



New South Wales

# Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Work Health and Safety Act 2011 No 10</b>	<b>3</b>

*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments.*



New South Wales

## **Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021**

Act No           , 2021

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### **A Bill for**

An Act to amend the *Work Health and Safety Act 2011* to create an offence of industrial manslaughter; and for related purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

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This Act is the *Work Health and Safety Amendment (Industrial Manslaughter) Act 2021*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Work Health and Safety Act 2011</b>	1
	<b>No 10</b>	2
<b>Part 2A</b>		3
Insert after Part 2—		4
<b>Part 2A Industrial manslaughter</b>		5
<b>34B Definitions for Part 2A</b>		6
(1) In this Part—		7
<i>conduct</i> means—		8
(a) an act, or		9
(b) an omission to perform an act.		10
<i>executive officer</i> , of a body corporate, means a person who is concerned with,		11
or takes part in, the corporation's management, whether or not the person is a		12
director or the person's position is given the name of executive officer.		13
<i>senior officer</i> , of a person conducting a business or undertaking, means—		14
(a) if the person is a body corporate—an executive officer of the body		15
corporate, or		16
(b) otherwise—the holder of an executive position (however described) in		17
relation to the person who makes, or takes part in making, decisions		18
affecting all, or a substantial part, of the person's functions.		19
(2) For this Part, a person's conduct <i>causes</i> death if it substantially contributes to		20
the death.		21
<b>34C Exceptions</b>		22
(1) A volunteer does not commit an offence under this Part.		23
(2) Despite section 34(2), a senior officer of an unincorporated association (other		24
than a volunteer) may commit an offence under this Part.		25
<b>34D Industrial manslaughter—person conducting business or undertaking</b>		26
(1) A person conducting a business or undertaking (the <i>first person</i> ) commits an		27
offence if—		28
(a) a worker or other person—		29
(i) dies at a workplace at which work is carried out for the business		30
or undertaking, or		31
(ii) is injured at a workplace at which work is carried out for the		32
business or undertaking, and later dies, and		33
(b) the first person's conduct causes the death of the worker or other person,		34
and		35
(c) the first person engages in the conduct without reasonable excuse, and		36
(d) the first person is grossly negligent or reckless about causing the death		37
of the worker or other person by the conduct.		38
Maximum penalty—		39
(a) for an individual—25 years imprisonment, or		40
(b) for a body corporate—100,000 penalty units.		41

	<b>Note.</b> See section 244 or 251 in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.	1 2 3
	(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.	4 5
<b>34E</b>	<b>Industrial manslaughter—senior officer</b>	6
	(1) A senior officer of a person conducting a business or undertaking commits an offence if—	7 8
	(a) a worker or other person—	9
	(i) dies at a workplace at which work is carried out for the business or undertaking, or	10 11
	(ii) is injured at a workplace at which work is carried out for the business or undertaking, and later dies, and	12 13
	(b) the senior officer’s conduct causes the death of the worker or other person, and	14 15
	(c) the senior officer engages in the conduct without reasonable excuse, and	16
	(d) the senior officer is grossly negligent or reckless about causing the death of the worker or other person by the conduct.	17 18
	Maximum penalty—25 years imprisonment.	19
	(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.	20 21
<b>34F</b>	<b>Proceedings for offences by individuals to be taken on indictment</b>	22
	Proceedings for an offence under this Part committed by an individual are to be taken on indictment.	23 24