



New South Wales

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Work Health and Safety Act 2011* (***the Act***) to create an offence of industrial manslaughter and to provide for matters relating to gross negligence,
- (b) to make consequential amendments to the *Industrial Relations Amendment Act 2023*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Schedule 1[2] inserts proposed Part 2A to create the offence of industrial manslaughter.

Proposed section 34B inserts a definition of ***conduct*** for the proposed part.

Proposed section 34C creates the offence of industrial manslaughter. A person commits the offence if the person—

- (a) has a health and safety duty, and
- (b) is a person, or an officer of a person, conducting a business or undertaking, and

- (c) engages in certain conduct that causes the death of a worker or another individual to whom the person's health and safety duty is owed, and
- (d) engages in the conduct with gross negligence.

The maximum penalty for the offence is imprisonment for 25 years for an individual or \$20,000,000 for a body corporate.

Proposed section 34D exempts volunteers from the offence of industrial manslaughter. Proposed section 34E provides that there is no limitation period for commencing proceedings for an industrial manslaughter offence. Proposed section 34F provides for alternative verdicts, allowing a court or jury to find a person charged with industrial manslaughter guilty instead of a Category 1 offence, if proven. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[3] provides that a regulator cannot accept a written undertaking for a contravention or alleged contravention involving an offence under proposed section 34C.

Schedule 1[4] provides for court proceedings for an offence under proposed section 34C.

Schedule 1[6] provides for circumstances in which a body corporate has engaged in conduct with gross negligence. **Schedule 1[5]** makes a consequential amendment.

Schedule 1[7] provides for the Minister to review and report on certain provisions inserted or amended by the proposed Act to determine whether the policy objectives of the provisions remain valid and the terms appropriate for achieving the objectives. The review must be undertaken as soon as possible after 18 months from the commencement of the provisions, and a report on the outcome must be tabled in each House of Parliament within 3 months after the review is completed.

Schedule 1[8] contains a transitional provision consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Industrial Relations Amendment Act 2023 No 41

Schedule 2 make consequential amendments to the *Industrial Relations Amendment Act 2023*.



New South Wales

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

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

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

No. _____, 2024

A Bill for

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.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

The Legislature of New South Wales enacts—

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1 Name of Act

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

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2 Commencement

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This Act commences as follows—

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- (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.

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| Schedule 1 | Amendment of Work Health and Safety Act 2011 | 1 |
| | No 10 | 2 |
| [1] Part 2, Division 5, note | | 3 |
| | Omit “the <i>Crimes Act 1900</i> and may be”. | 4 |
| | Insert instead “Part 2A and be prosecuted under this Act or may constitute manslaughter under the <i>Crimes Act 1900</i> and be”. | 5 6 |
| [2] Part 2A | | 7 |
| | Insert after Part 2— | 8 |
| | Part 2A Industrial manslaughter | 9 |
| 34B Definition | | 10 |
| | In this part— | 11 |
| | conduct means— | 12 |
| | (a) an act, or | 13 |
| | (b) an omission to perform an act. | 14 |
| 34C Offence of industrial manslaughter | | 15 |
| | A person commits industrial manslaughter if— | 16 |
| | (a) the person has a health and safety duty, and | 17 |
| | (b) the person is— | 18 |
| | (i) a person conducting a business or undertaking, or | 19 |
| | (ii) an officer of a person conducting a business or undertaking, and | 20 |
| | (c) the person engages in conduct that— | 21 |
| | (i) constitutes a failure to comply with the person’s health and safety duty, and | 22 23 |
| | (ii) causes the death of a worker or another individual to whom the person’s health and safety duty is owed, and | 24 25 |
| | (d) the person engages in the conduct with gross negligence. | 26 |
| | Maximum penalty— | 27 |
| | (a) for an individual—imprisonment for 25 years, or | 28 |
| | (b) for a body corporate—\$20,000,000. | 29 |
| 34D Exception for volunteers | | 30 |
| | A volunteer does not commit an offence against section 34C. | 31 |
| | Note— A volunteer may still be liable for an offence of manslaughter under the <i>Crimes Act 1900</i> . | 32 33 |
| 34E No limitation period for proceedings for offences against section 34C | | 34 |
| | Proceedings for an offence against section 34C— | 35 |
| | (a) may be commenced at any time after the commission of the offence, and | 36 |
| | (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. | 37 38 39 |

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| 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. | 1 2 3 |
| 34F Alternative verdict | 4 |
| (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— | 5 6 7 |
| (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 | 8 9 |
| (b) the person is liable to the punishment for the offence against section 31. | 10 |
| (2) To avoid doubt, section 232 does not apply to proceedings to which this section applies. | 11 12 |
| [3] Section 216 Regulator may accept WHS undertakings | 13 |
| Insert “an offence against section 34C or” after “that is” in section 216(2). | 14 |
| [4] Section 229B Procedure for offences | 15 |
| Omit section 229B(2) and (3). Insert instead— | 16 |
| (2) Proceedings for an offence against section 34C committed by an individual must be dealt with on indictment. | 17 18 |
| Note— The Industrial Court has only summary jurisdiction for criminal proceedings. | 19 |
| (3) Proceedings for a Category 1 offence committed by an individual must be dealt with on indictment. | 20 21 |
| Note— Section 230 provides for who may bring proceedings for an offence against this Act. | 22 23 |
| (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— | 24 25 26 |
| (a) an offence against section 34C, | 27 |
| (b) a Category 1 offence. | 28 |
| [5] Section 244B State of mind | 29 |
| Insert after section 244B(1)— | 30 |
| (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. | 31 32 |
| [6] Section 244BA | 33 |
| Insert after section 244B— | 34 |
| 244BA Gross negligence | 35 |
| (1) This section applies if an offence against this Act is constituted by engaging in conduct with gross negligence. | 36 37 |
| (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. | 38 39 40 41 42 |

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| (3) | For subsection (2), engaging in conduct with gross negligence may be evidenced by the fact the conduct was substantially attributable to— | 1 2 |
| (a) | inadequate corporate management, control or supervision of the conduct of 1 or more authorised persons, or | 3 4 |
| (b) | failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate. | 5 6 |
| [7] | Section 276B | 7 |
| | Omit the section. Insert instead— | 8 |
| 276B | Review of certain provisions | 9 |
| (1) | The Minister must review the relevant provisions to determine whether— | 10 |
| (a) | the policy objectives of the relevant provisions remain valid, and | 11 |
| (b) | the terms of the relevant provisions remain appropriate for achieving the objectives. | 12 13 |
| (2) | The review must be undertaken as soon as possible after the period of 18 months from the commencement of the relevant provisions. | 14 15 |
| (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. | 16 17 |
| (4) | In this section— | 18 |
| | <i>relevant provisions</i> means the provisions inserted or amended by the <i>Work Health and Safety Amendment (Industrial Manslaughter) Act 2024</i> , Schedule 1[1]–[4]. | 19 20 21 |
| [8] | Schedule 4 Savings, transitional and other provisions | 22 |
| | Insert after clause 31— | 23 |
| Part 9 | Provision consequent on enactment of Work Health and Safety Amendment (Industrial Manslaughter) Act 2024 | 24 25 26 |
| 32 | Application of amendments | 27 |
| | An amendment made to this Act by the <i>Work Health and Safety Amendment (Industrial Manslaughter) Act 2024</i> applies only in relation to conduct engaged in, or alleged to have been engaged in, on or after the commencement of the amendment. | 28 29 30 31 |

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| Schedule 2 | Amendment of Industrial Relations Amendment Act 2023 No 41 | 1 |
| | | 2 |
| Schedule 2.35 | Work Health and Safety Act 2011 No 10 | 3 |
| | Omit Schedule 2.35[3], to the extent it inserts proposed section 229B(3). | 4 |