etc</li> <li>• Employees - Although the intention of the personal liability offence was to only render officers liable, the legislation does appear to permit the prosecution of employees in limited situations. For example, an employee who exercises limited management and control in certain circumstances.</li> </ul>	<p>25 years imprisonment for natural person</p> <p>\$18.174 million for Corporation</p>	<p><i>OHS Act section 32</i></p> <p>Recklessly engaging in conduct that places or may place person at risk of serious injury</p> <p><b>Test:</b></p> <p>Acting with indifference towards or in disregard of the realised or foreseen probable consequences of the relevant conduct (<i>Orbit Drilling v The Queen</i> [2012] VSCA 82)</p> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>• 5 years imprisonment and/or fine of \$327,132 for natural person</li> <li>• Corporation: \$3,634,800 million</li> </ul>

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NEW SOUTH WALES			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
No provision, but reckless endangerment offence in WHSA Act has been amended to include alternative test of gross negligence (passed by Parliament and awaiting royal assent)	The SafeWork NSW Prosecution Guidelines state that, where there has been a breach of the law leading to a work-related death, NSW Police and SafeWork NSW should consider whether the circumstances of the case might justify a charge of manslaughter under the <i>Crimes Act 1900 (NSW)</i> .	25 years imprisonment for manslaughter in the <i>Crimes Act 1900 (NSW)</i>	<p><i>Work Health and Safety Act 2011</i> section 31, where:</p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness OR grossly negligent</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>Individual: \$346,500 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$692,500 and/or 5 years imprisonment</li> <li>Corporation: \$3.463 million</li> </ul>

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QUEENSLAND			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Work Health and Safety Act 2011 section 34A - section 34D</i></p> <p>Also found in:</p> <ul style="list-style-type: none"> <li>• <i>Electrical Safety Act 2002; and</i></li> <li>• <i>Safety in Recreational Water Activities Act 2011</i></li> </ul>	<ul style="list-style-type: none"> <li>• A worker dies in the course of carrying out work, or is injured in the course of carrying out work and later dies.</li> <li>• A person (not a volunteer) conducting a business or undertaking or a senior officer (i.e. executive officer of a corporation):               <ul style="list-style-type: none"> <li>◦ engages in conduct which caused the death of the worker; and</li> <li>◦ is negligent about causing the death of the worker by the conduct.</li> </ul> </li> </ul> <p>NB: an undertaking is a non-profit organisation</p>	<p>Corporation: \$13.785 million</p> <p>Natural Person: 20 years imprisonment</p>	<p><i>Work Health and Safety Act 2011</i> s31, where:</p> <ul style="list-style-type: none"> <li>• the person has a health and safety duty; and</li> <li>• the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>• the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>• Individual: \$413,550 and/or 5 years imprisonment</li> <li>• Individual who conducts business or is officer of a business: \$827,100 and/or 5 years imprisonment</li> <li>• Corporation: \$4,135,500 million</li> </ul>
<p><b>Extension to the Mining Sector</b> <i>Mineral and Energy Resources and Other Legislation Amendment Bill 2020</i> which amends the:</p> <ul style="list-style-type: none"> <li>• <i>Coal Mining Safety and Health Act 1999,</i></li> <li>• <i>Explosives Act 1999,</i></li> <li>• <i>Mining and Quarrying Safety and Health Act 1999 and Petroleum and Gas (Production and Safety) Act 2004</i></li> </ul>	<p><b>Extension to the Mining Sector</b> <i>The Mineral and Energy Resources and Other Legislation Amendment Bill 2020</i> amends 4 mining and resources related Acts.</p> <p>It will come into force on a date to be proclaimed.</p> <p>The legislation covers coal and metalliferous mines, quarries and petroleum and gas operations, and will impose an offence of industrial manslaughter in similar terms to the WHS laws.</p> <p>The offence states, in the same terms under each Act - covering coal and metalliferous mining, quarrying operations and the petroleum and gas industry.</p> <p>An employer commits an offence if a worker:</p> <ul style="list-style-type: none"> <li>• In the course of undertaking work is injured and later dies; and</li> <li>• The employer or senior officer's conduct causes the death; and</li> <li>• The employer or senior officer is negligent about causing the death.</li> </ul>	<p><b>Extension to the Mining Sector</b> Corporation / employer body corporate of 100,000 penalty units - \$13.785 million</p> <p>Natural Person: 20 years imprisonment</p>	

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	<p><b>Who is a senior officer?</b></p> <p>A 'senior officer' is an 'executive officer' of a corporation (where the employer is a corporation). An 'executive officer' is defined and is capable of a much wider interpretation than the definition of 'officer' in the Corporations Act 2001 (Cth), which is used for most other officer obligations, and in theory, may extend to individuals below the executive level.</p> <p>Employees holding statutory responsibilities under the Acts could potentially be exposed to the industrial manslaughter offence where they are not executives and therefore have limited capacity to control the company's financial and/or operating policies. These statutory officeholders are not traditionally seen as 'representing' the company. There is no equivalent concept of a statutory officeholder under Queensland's general workplace safety legislation.</p>		
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SOUTH AUSTRALIA			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Work Health and Safety (Industrial Manslaughter) Amendment Bill 2020</i> introduced on 23 September 2020</p>	<ul style="list-style-type: none"> <li>Employer knew, ought reasonably to have known or was recklessly indifferent that act or breach would create substantial risk of serious harm;</li> <li>Breach caused death of another (whether or not in workplace or employee)</li> </ul>	<p>Corporation: \$13 million Natural Person: 20 years imprisonment</p>	<p><i>Work Health and Safety Act 2012</i> section 31, where:</p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties</b></p> <ul style="list-style-type: none"> <li>Individual: \$300,000 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$600,000 and/or 5 years imprisonment</li> <li>Corporation: \$3 million</li> </ul>

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WESTERN AUSTRALIA			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Workplace and Safety Bill 2019</i> (passed through both houses and waiting Royal Assent)</p> <p>Will replace the <i>Occupational Safety and Health Act 1984</i></p> <p>Not law until corresponding regulations finalised.</p>	<p><b>Industrial manslaughter class one ('Crime'):</b></p> <ul style="list-style-type: none"> <li>the person has a health and safety duty as a person conducting a business or undertaking (PCBU); and</li> <li>the person engages in conduct that causes the death of an individual; and</li> <li>the conduct constitutes a failure to comply with the person's health and safety duty; and</li> <li>the person engages in the conduct               <ul style="list-style-type: none"> <li>knowing that the conduct is likely to cause the death of an individual; and</li> <li>in disregard of that likelihood.</li> </ul> </li> </ul> <p>Officer (as per Corporations Act) of a PCBU commits a class one offence if:</p> <ul style="list-style-type: none"> <li>a PCBU breaches a duty and it causes a death, and</li> <li>the PCBU's conduct:               <ul style="list-style-type: none"> <li>is attributable to any neglect on the part of the officer; or</li> <li>is engaged in with the officer's consent or connivance; AND</li> <li>the officer engages in the conduct knowing that the PCBU's conduct is likely to cause the death of an individual; and in disregard of that likelihood.</li> </ul> </li> </ul> <p><b>Industrial manslaughter class two ('Simple')</b></p> <ul style="list-style-type: none"> <li>the person has a health and safety duty as a person conducting a business or undertaking (PCBU); and</li> <li>the person fails to comply with that duty; and</li> <li>the failure causes the death of a person</li> </ul> <p>Officer of a PCBU commits class 2 offence if the PCBU's breach of duty causes a death, and the PCBU's conduct:</p> <ul style="list-style-type: none"> <li>is attributable to any neglect on the part of the officer; or</li> <li>is engaged in with the officer's consent or connivance</li> </ul>	<p><b>Class 1</b></p> <ul style="list-style-type: none"> <li>PCBU: imp for 20 years and a fine of \$5 million</li> <li>Corporation: \$10 million</li> <li>Officer of PCBU: imp for 20 years and a fine of \$5 million</li> </ul> <p><b>Class 2</b></p> <ul style="list-style-type: none"> <li>PCBU: imp for 10 years and a fine of \$2.5 million</li> <li>Corporation: \$5 million</li> <li>Officer of PCBU: imp for 10 years and a fine of \$2.5million</li> </ul>	No

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TASMANIA			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
No	N/A	N/A	<p><i>Work Health and Safety Act 2012</i> section 31, where:</p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>Individual: \$300,000 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$600,000 and/or 5 years imprisonment</li> <li>Corporation: \$3 million</li> </ul>

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NORTHERN TERRITORY			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Work Health and Safety (National Uniform Legislation) Act 2011 section 34B</i></p>	<ul style="list-style-type: none"> <li>The person has a health and safety duty;</li> <li>The person conducts a business or undertaking or is an officer of a person conducting a business or undertaking; The person intentionally engages in conduct;</li> <li>The conduct (including acts and omissions) breaches the health and safety duty and causes the death of an individual to whom the health and safety duty is owed; <b>and</b></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>Corporation: \$10.27 million</p> <p>Life imprisonment for natural person</p>	<p><i>Work Health and Safety (National Uniform Legislation) Act 2011 s31, where:</i></p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>Individual: \$300,000 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$600,000 and/or 5 years imprisonment</li> <li>Corporation: \$3 million</li> </ul>

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AUSTRALIAN CAPITAL TERRITORY			
LEGISLATIVE PROVISION	ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
<p><i>Crimes Act</i> section 49C</p> <p>On 24 June 2021, ACT introduced <i>Work Health and Safety Amendment Bill 2021</i> which will introduce an industrial manslaughter definition in the WHS Act, similar to the Victorian definition. There will be no statute of limitation for these claims.</p> <p>Maximum of \$16.5 million for corporation and 20 years imprisonment for individuals.</p>	<ul style="list-style-type: none"> <li>Death of a worker (including dying later from an injury) in course of employment or when providing services in relation to an employer</li> <li>Employer or senior officer:               <ul style="list-style-type: none"> <li>caused the death (through act or omission)</li> <li>was reckless about causing serious harm to that (or any) worker; OR</li> <li>was negligent about causing the death of that (or any) worker</li> </ul> </li> </ul> <p><b>Definitions (s49A)</b></p> <ul style="list-style-type: none"> <li>'Causes': substantially contributes</li> <li>'Officer': same as Corps Act</li> <li>'Senior Officer': officer in executive who makes decisions affecting substantial part of business</li> </ul>	<p>Corporation: \$1.62 million</p> <p>20 years prison for natural person and/or \$320,000</p>	<p><i>Work Health and Safety Act 2011</i> section 31, where:</p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>Individual: \$300,000 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$600,000 and/or 5 years imprisonment</li> <li>Corporation: \$3 million</li> </ul>

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NEW ZEALAND			
LEGISLATIVE PROVISION	• ELEMENTS OF WORKPLACE MANSLAUGHTER	MAXIMUM PENALTIES	RECKLESS ENDANGERMENT
No current commitment to introduce	N/A	N/A	<p><i>Health and Safety at Work Act 2015</i> Section 47, where:</p> <ul style="list-style-type: none"> <li>the person has a health and safety duty; and</li> <li>the person, without reasonable excuse, engages in conduct that exposes an individual owed the duty to a risk of death or serious injury or illness; and</li> <li>the person is reckless as to the risk to an individual of death or serious injury or illness.</li> </ul> <p><b>Penalties:</b></p> <ul style="list-style-type: none"> <li>Individual: \$300,000 and/or 5 years imprisonment</li> <li>Individual who conducts business or is officer of a business: \$600,000 and/or 5 years imp</li> <li>Corporation: \$3 million</li> </ul> <p><i>Health and Safety at Work Act 2015</i> Section 47, where breach of duty places person at risk of death or serious injury or illness (but no recklessness)</p> <p><b>Penalties:</b> Fines are half the max fines for reckless endangerment, and no prison term</p>

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