



New South Wales

Work Health and Safety Amendment (Industrial Manslaughter) Act 2024 No 43

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Work Health and Safety Amendment (Industrial Manslaughter) Act 2024 No 43

Act No 43, 2024

An Act to amend the *Work Health and Safety Act 2011* to create an offence of industrial manslaughter and to provide for matters relating to gross negligence; to amend the *Industrial Relations Amendment Act 2023* to remove a redundant provision; and for related purposes.
[Assented to 24 June 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Work Health and Safety Amendment (Industrial Manslaughter) Act 2024*.

2 Commencement

This Act commences as follows—

- (a) for Schedules 1[5]–[8] and 2—on the date of assent to this Act,
- (b) otherwise—on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10

[1] Part 2, Division 5, note

Omit “the *Crimes Act 1900* and may be”.

Insert instead “Part 2A and be prosecuted under this Act or may constitute manslaughter under the *Crimes Act 1900* and be”.

[2] Part 2A

Insert after Part 2—

Part 2A Industrial manslaughter

34B Definitions

In this part—

conduct means—

- (a) an act, or
- (b) an omission to perform an act.

health and safety duty has the same meaning as in Part 2, Division 5.

34C Offence of industrial manslaughter

A person commits industrial manslaughter if—

- (a) the person has a health and safety duty, and
- (b) the person is—
 - (i) a person conducting a business or undertaking, or
 - (ii) an officer of a person conducting a business or undertaking, and
- (c) the person engages in conduct that—
 - (i) for a person conducting a business or undertaking—
 - (A) constitutes a failure to comply with the person’s health and safety duty, and
 - (B) causes the death of a worker or another individual to whom the person’s health and safety duty is owed, or
 - (ii) for an officer of a person conducting a business or undertaking—
 - (A) constitutes a failure to comply with the officer’s health and safety duty, and
 - (B) causes the death of a worker or another individual to whom the person conducting a business or undertaking owes a health and safety duty, and
- (d) the person engages in the conduct with gross negligence.

Maximum penalty—

- (a) for an individual—imprisonment for 25 years, or
- (b) for a body corporate—\$20,000,000.

34D Exception for volunteers

A volunteer does not commit an offence against section 34C.

Note— A volunteer may still be liable for an offence of manslaughter under the *Crimes Act 1900*.

34E No limitation period for proceedings for offences against section 34C

Proceedings for an offence against section 34C—

- (a) may be commenced at any time after the commission of the offence, and
- (b) are not subject to any limitation period in section 232 or another statute of limitations that would otherwise operate to prevent the commencement of proceedings for the offence.

Note— See also Part 13, which provides for matters relating to legal proceedings under this Act, including that proceedings for an offence against section 34C committed by an individual must be dealt with on indictment.

34F Alternative verdict

- (1) If, on the trial of a person for an offence against section 34C, the court or jury is not satisfied the person is guilty but is satisfied the person is guilty of an offence against section 31—
 - (a) the court or jury may acquit the person of the offence charged and find the person guilty of an offence against section 31, and
 - (b) the person is liable to the punishment for the offence against section 31.
- (2) To avoid doubt, section 232 does not apply to proceedings to which this section applies.

[3] Section 216 Regulator may accept WHS undertakings

Insert “an offence against section 34C or” after “that is” in section 216(2).

[4] Section 229B Procedure for offences

Omit section 229B(2) and (3). Insert instead—

- (2) Proceedings for an offence against section 34C committed by an individual must be dealt with on indictment.
Note— The Industrial Court has only summary jurisdiction for criminal proceedings.
- (3) Proceedings for a Category 1 offence committed by an individual must be dealt with on indictment.
Note— Section 230 provides for who may bring proceedings for an offence against this Act.
- (3A) Proceedings for the following offences committed by a body corporate must be dealt with summarily unless the prosecutor elects to have the proceedings dealt with on indictment—
 - (a) an offence against section 34C,
 - (b) a Category 1 offence.

[5] Section 244B State of mind

Insert after section 244B(1)—

- (1A) For subsection (1), having a state of mind in relation to the commission of an offence does not include engaging in conduct with gross negligence.

[6] Section 244BA

Insert after section 244B—

244BA Gross negligence

- (1) This section applies if an offence against this Act is constituted by engaging in conduct with gross negligence.

- (2) The conduct may be established on the part of a body corporate, despite no individual authorised person of the body corporate having engaged in conduct with gross negligence, if the body corporate has engaged in conduct with gross negligence when viewed as a whole, determined by aggregating the conduct of more than 1 authorised person.
- (3) For subsection (2), engaging in conduct with gross negligence may be evidenced by the fact the conduct was substantially attributable to—
 - (a) inadequate corporate management, control or supervision of the conduct of 1 or more authorised persons, or
 - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

[7] Section 276B

Omit the section. Insert instead—

276B Review of certain provisions

- (1) The Minister must review the relevant provisions to determine whether—
 - (a) the policy objectives of the relevant provisions remain valid, and
 - (b) the terms of the relevant provisions remain appropriate for achieving the objectives.
- (2) The review must be undertaken as soon as possible after the period of 18 months from the commencement of the relevant provisions.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 3 months after the review is completed.
- (4) In this section—

relevant provisions means the provisions inserted or amended by the *Work Health and Safety Amendment (Industrial Manslaughter) Act 2024*, Schedule 1[1]–[4].

[8] Schedule 4 Savings, transitional and other provisions

Insert after clause 31—

Part 9 Provision consequent on enactment of Work Health and Safety Amendment (Industrial Manslaughter) Act 2024

32 Application of amendments

An amendment made to this Act by the *Work Health and Safety Amendment (Industrial Manslaughter) Act 2024* applies only in relation to conduct engaged in, or alleged to have been engaged in, on or after the commencement of the amendment.

Schedule 2 Amendment of Industrial Relations Amendment Act 2023 No 41

Schedule 2.35 Work Health and Safety Act 2011 No 10

Omit Schedule 2.35[3], to the extent it inserts proposed section 229B(3).

[Second reading speech made in—
Legislative Assembly on 4 June 2024
Legislative Council on 20 June 2024]