

INDUSTRIAL MANSLAUGHTER – NATIONAL UPDATE

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Australia Labour, Employment and Workplace Safety Alert

By: Paul Hardman, Alanna Fitzpatrick

The introduction of an industrial manslaughter offence in Queensland has kicked off debate throughout other Australian jurisdictions. With the upcoming national review of workplace health and safety laws, it is a timely reminder to consider possible changes in each Australian state.

In the face of the threat of imprisonment, it is essential that organisations and their officers are taking stock of their workplace health and safety systems and ensuring sound crisis management plans are implemented to enable the business to respond to a workplace fatality or serious workplace incident. A measured response and timely legal advice could be the difference between serious charges being laid.

Employers in states that are yet to introduce an offence of industrial manslaughter are not off the hook. There has been an increase in the number of prosecutions for reckless breaches of workplace health and safety laws and in circumstances where the breach results in a fatality, there has been an increase in penalties.

AUSTRALIAN CAPITAL TERRITORY

Apart from Queensland, the ACT is the only other Australian jurisdiction to have an industrial manslaughter offence. This offence has been in place in the ACT since 2004 but there have been no prosecutions under this provision.

QUEENSLAND

Since the industrial manslaughter laws entered into force on 12 October 2017, Queensland has been pushing for national industrial manslaughter laws to be introduced in other Australian jurisdictions, especially in light of the upcoming national review of workplace health and safety laws.

NEW SOUTH WALES

New South Wales had previously considered implementing industrial manslaughter offences in 2004/2005. There has been no recent discussion regarding the introduction of industrial manslaughter.

NORTHERN TERRITORY

Northern Territory unions have recently been lobbying the government to introduce industrial manslaughter laws

similar to those in Queensland. The Northern Territory Government has indicated that they are waiting for the national review of workplace health and safety laws prior to moving to introduce any industrial manslaughter offence.

SOUTH AUSTRALIA

The South Australian Labor party announced in January 2018 that they intend to introduce higher penalties for work health and safety offences that cause workplace deaths.

It is still unclear whether this will involve the introduction of industrial manslaughter provisions or only involve the increase of maximum penalties under the South Australian provisions.

TASMANIA

The Tasmanian Labor Party has indicated that if they win the upcoming March 3 state election to be held on March 3 2018, they will introduce industrial manslaughter offences. It is not part of the current Liberal Government's policy to introduce an industrial manslaughter offence.

VICTORIA

Victorian unions are starting to campaign heavily for the introduction of industrial manslaughter offences. With a state election scheduled in November this year this issue is likely to come to the fore.

WESTERN AUSTRALIA

When the current Labor Government was in opposition they promised to introduce 20-year jail terms for work-related reckless or gross negligent conduct. While no immediate action has been taken to progress this they have indicated that a new Workplace Health and Safety Bill (based on the harmonised laws) will be introduced mid-2019 which may incorporate industrial manslaughter offences.

WHAT SHOULD YOU DO?

No organisation is immune from the risk of a workplace fatality.

More than ever, businesses need to get on the front foot with safety management and undertake comprehensive reviews of safety systems and processes. Even businesses that are typically considered to be 'low risk' environments need to consider the possibility of workplace fatalities and make sure that controls are implemented to minimize those risks.

Organisations should also take the time to implement comprehensive crisis management plans. Timely legal advice, protection of key officers and processes to respond to workplace safety regulators are all critical aspects which should be addressed and put into place so that a rapid response can be put into action if the need ever unfortunately arises.

KEY CONTACTS



PAUL HARDMAN
PARTNER
BRISBANE
+61.7.3233.1248
PAUL.HARDMAN@KLGATES.COM



ALANNA FITZPATRICK
SPECIAL COUNSEL
BRISBANE
+61.7.3233.1251
ALANNA.FITZPATRICK@KLGATES.COM

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