



New South Wales

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

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Work Health and Safety Act 2011* to insert a new Part 2A into the Act to create 2 new offences relating to industrial manslaughter.

The first offence (proposed section 34D) provides that a person conducting a business or undertaking commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the person conducting the business or undertaking and that person is negligent or reckless about causing the death.

The second offence (proposed section 34E) provides that a senior officer of a person conducting a business or undertaking also commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the senior officer and the senior officer is negligent or reckless about causing the death.

## 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 on the date of assent to the proposed Act.

**Schedule 1** amends the *Work Health and Safety Act 2011* for the purpose referred to in the Overview.



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

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New South Wales

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

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—**

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**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
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, whether or not in the course of carrying out work		31
for the business or undertaking, or		32
(ii) is injured at a workplace at which work is carried out for the		33
business or undertaking, whether or not in the course of carrying		34
out work for the business or undertaking, and later dies, and		35
(b) the first person’s conduct causes the death of the worker or other person,		36
and		37
(c) the first person is negligent or reckless about causing the death of the		38
worker or other person by the conduct.		39
Maximum penalty—		40
(a) for an individual—25 years imprisonment, or		41
(b) for a body corporate—100,000 penalty units.		42

**Note.** 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  
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**34E Industrial manslaughter—senior officer** 4

A senior officer of a person conducting a business or undertaking commits an offence if— 5  
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(a) a worker or other person— 7

(i) dies at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, or 8  
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(ii) is injured at a workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking, and later dies, and 11  
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(b) the senior officer's conduct causes the death of the worker or other person, and 14  
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(c) the senior officer is negligent or reckless about causing the death of the worker or other person by the conduct. 16  
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Maximum penalty—25 years imprisonment. 18