



AUSTRALIA: EMPLOYMENT LAW | JULY 2024

## INDUSTRIAL MANSLAUGHTER OFFENCE IN AUSTRALIA: A STATE-BY-STATE ANALYSIS

**New legislation has come into force expanding the imposition of harsh criminal penalties on corporations and officers that commit the offence of industrial manslaughter. In this briefing, we review the coverage and spread of industrial manslaughter laws in Australia and identify the potential implications for business.**

On 1 July 2024, new offences commenced for the industrial manslaughter of workers in South Australia, and for Commonwealth public workers. This means that within Australia, all States and Territories except for New South Wales and Tasmania will have introduced criminal offences for industrial manslaughter. New South Wales has recently followed suit and introduced industrial manslaughter laws to Parliament.

### **What is industrial manslaughter, and who do the laws effect?**

Industrial manslaughter occurs when there is an unlawful killing of a worker by a person conducting a business or undertaking (**PCBU**), or an officer of the PCBU.

In 2023 alone, there were 175 workers killed at work in Australia. Of these fatalities, 64% occurred in only three industries, including:

- agriculture, forestry and fishing;
- construction; and
- transport, postal and warehousing.

Employers in Australia have a duty of care to provide their workers with a safe working environment. In recent years, there has been a national push to develop a harmonised industrial manslaughter offence which imposes heavy fines and terms of imprisonment for individuals who breach their duty of care, and negligently or recklessly cause the death of a worker.

The fault element (or aggravating factor) of the offence of industrial manslaughter varies slightly between each State and Territory, with nearly all jurisdictions requiring as part of the offence that the PCBU or officer who owes a WHS duty to the worker, engages in conduct which is in breach of this duty, and this conduct causes the worker's death. Where these jurisdictions diverge is in the expression of the fault requirement, with differing tests for negligence and/or recklessness being employed in each of the jurisdictions.

### **What are the penalties for industrial manslaughter, and can they be insured against?**

The penalties for industrial manslaughter differ across each State and Territory, with each jurisdiction imposing heavy fines on corporations, and lengthy terms of imprisonment and/or fines for individuals.

States such as Western Australia, Victoria and New South Wales have also imposed prohibitions on obtaining insurance protection or indemnity for WHS penalties. Hence, while an employer may be able to obtain insurance for their legal defence costs, they will not be able to obtain indemnity for the large fines which may result from committing industrial manslaughter.

## Overview of Industrial Manslaughter Offences in Australia

Jurisdiction	Maximum Penalty	Fault Element (aggravating factor)
<b>ACT</b>	Body corporate: \$16,500,000 fine PCBU or officer: 20 years imprisonment	'reckless or negligent about causing the death' <sup>1</sup>
<b>CTH</b>	Body corporate: \$18,000,000 fine PCBU or officer: 25 years imprisonment	'reckless, or negligent, as to whether the conduct would cause the death' <sup>2</sup>
<b>NT</b>	Body corporate: \$10,075,000 PCBU or officer: Life imprisonment	'reckless, or negligent about the conduct' <sup>3</sup>
<b>QLD</b>	Body corporate: \$15,480,000 PCBU or officer: 20 years imprisonment	'negligence' <sup>4</sup>
<b>VIC</b>	Body corporate: \$19,231,000 PCBU or officer: 25 years imprisonment	'negligence' <sup>5</sup>
<b>SA</b>	Body corporate: \$18,000,000 PCBU or officer: 20 years imprisonment	'gross negligence or is reckless' <sup>6</sup>
<b>WA</b>	Body corporate: \$10,000,000 PCBU or officer: 20 years imprisonment and/or a fine up to \$5,000,000	'knowing that the conduct is likely to cause the death of, or serious harm to, an individual; and in disregard of that likelihood'. <sup>7</sup>
<b>NSW</b>	Body corporate: \$20,000,000 PCBU or officer: 25 years imprisonment	'gross negligence' <sup>8</sup>

### Have the penalties for industrial manslaughter been enforced?

#### LH Holding Management Pty Ltd (Victoria)

**Facts:** In October 2021, a 25-year-old sub-contractor was killed in a forklift incident because of the negligence of the company's sole director, Laith Hanna. Mr Hanna had been operating a forklift with a raised load on a sloping driveway when it suddenly tipped over and landed on top of the sub-contractor. The Supreme Court of Victoria found that through failing to ensure that the forklift had been operated properly, Mr Hanna had engaged in negligent conduct which constituted a breach of his duty to the worker.

**Penalties:** The company was convicted of workplace manslaughter and fined A\$1,300,000. Mr Hanna was convicted of workplace manslaughter and placed on a two-year Community Corrections Order.

#### Brisbane Auto Recycling Pty Ltd (Queensland)

**Facts:** In May 2019, Barry Willis, an employee at Brisbane Auto Recycling, received fatal injuries when a reversing forklift which was being operated by an inexperienced worker crushed him into a truck. An investigation into the company by Workplace Health and Safety Queensland revealed the company had inadequate safety measures in place and was in breach of various WHS requirements.

**Penalties:** The company was convicted of industrial manslaughter by the District Court of Queensland and fined A\$3 million. Both directors of the company were sentenced to 10 months suspended imprisonment.

<sup>1</sup> WHS Act 2011 (ACT) s 34A.

<sup>2</sup> WHS Act 2011 (Cth) s 30A.

<sup>3</sup> WHS Act 2011 (NT) s 34B.

<sup>4</sup> WHS Act 2011 (QLD) s 34C.

<sup>5</sup> OHS Act 2004 (VIC) s 39G.

<sup>6</sup> WHS Act 2012 (SA) s 30A.

<sup>7</sup> WHS Act 2020 (WA) s 30A.

<sup>8</sup> WHS Act 2011 (NSW) s 34C.

## Key takeaways

To avoid imprisonment and/or heavy fines which may not be (or cannot be) covered by insurance, it is crucial that employers implement comprehensive safety systems and comply with the relevant WHS laws. The importance of safety and the duty to be proactive in ensuring compliance with WHS duties should be emphasised to officers within the organisation, as well as the personal repercussions the industrial manslaughter offence may have on them in the case of a worker's death.

### What employers should do:

- Foster an organisational culture of compliance through safety policies and regulations above all other business priorities.
- Develop comprehensive safety systems and documentation processes.
- Ensure organisational compliance with the relevant WHS laws and regulations.
- Adopt a hard stance against employees and managers who act against the organisation's safety processes and rules.
- Conduct regular internal and external risk audits.

## Get in touch

This briefing provides a high-level summary of industrial manslaughter offence as it has been enacted and continues to be enacted across Australia. For more information, or if you would like advice about how your business can mitigate against the risk of officers being exposed to the industrial manslaughter offence through taking proactive measures to ensure compliance with their WHS duties, please contact the authors of this briefing or your usual HFW contact(s).

You can read our previous updates on recent amendments to the Fair Work Act here:

- [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023](#)
- [Regulated Labour Hire Reforms](#)
- [New Delegates' Rights Provisions](#)
- [An Employee's Right to Disconnect](#)

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