

# Industrial manslaughter laws

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February 2024



## Key points

- In October 2023, the NSW Government announced that it would introduce industrial manslaughter laws with severe penalties for serious work health and safety breaches that result in death.
- In the general criminal law, there is an offence of manslaughter by criminal negligence, which has a maximum penalty of 20 years imprisonment. In NSW, it appears that there has only been one successful prosecution of this offence in the context of a workplace death.
- The most serious offence in the *Work Health and Safety Act 2011* (NSW) is the Category 1 offence of engaging in conduct with gross negligence or recklessness that exposes an individual to a risk of death or serious injury or illness. The maximum penalty is 5 years imprisonment for an individual and a fine of \$4 million for a corporation. From 1 July 2024, the maximum penalty will increase to 10 years imprisonment for an individual and \$10.4 million for a corporation.
- Since 2012, there have been 4 successful prosecutions of Category 1 offences in NSW – all involved a corporation rather than an individual. The maximum penalty imposed for this offence was a fine of \$2.025 million.
- In 2018 a Senate committee report on industrial deaths and a national review of work health and safety laws recommended introducing a new offence of industrial manslaughter. In contrast, Safe Work Australia’s 2019 advice to ministers did not recommend introducing this offence.
- The main argument for industrial manslaughter laws is that existing offences are inadequate for deterring and punishing grossly negligent safety breaches that result in a workplace death. Critics of these laws argue that existing offences are sufficient and that enacting new outcome-based offences interferes with the risk-based preventative framework of work health and safety laws.
- Since 2017, 6 states and territories have introduced industrial manslaughter offences into their work health and safety laws. These offences are similar to the Category 1 offence but only apply where there has been a workplace death and have much higher maximum penalties such as 25 years imprisonment.
- Since 2017, it appears that there have been 4 successful prosecutions for industrial manslaughter in other states and territories. Two of these cases have been finalised. In one, an individual was sentenced to 5 years imprisonment, suspended after 18 months; and in the other a corporation was fined \$3 million.

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# 1. Introduction

The issue of criminal responsibility for workplace deaths has generated debate in NSW and nationally for many years.<sup>1</sup> In the mid-2000s, the ACT enacted an industrial manslaughter offence in its *Crimes Act* while NSW and several other states made other reforms to their respective work health and safety laws to address this issue.<sup>2</sup> From 2011, NSW and most other states and territories adopted new model work health and safety laws which included an offence of recklessly exposing an individual to risk of death or serious injury. There have not been many successful prosecutions for this offence and there have been concerns about the leniency of penalties imposed in relation to workplace deaths.<sup>3</sup>

Since 2017 most states and territories have introduced industrial manslaughter offences into their work health and safety laws. This aligned with one of the recommendations of a 2018 national review of model work health and safety laws.

In NSW, the Coalition Government introduced some legislative reforms in 2020 but did not create an industrial manslaughter offence. In 2021, the Labor Opposition introduced a private members bill to create this offence in work health and safety laws.<sup>4</sup> The bill passed the Legislative Council but lapsed in the Legislative Assembly. In October 2023, the new Labor Government announced that it would introduce an industrial manslaughter offence in the first half of 2024. The government explained:

The new laws will ensure the most serious work health and safety breaches carry a severe penalty, sending a clear message that those who place a worker's life at risk will be held to account in the event of a workplace death.

Despite years of campaigning by the families of those killed at work, NSW is the last mainland state without an industrial manslaughter offence or legislation in parliament.<sup>5</sup>

The purpose of this paper is to put these proposed reforms in their current and historical context. The paper:

- Discusses the general criminal offence of manslaughter
- Outlines the key offences in past and present NSW work health and safety laws

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<sup>1</sup> See for example Legislative Council General Purpose Standing Committee No. 1, [Serious injury and death in the workplace](#), NSW Parliament, May 2004.

<sup>2</sup> See sections 4.2 and 8.1 of this paper.

<sup>3</sup> See for example L Matthews, R Johnstone, M Quinlan, O Rawlings-Way, & P Bohle, [Work fatalities, bereaved families and the enforcement of OHS legislation](#), *Journal of Industrial Relations*, 2019, 61(5), 637-656.

<sup>4</sup> [Work Health and Safety Amendment \(Industrial Manslaughter\) Bill 2021](#)

<sup>5</sup> S Cotsis, [Industrial manslaughter law to be introduced in NSW](#) [media release], NSW Government, 19 October 2023, accessed 15 November 2023. See also M McGowan, [Negligent employers face up to 20 years jail over worker deaths](#), *Sydney Morning Herald*, 18 October 2023, accessed 15 November 2023.

- Discusses 2018 national reviews of model work health and safety laws
- Summarises the arguments for and against industrial manslaughter laws
- Outlines and compares industrial manslaughter laws in other jurisdictions.

The paper does not consider other policy measures to reduce workplace fatalities, such as information and awareness raising, and strengthening compliance and enforcement.<sup>6</sup>

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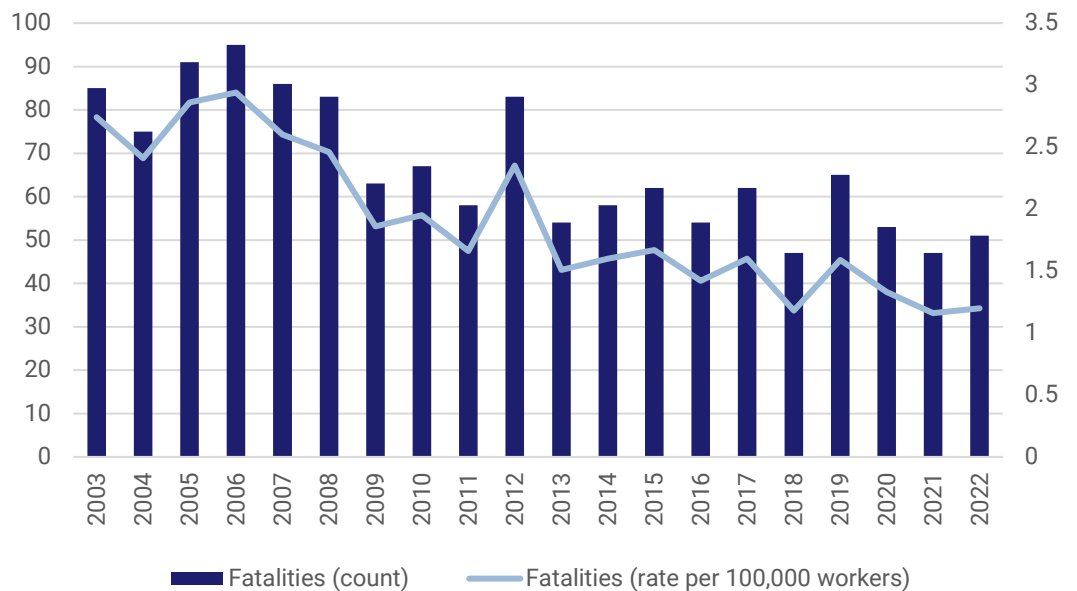
<sup>6</sup> See Safe Work Australia, [Australian Work Health and Safety \(WHS\) Strategy 2023-2033](#), 2023; and Safe Work NSW, [Our Regulatory Priorities 2023](#), 2023. Note that in relation to compliance and enforcement, the NSW Government commissioned an [Independent review of SafeWork NSW](#), with the report due by 29 November 2023.

## 2. Data on workplace deaths

### 2.1 New South Wales

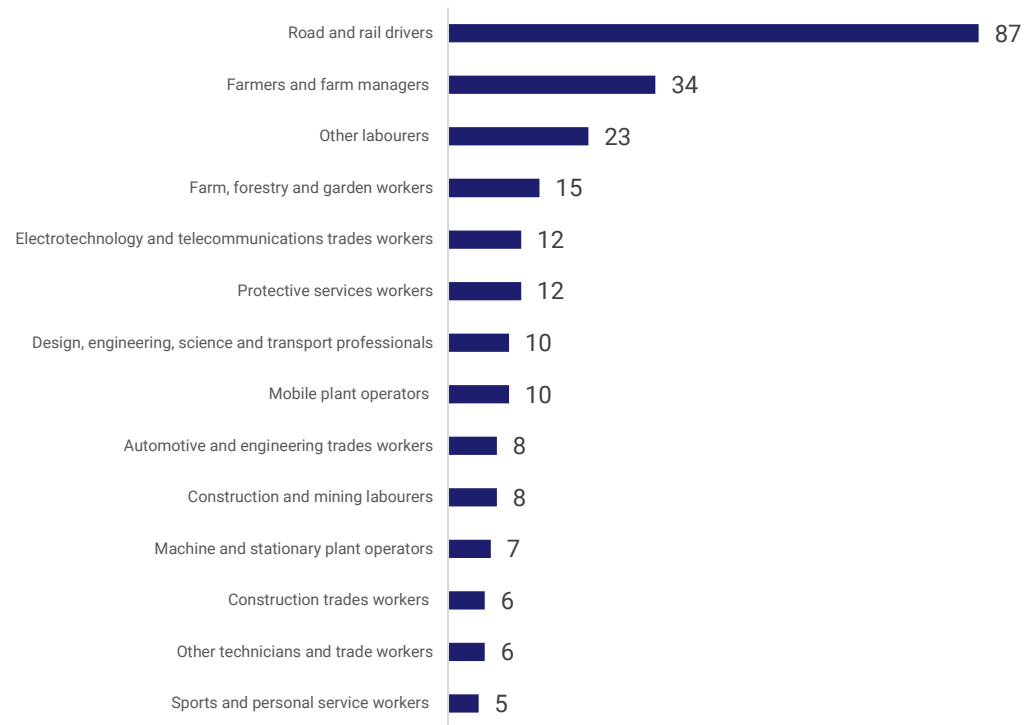
In 2022, there were 51 workplace deaths in NSW. Workplace deaths, both as a count, and as a rate per 100,000 workers, have decreased over the past 20 years (Figure 1). Between 2018 and 2022, the occupations with the highest number of workplace deaths were road and rail drivers, farmers and farm managers, and 'other labourers' (Figure 2).

**Figure 1: Workplace deaths in NSW, 2003-2022**



Source: SafeWork Australia, [Work-related fatalities](#), interactive dashboard.

**Figure 2: Workplace deaths in NSW, 2018-2022, by occupation\***



Source: SafeWork Australia, [Work-related fatalities](#), interactive dashboard.

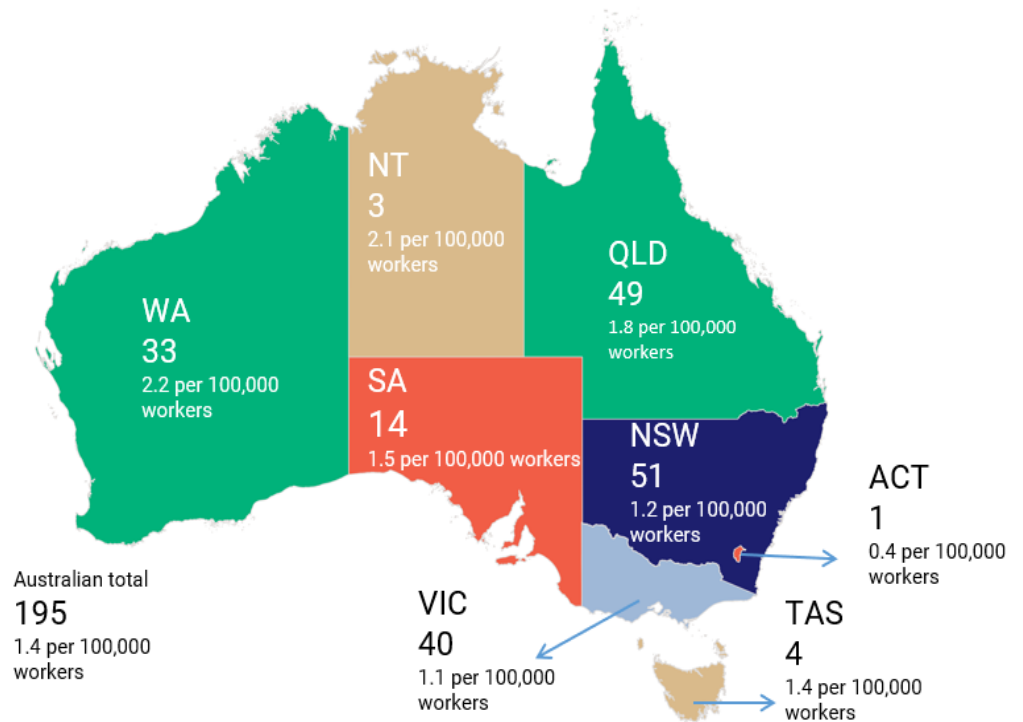
\*Note that Figure 2 only shows occupations which had 5 or more fatalities in this period.



## 2.2 Comparisons with other states

While NSW had the highest number of workplace deaths in Australia in 2022, it had one of the lowest rates of workplace deaths (1.2 per 100,000 workers) (Figure 3).

**Figure 3: Workplace deaths in Australia, by jurisdiction, 2022**



Source: SafeWork Australia, [Key Work Health and Safety Statistics Australia, 2023](#), 2023.

## 3. General criminal law offences

### 3.1 Manslaughter by criminal negligence

In NSW, the general criminal law is largely set out in the [Crimes Act 1900 \(NSW\)](#). Part 3, Division 1 of the Act contains the offences of homicide. Section 18 defines the elements of murder and states that every other punishable homicide that doesn't meet this definition is taken to be manslaughter. The maximum penalty for murder is life imprisonment (s 19A), whereas the maximum penalty for manslaughter is 25 years imprisonment (s 24).

There are some partial defences to murder that reduce the crime to manslaughter. These include extreme provocation (s 23), substantial impairment because of mental health impairment or cognitive impairment (s 23A) and excessive self-defence (s 421). More relevant in the context of workplace deaths is the common law offence of manslaughter by criminal negligence. To establish this offence, the prosecution needs to prove beyond reasonable doubt that the accused owed a legal duty of care to the deceased and that the act by the accused which caused the death was done:

...in circumstances which involved such a great falling short of the standard of care which a reasonable man would have exercised and which involved such a high risk that death or grievous bodily harm would follow that the doing of the act merited criminal punishment.<sup>7</sup>

The offence can also apply where an omission rather than an act caused the death.<sup>8</sup> Many cases of manslaughter by criminal negligence involve the failure of parents to obtain medical assistance for their children following the infliction of injuries.<sup>9</sup>

### 3.2 Prosecutions in relation to workplace deaths

A 2004 NSW parliamentary committee report noted that 'there has been no successful prosecution of an individual for manslaughter arising from a workplace fatality.'<sup>10</sup> The difficulties of prosecuting this offence included the high level of negligence that needed to be proved, and the difficulty in attributing criminal liability to a corporation (often the employer was a corporation rather than an individual). In criminal law, it was only those people who were the 'controlling mind' of the corporation, whose conduct could be attributed to it (known as the 'identification doctrine'). The report stated that it was 'rare

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<sup>7</sup> Nydam [1977] VR 430 at 445. See also *Lavender* [2005] HCA 37.

<sup>8</sup> *R v Moore* [2015] 91 NSWLR 276.

<sup>9</sup> Judicial Commission of NSW, [Sentencing Benchbook - Manslaughter and infanticide](#), accessed 15 December 2023.

<sup>10</sup> Legislative Council General Purpose Standing Committee No. 1, [Serious injury and death in the workplace](#), NSW Parliament, May 2004, p 125-129.

that decisions affecting the health and safety of workers are made by a person senior enough to be classified as the “controlling mind and will” of the corporation.’<sup>11</sup>

A 2009 report by the NSW Law Reform Commission identified only 2 successful prosecutions of corporations for manslaughter in relation to workplace deaths, one in Victoria and one in NSW.<sup>12</sup> In 1994, a small Victorian company was found guilty of manslaughter by criminal negligence and fined \$120,000. In 2008 the operator of a small business in NSW plead guilty to manslaughter by criminal negligence and received a suspended sentence of 2 years imprisonment.

The most recent case of a successful manslaughter prosecution in relation to a workplace death appears to be a 2017 South Australian case.<sup>13</sup> A truck driver died when his truck crashed due to brake failure. The owner of the company had known for several months that the brakes were faulty and had done nothing about it. He was found guilty of manslaughter and sentenced to 9 years imprisonment for this offence.<sup>14</sup>

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<sup>11</sup> Legislative Council General Purpose Standing Committee No. 1, *Serious injury and death in the workplace*, NSW Parliament, May 2004, p 129. For further reading on the difficulty of prosecuting corporations and corporate officers, see R Johnstone, *Work Health and Safety Law Reform in Australia—The Recent Industrial Manslaughter Provisions*, *Journal of Work Health Safety Regulation*, 2023; 1, pp 155–163.

<sup>12</sup> NSW Law Reform Commission, *Workplace deaths*, Report 122, July 2009, p 16.

<sup>13</sup> *R v Colbert* [2017] SASCFC 29.

<sup>14</sup> The total sentence for this offence and another offence of endangering life was 12 years imprisonment.

## 4. Previous work health and safety offences in NSW

### 4.1 The 2000 Act

In 1983, NSW enacted a new form of occupational health and safety law which placed broad performance-based duties on employers, employees, and others to ensure the health and safety of employees and all persons at work.<sup>15</sup> Breaches of these duties would constitute an offence under the Act. Following a review, the 1983 Act was replaced by a similar [Occupational Health and Safety Act 2000 \(NSW\)](#) (OH&S Act).

A key offence in the OH&S Act was the failure by an employer to comply with its duty to, so far as is reasonably practicable, ensure the health, safety and welfare at work of all employees (s 8, 12). The maximum penalty was a fine of \$55,000 in the case of individuals and \$550,000 for corporations (s 12). Higher maximum penalties applied in the case of repeat offenders including 2 years imprisonment for a repeat individual offender.

Corporate liability could be extended to directors and managers if they were in a position to influence the conduct of the corporation in relation to its contravention, and they failed to exercise due diligence to ensure that the corporation complied with its duty (s 26).

### 4.2 New workplace death offence in 2005

A 2004 parliamentary committee report on workplace deaths and serious injuries made several recommendations including that ‘discrete and specific offences of “corporate manslaughter” and “gross negligence by a corporation causing serious injury” be enacted in the *Crimes Act 1900* (NSW).’<sup>16</sup> The committee commented:

The Committee agrees that current manslaughter laws mean it is difficult to successfully prosecute a corporation for manslaughter where gross negligence leads to the death of a worker. The Committee also believes that the primary objective of any criminal law amendment should be to increase corporate criminal responsibility generally.<sup>17</sup>

In contrast, a report in June 2004 to the WorkCover Authority of NSW by an expert panel recommended the creation of a separate offence in the OH&S Act in relation to workplace

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<sup>15</sup> [Occupational Health and Safety Act 1983 \(NSW\)](#). See R McCallum et al, *Advice in relation to workplace death, occupational health and safety legislation and other matters: Report to WorkCover Authority of NSW*, June 2004, p 4-6.

<sup>16</sup> Legislative Council General Purpose Standing Committee No. 1, [Serious injury and death in the workplace](#), NSW Parliament, May 2004, Rec 26.

<sup>17</sup> Legislative Council General Purpose Standing Committee No. 1, [Serious injury and death in the workplace](#), NSW Parliament, May 2004, p 144.

deaths, with higher penalties and more penalty options.<sup>18</sup> The expert panel referred to 'the failure of [OH&S] sentencing patterns to keep pace with legislated increases in maximum penalties'; and it concluded that a new offence would be the best way to ensure workplace deaths 'are dealt with appropriately and that the necessary deterrent effect is achieved.'<sup>19</sup>

In 2005 the NSW Government introduced an offence into the OH&S Act of reckless conduct causing death at a workplace.<sup>20</sup> The government stated that the new offence was 'aimed at a small minority of rogues whose indifference to health and safety in the workplace results in death'.<sup>21</sup> The maximum penalties were a fine of \$165,000 and/or up to 5 years imprisonment for individuals, and a fine of \$1.65 million for corporations. It was a defence to the offence if there was a reasonable excuse for the conduct. There was no definition of 'recklessness' in the legislation but the government said:

"Recklessness" has been defined as heedless or careless conduct where the person can foresee some probable or possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences.<sup>22</sup>

#### 4.3 Review of this offence in 2009

A review by the NSW Law Reform Commission in 2009 noted that 'there have been no prosecutions under the new offence.'<sup>23</sup> Instead, there were prosecutions for breaches of the general duties in the OH&S Act, which resulted in fines varying from \$85,000 to \$214,000.<sup>24</sup> The review also referred to the development of national model OH&S laws, including the proposed Category 1 offence (see section 5.1), and stated that if this approach were adopted 'there would not be any need for a separate workplace deaths offence.'<sup>25</sup>

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<sup>18</sup> R McCallum et al, *Advice in relation to workplace death, occupational health and safety legislation and other matters: Report to WorkCover Authority of NSW*, June 2004, p 11.

<sup>19</sup> R McCallum et al, *Advice in relation to workplace death, occupational health and safety legislation and other matters: Report to WorkCover Authority of NSW*, June 2004, p 11.

<sup>20</sup> [Occupational Health and Safety Amendment \(Workplace Deaths\) Act 2005 \(NSW\)](#). For reforms in other states and territories around this time, see section 8.1 below.

<sup>21</sup> K Hickey, [Occupational Health and Safety Amendment \(Workplace Deaths\) Bill](#), *NSW Hansard*, 27 May 2005.

<sup>22</sup> K Hickey, [Occupational Health and Safety Amendment \(Workplace Deaths\) Bill](#), *NSW Hansard*, 27 May 2005.

<sup>23</sup> NSW Law Reform Commission, [Workplace deaths](#), Report 122, July 2009, p x.

<sup>24</sup> NSW Law Reform Commission, [Workplace deaths](#), Report 122, July 2009, p 4.

<sup>25</sup> NSW Law Reform Commission, [Workplace deaths](#), Report 122, July 2009, p 7.

## 5. Current work health and safety offences in NSW

### 5.1 The 2011 Act

Model work health and safety (WHS) laws were developed at the national level from 2009 following a national review.<sup>26</sup> The model WHS laws were implemented by most states and territories through separate legislation.<sup>27</sup> The [Work Health and Safety Act 2011 \(NSW\)](#) (‘the Act’) enacted the model laws in NSW, with some modifications.

Like its predecessor, the Act imposes duties on several persons including a person conducting a business or undertaking (PCBU).<sup>28</sup> A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers engaged by the PCBU and workers whose activities are influenced or directed by the PCBU (s 19). An officer of a PCBU also has a duty to exercise due diligence to ensure the PCBU complies with their duty (s 27).

There are 2 categories of offences that relate to breaches of these duties which expose an individual to a risk of death. The offences are risk-based offences (involving a risk of death) that can be prosecuted regardless of whether an individual has actually died. The most serious (Category 1) offence is set out in section 31:

#### 31 Gross negligence or reckless conduct—Category 1

- (1) A person commits a Category 1 offence if—
- (a) the person has a health and safety duty, and
  - (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and
  - (c) the person—
    - (i) engages in the conduct with gross negligence, or
    - (ii) is reckless as to the risk to an individual of death or serious injury or illness.

If this offence is committed by an individual as a PCBU, or as an officer of a PCBU, the maximum penalty is 5 years imprisonment or a fine of \$798,383, or both. If the offence is committed by a body corporate, the maximum penalty is a fine of \$4 million.<sup>29</sup>

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<sup>26</sup> See Workplace Relations Ministers’ Council, [National Review into model occupational health safety laws: First Report](#), Australian Government, October 2008.

<sup>27</sup> Victoria is now the only jurisdiction that has not adopted the model laws.

<sup>28</sup> Person includes an individual, a corporation and a body corporate: see [Interpretation Act 1987](#), Schedule 1.

<sup>29</sup> Section 242B of the Act specifies the value of a penalty unit. The court can also make a range of other orders in relation to an offender: see Part 13, Div 2 (Sentencing for offences).

The next most serious offence (Category 2) is in section 32:

**32 Failure to comply with health and safety duty—Category 2**

A person commits a Category 2 offence if—

- (a) the person has a health and safety duty, and
- (b) the person fails to comply with that duty, and
- (c) the failure exposes an individual to a risk of death or serious injury or illness.

If this offence is committed by an individual as a PCBU, or an officer of a PCBU, the maximum penalty is a fine of \$399,479. If the offence is committed by a body corporate, the maximum penalty is a fine of \$2 million.<sup>30</sup>

The Act contains provisions to impute the conduct of individuals to a body corporate in certain circumstances. Until recent changes, section 244 stated (in part):

**244 Imputing conduct to bodies corporate**

- (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.
- (2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

## 5.2 Amendments after 2018 Boland review

In 2020, the Act was amended to implement some recommendations of the 2018 Boland review of model work health and safety laws (the review is discussed section 6.2).<sup>31</sup> One of the amendments related to the Category 1 offence. Prior to the amendment, the offence only included the culpability element of recklessness. The 2020 amendment added the alternative element of 'gross negligence'. It appears that this term was intended to have a similar meaning to criminal negligence.<sup>32</sup> An amendment also inserted a note into the Act stating that 'in certain circumstances, the death of a person at work may also constitute manslaughter under the Crimes Act 1900 and may be prosecuted under that Act.'

A 2020 parliamentary committee report on the Bill discussed the omission of an industrial manslaughter offence from the Bill and concluded:

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<sup>30</sup> Section 242B of the Act specifies the value of a penalty unit. The court can also make a range of other orders in relation to an offender: see Part 13, Div 2 (Sentencing for offences).

<sup>31</sup> [Work Health and Safety Amendment \(Review\) Act 2020 \(NSW\)](#).

<sup>32</sup> K Anderson, [Work Health and Safety Amendment \(Review\) Bill 2019](#), Hansard, 12 November 2019.

The committee notes a divergence of views on the issue of the appropriateness of introducing an offence of industrial manslaughter. Additionally, amongst those supporting such an offence, at this stage, there seems no clear agreement upon the model to be adopted. The committee is therefore of the view that stakeholders should continue to engage in this issue.<sup>33</sup>

As noted earlier, in 2021 the NSW Labor Opposition introduced a private members bill in the to create an offence of industrial manslaughter.<sup>34</sup> The proposed offence carried a maximum penalty of 25 years imprisonment in the case of an individual. The Bill passed the Legislative Council but lapsed in the Legislative Assembly.

In October 2023, the Act was amended to implement some of the remaining recommendations of the 2018 Boland review. This included an increase to maximum penalties from 1 July 2024, including a large increase in penalties for Category 1 offences (Table 1), and strengthening the provision on imputing conduct to bodies corporate.<sup>35</sup>

**Table 1: Penalties for Category 1 offences from 1 July 2024**

	Individuals and officers*	Body corporate
Currently	5 years or \$798,383	\$4 million
From 1 July 2024	10 years or \$2.2 million	\$10.4 million

\*If they are a person conducting a business or undertaking (PCBU) or an officer of a PCBU

### 5.3 Prosecutions of Category 1 offence

Between January 2012 and September 2023 there were 4 successful prosecutions of a Category 1 offence in NSW (Table 2).<sup>36</sup> In all cases, the defendant was a company and plead guilty to the offence. The largest penalty imposed was a fine of \$2.025 million.

<sup>33</sup> Legislative Council Portfolio Committee No. 1 - Premier and Finance, [Work Health and Safety Amendment \(Review\) Bill 2019](#), Report 49, NSW Parliament, March 2020, p 13.

<sup>34</sup> [Work Health and Safety Amendment \(Industrial Manslaughter\) Bill 2021](#)

<sup>35</sup> [Work Health and Safety Amendment Act 2023 \(NSW\)](#). See also S Cotsis, [New laws bring tougher penalties, longer imprisonment and better protections for dust diseases](#) [media release], NSW Government, 10 October 2023.

<sup>36</sup> Data provided on request to research service by NSW Bureau of Crime Statistics and Research, January 2024.



**Table 2: Successful prosecutions of Category 1 offences**

Year	Summary	Fine
2018	Judith Liehr, the partner of a mine worker, died by electrocution due to a faulty electrical switchboard in a cottage owned by the mining company. Dangerous electrical voltage was present in the metallic fixtures of the cottage as a result of a fault in the low voltage system of the mine. The company did not ensure that the switchboard was installed by a qualified electrician. <sup>37</sup>	\$900,000
2021	A blast fired at a quarry resulted in flyrock being ejected and landing near 11 spectators exposing them to a risk of death or serious injury (there were no actual deaths or injuries). <sup>38</sup> The company had not set up an adequate blast exclusion zone.	\$300,000
2022	Christopher Cassaniti, a formwork apprentice died when a large scaffold structure collapsed onto him. A co-worker was seriously injured. The collapse of the scaffold was due to several failures including overloading, a lack of vertical bracing, and the removal of ties and transoms (horizontal beams). <sup>39</sup>	\$2 million
2023	Samuela Cirivakayawa, a trainee groundsman at a tree services company, was fatally injured when he was drawn into the hopper of the woodchipper he was operating. The company had allowed the machine to be operated contrary to safety warnings and he was not given proper training. <sup>40</sup>	\$2.025 million

<sup>37</sup> [Stephen James Orr v Cudal Lime Products Pty Ltd; Stephen James Orr v Simon Shannon](#) [2018] NSWDC 27. Note that an employee of the company also plead guilty to a *Category 2 offence* and was fined \$48,000.

<sup>38</sup> [McColm v Hamiltons Blasting Services Pty Ltd; McColm v Hamilton](#) [2021] NSWDC 688. Note the manager of the blasting activities also plead guilty to a *Category 2 offence* was fined \$22,500.

<sup>39</sup> [SafeWork NSW v Synergy Scaffolding Services Pty Ltd](#) [2022] NSWDC 584. Note that another company – the principal contractor - also plead guilty to a *Category 2 offence* and was fined \$900,000: see [SafeWork NSW v GN Residential Construction Pty Ltd](#) [2020] NSWDC 764.

<sup>40</sup> [SafeWork NSW v A1 Arbor Tree Services Pty Ltd and Anor](#) [2023] NSWDC 256. Note that the manager and supervisor at the site plead guilty to a *Category 2 offence* and was fined \$112,500.

## 6. National reviews of model work health and safety laws

### 6.1 Senate committee

A 2018 Senate committee report on industrial deaths in Australia made several recommendations including adding a new industrial manslaughter offence to the model work health and safety laws.<sup>41</sup> The report commented:

...the committee is persuaded by the evidence received during the inquiry illustrating that the current legislative and regulatory framework is inadequate. It is absolutely necessary for corporate entities to be held accountable for their actions, including facing prosecution for industrial manslaughter for the worst examples of corporate or individual behaviour.<sup>42</sup>

Coalition senators did not support this recommendation, stating in part:

...The introduction of industrial manslaughter laws would not take account of the serious, criminal sanctions already in place for workplace fatalities in the model Work Health Safety (WHS) laws and in general criminal laws.<sup>43</sup>

The Coalition Government's response to the committee report made a similar argument.<sup>44</sup>

### 6.2 Boland review

A separate review in 2018 of the model work health and safety laws by Marie Boland made 2 key recommendations in relation to offences. The first was to introduce 'gross negligence' as a fault element of the existing Category 1 offence.<sup>45</sup> The report explained:

This change to the model WHS Act will assist prosecutors to secure convictions for the most egregious breaches of duties. This will assist in addressing community concerns that many

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<sup>41</sup> Senate Education and Employment References Committee, [They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia](#), Parliament of Australia, October 2018, Rec 13.

<sup>42</sup> Senate Education and Employment References Committee, [They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia](#), Parliament of Australia, October 2018, p 58.

<sup>43</sup> Senate Education and Employment References Committee, [They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia](#), Parliament of Australia, October 2018, p 99-100.

<sup>44</sup> Australian Government, [Australian Government response to the Senate Education and Employment References Committee report: They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia](#), December 2018, p 12-13.

<sup>45</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, Rec 23(a).

PCBUs accused of serious WHS breaches are escaping punishment because the bar for conviction is set too high.<sup>46</sup>

The second recommendation was for a new offence of industrial manslaughter ('gross negligence causing death') to be added to the model laws.<sup>47</sup> The report stated:

The growing public debate about including an offence of industrial manslaughter in the model WHS laws was reflected in consultations for this Review. I consider that this new offence is required to address increasing community concerns that there should be a separate industrial manslaughter offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death. It is also required to address the limitations of the criminal law when dealing with breaches of WHS duties. More broadly, the ACT and Queensland have already introduced industrial manslaughter provisions, with other jurisdictions considering it, and so this new offence also aims to enhance and maintain harmonisation of the WHS laws.<sup>48</sup>

The review also recommended increasing the penalty levels in the model laws to reflect increases in consumer price index and in the value of penalty units since 2011, and the development of sentencing guidelines.<sup>49</sup>

### 6.3 Safe Work Australia's advice to ministers

In December 2019 SafeWork Australia provided work health and safety ministers with a decision regulation impact statement that analysed the likely impacts of the Boland review recommendations.<sup>50</sup> Based on its analysis, SafeWork Australia recommended including gross negligence as a fault element in the Category 1 offence but did not recommend introducing a new offence of industrial manslaughter.<sup>51</sup> Safe Work Australia did not believe that introducing such an offence would lead to more prosecutions for serious breaches of work health and safety laws.<sup>52</sup> It also suggested that implementing the review's recommendations relating to penalties would make the penalty for the Category 1 offence more consistent with penalties for industrial manslaughter.<sup>53</sup>

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<sup>46</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, p 122.

<sup>47</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, Rec 23(b).

<sup>48</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, p 10.

<sup>49</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, recs 22 and 25.

<sup>50</sup> Safe Work Australia, [Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws](#), Australian Government, December 2019.

<sup>51</sup> Safe Work Australia, [Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws](#), Australian Government, December 2019, p 59ff.

<sup>52</sup> Safe Work Australia, [Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws](#), Australian Government, December 2019, p 72-73.

<sup>53</sup> Safe Work Australia, [Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws](#), Australian Government, December 2019., p 73.

## 6.4 Recent reforms to model laws

At the meeting of work health and safety ministers in May 2021, it was agreed that 35 of the review recommendations would be implemented including introducing 'gross negligence' as a fault element of the existing Category 1 offence, increasing penalties for all offences, and considering significant increases to penalties in relation to Category 1 offences.<sup>54</sup> A majority of ministers did not support amending the model WHS Act to include an industrial manslaughter offence.<sup>55</sup> In June 2022, the updated model WHS Act incorporating various amendments was published on the Safe Work Australia website.<sup>56</sup>

At a February 2023 meeting of work health and safety ministers, and in contrast to the 2021 meeting, ministers agreed to amend the model laws to include a note stating that each jurisdiction may insert local provisions to create an offence of industrial manslaughter.<sup>57</sup> They also agreed to include model penalty amounts for the offence of industrial manslaughter: 20 years' imprisonment for individuals and \$18 million for a body corporate. In July 2023, SafeWork Australia published an amendment to the model laws to reflect this and to increase penalties for all offences.<sup>58</sup>

Note that amendments to the model laws do not automatically come into effect across Australia. To have effect in a jurisdiction, the amendments must be enacted in that jurisdiction.<sup>59</sup> As noted in section 5.2 above, amendments were made to the NSW Act in 2020 and 2023 to implement some of the changes to the model laws.

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<sup>54</sup> Safe Work Australia, [Implementation of WHS ministers' agreed response to the Review of the model WHS laws](#), Australian Government, accessed 15 November 2023.

<sup>55</sup> Safe Work Australia, [Explanatory Memorandum to the Model Work Health and Safety Legislation Amendment \(Offences and Penalties\) 2023](#), Australian Government, 2023, p 2.

<sup>56</sup> Safe Work Australia, [Amendments to the model WHS laws](#) [media release], 6 June 2022.

<sup>57</sup> Department of Employment and Workplace Relations, [Work Health and Safety Ministers' Meeting – 28 February 2023](#), accessed 15 November 2023.

<sup>58</sup> Safe Work Australia, [Amendments to the model WHS laws](#) [media release], 27 July 2023. See also Safe Work Australia, [Implementation of WHS ministers' agreed response to the Review of the model WHS laws](#), accessed 15 November 2023.

<sup>59</sup> Safe Work Australia, [Amendments to the model WHS laws](#) [media release], 27 July 2023.

## 7. Debate about industrial manslaughter laws

### 7.1 Arguments for the laws

As can be seen from the previous section, the main argument for industrial manslaughter laws is that the general law offence of manslaughter and work health and safety offences are inadequate for deterring and punishing grossly negligent safety breaches that result in a person's death. A 2017 Queensland report stated:

... there is a gap in the current offence framework as it applies to corporations, specifically that existing manslaughter provisions in the Queensland Criminal Code only apply to individuals as opposed to corporations which makes it challenging to find a corporation criminally responsible. Additionally, a new offence is considered necessary and appropriate to deal with the worst examples of failures causing fatalities, the expectations of the public and affected families where a fatality occurs, and to provide a deterrent effect.<sup>60</sup>

A 2020 NSW parliamentary committee report noted that unions strongly supported the introduction of industrial manslaughter laws 'due to its deterrent impact, as a reflection of society expectations on workplace safety, to support uniformity across jurisdictions and as a way to ensure the regulator is more responsive to workplace deaths.'<sup>61</sup> In 2021, when introducing a private members bill into the NSW Parliament Adam Searle, said:

...legislation is required to enable the prosecution of industrial manslaughter and to fundamentally change the approach across industry in order to raise the standard and embed a culture of workplace safety of a much higher and more stringent nature. We need a culture that supports workplace safety in our State, not a culture...that allows and encourages the cutting of corners and the fostering of unsafe workplaces...The community expects that when a person is killed at work those responsible should be held properly to account. Clearly, that is not happening under the existing law or its enforcement.<sup>62</sup>

### 7.2 Arguments against the laws

The Boland review noted the following criticisms of industrial manslaughter laws:

...many parties, particularly industry and business representatives and some legal commentators, opposed the introduction of an industrial manslaughter offence under the model WHS laws and continued to support the risk-based framework for offences (that is, proof of harm is not required and offences apply where there is exposure to the risk).

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<sup>60</sup> T Lyons, [Best practice review of workplace health and safety Queensland: final report](#), July 2017, p 113.

<sup>61</sup> Legislative Council Portfolio Committee No. 1 - Premier and Finance, [Work Health and Safety Amendment \(Review\) Bill 2019](#), Report 49, NSW Parliament, March 2020, p 8.

<sup>62</sup> A Searle, [Work Health and Safety Amendment \(Industrial Manslaughter\) Bill 2021](#), *NSW Hansard*, 5 May 2021.

I acknowledge in this context the recent paper 'Industrial manslaughter reform: The rise of a solution not fit for purpose', which highlights a number of reasons why the authors consider industrial manslaughter provisions to be an ineffective solution for the issues it is trying to address. These include that such offences interfere with the risk-based preventative framework of the WHS laws; the full extent of enforcement under the current offences in the WHS laws has not yet been realised; and just because an offence is on the books does not mean it will be used...<sup>63</sup>

The paper referred to in this quotation suggested that other reforms would be more effective in relation to enforcement and penalties for workplace deaths such as reviewing the effectiveness of training and procedures for workplace inspectors, increasing penalties for existing offences, or introducing sentencing guidelines.<sup>64</sup>

A decision regulation impact statement from SafeWork Australia in 2019 stated:

No submission to the 2018 Review or Consultation [Regulation Impact Statement] provided sufficient evidence to determine the adequacy or otherwise of the current offences and penalties (the status quo) or why, compared to the current offences framework, an outcome-based offence of industrial manslaughter would result in better health and safety outcomes and therefore decrease workplace fatalities.<sup>65</sup>

A 2020 NSW parliamentary committee report noted that industry stakeholders were opposed to industrial manslaughter laws.<sup>66</sup> In debate on Labor's 2021 industrial manslaughter bill, Scott Farlow, for the Coalition said:

The Government has already taken significant steps to improve work health and safety. This bill has a number of major flaws and deviates from the preventative, risk-based approach applied to the model national work health and safety laws which New South Wales indeed supports. For these reasons, the Government opposes the bill.<sup>67</sup>

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<sup>63</sup> M Boland, [Review of the model Work Health and Safety laws Final report](#), December 2018, p 119-120.

<sup>64</sup> Clyde & Co, [Industrial manslaughter reform: the rise of a solution not fit for purpose](#), August 2018, p 23-27.

<sup>65</sup> Safe Work Australia, [Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws](#), Australian Government, December 2019, p 72. See also R Sarre, [Why industrial manslaughter laws are unlikely to save lives in the workplace](#), *The Conversation*, 5 June 2018.

<sup>66</sup> Legislative Council Portfolio Committee No. 1 - Premier and Finance, [Work Health and Safety Amendment \(Review\) Bill 2019](#), Report 49, NSW Parliament, March 2020, p 10.

<sup>67</sup> S Farlow, [Work Health and Safety Amendment \(Industrial Manslaughter\) Bill 2021](#), *NSW Hansard*, 10 November 2021.

## 8. Industrial manslaughter laws in other states and territories

### 8.1 Background

In 2003, the ACT introduced an 'industrial manslaughter' offence, with a maximum penalty of 20 years imprisonment.<sup>68</sup> This offence was inserted into the *Crimes Act 1900* (ACT). At around the same time, several other states and territories introduced into their work health and safety laws 'provisions imposing higher maximum penalties where an incident resulted in death, serious injury or a serious risk of death and serious injury, and where there was an element of mental intention.'<sup>69</sup> In contrast to the ACT offence, these provisions did not use the term 'industrial manslaughter'.<sup>70</sup> The highest maximum penalty imposed by the various provisions was 5 years imprisonment. According to a 2013 article, it appeared that these provisions had 'been little used.'<sup>71</sup> As noted earlier, the model work health and safety laws were introduced in most Australian jurisdictions from 2011.

### 8.2 Current laws

Between 2017 and 2021, Queensland, the Northern Territory, Victoria, Western Australia, and the ACT all introduced new industrial manslaughter offences into their work health and safety laws.<sup>72</sup> The Queensland reforms in 2017 followed a recommendation in a state level review of work health and safety laws that was prompted by fatalities at Dreamworld and Eagle Farm Race course.<sup>73</sup> In 2023 the South Australian Government introduced a Bill to enact an industrial manslaughter offence in work health and safety laws.<sup>74</sup> The Bill was passed by parliament on 28 November 2023.<sup>75</sup>

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<sup>68</sup> The 2003 offence was introduced by the [Crimes \(Industrial Manslaughter\) Amendment Act 2003 \(ACT\)](#).

<sup>69</sup> R Johnstone, [Work health and safety and the criminal law in Australia](#), *Policy and Practice in Health and Safety*, 2013, 11(2), pp 25-44, at p 38-39. The NSW provisions were discussed in section 4.2 above.

<sup>70</sup> For example, the Victorian offence was titled 'Duty not to recklessly endanger persons at workplaces', the South Australian offence was titled 'Offence to endanger persons in workplaces', and the Western Australian provisions referred to a breaching a duty 'in circumstances of gross negligence'.

<sup>71</sup> R Johnstone, [Work health and safety and the criminal law in Australia](#), *Policy and Practice in Health and Safety*, 2013, 11(2), pp 25-44, at p 39.

<sup>72</sup> [Work Health and Safety and Other Legislation Amendment Act 2017 \(QLD\)](#), [Work Health and Safety \(National Uniform Legislation\) Amendment Act 2019 \(NT\)](#), [Workplace Safety Legislation Amendment \(Workplace Manslaughter and Other Matters\) Act 2019 \(VIC\)](#), [Work Health and Safety Act 2020 \(WA\)](#), [Work Health and Safety Amendment Act 2021 \(ACT\)](#). Note that the new ACT provisions replaced the 2003 *Crimes Act* provisions.

<sup>73</sup> T Lyons, [Best practice review of workplace health and safety Queensland: final report](#), July 2017, p 113. See also T Lyons, [Best Practice Review of Workplace Health and Safety in the Northern Territory](#), January 2019, Rec 19.

<sup>74</sup> [Work Health and Safety \(Industrial Manslaughter\) Amendment Bill 2023](#). See also K Maher, [SA to introduce laws to criminalise industrial manslaughter](#) [media release], SA Government, 5 July 2023.

<sup>75</sup> See SafeWork SA, [Industrial manslaughter to be criminalised in SA](#), 29 November 2023, accessed 5 December 2023.

In September 2023 the Commonwealth Government introduced a Bill to create a new offence of industrial manslaughter in Commonwealth work health and safety laws.<sup>76</sup> It should be noted that these laws only apply to the Commonwealth and Commonwealth public authorities that conduct a business or undertaking. The Bill was passed by parliament on 7 December 2023.

A summary of the current industrial manslaughter offences in the jurisdictions that have them is presented in Table 3.<sup>77</sup> The current offences look very similar to Category 1 offences in current NSW WHS legislation. The main differences are that in the industrial manslaughter offences:

- The offender's reckless or negligent conduct 'causes the death' of a person, rather than exposing a person to 'a risk of death or serious injury'
- The maximum penalties are significantly higher, in line with penalties for the general criminal offence of manslaughter.

There are many similarities between the various jurisdictional industrial manslaughter laws but also some differences. Differences include:

- In most jurisdictions, the offence can apply where the conduct causes the death of a worker or another person. In Queensland, the offence only applies where the conduct causes the death of a worker.
- In some jurisdictions the offence is committed where a person is reckless or negligent (ACT, NT, SA, CTH), whereas in other jurisdictions the offence is only committed where a person is negligent (QLD, VIC).
- In some jurisdictions the elements of the offence are the same for a person conducting a business or undertaking (PCBU) and an officer of a PCBU (ACT, NT, QLD, SA, CTH), whereas in others they are not (VIC, WA).
- There is some variation in the maximum penalties. The Northern Territory has the highest penalty for an individual (life imprisonment). Victoria has the highest penalty for a body corporate (\$19.2 million).<sup>78</sup>

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<sup>76</sup> [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023](#). See also T Burke, [Albanese Labor Government to criminalise industrial manslaughter](#) [media release], 2 September 2023.

<sup>77</sup> For a recent article on Tasmania, see S Ross, [A Tasmanian mother whose son died in the Hillcrest jumping castle tragedy is pushing for law reform](#), ABC News, 24 January 2024, accessed 5 February 2024.

<sup>78</sup> See also R Johnstone, [Work Health and Safety Law Reform in Australia—The Recent Industrial Manslaughter Provisions](#), *Journal of Work Health Safety Regulation*, 2023; 1, pp 155–163.



**Table 3: Summary of industrial manslaughter laws in Australia**

	<b>Legislation</b>	<b>Person</b>	<b>Conduct</b>	<b>Culpability</b>	<b>Maximum penalty</b>
ACT	<a href="#">Work Health and Safety Act 2011</a> s 34A	A person who conducts a business or undertaking (PCBU) or an officer of a PCBU	The person engages in conduct that results in a breach of their health and safety duty and causes the death of a worker or other person	The person is reckless or negligent about causing the death of the worker or other person by the conduct	Individual – 20 years Body corporate - \$16.5m
Commonwealth	<a href="#">Fair Work Legislation Amendment (Closing Loopholes) Act 2023</a> Inserting section 30A into the <a href="#">Work Health and Safety Act 2011</a>	A PCBU or officer of a PCBU	The person intentionally engages in conduct that breaches their health and safety duty and the conduct causes the death of an individual	The person was reckless, or negligent, as to whether the conduct would cause the death of an individual	Individual – 25 years Body corporate - \$18m
Northern Territory	<a href="#">Work Health and Safety (National Uniform Legislation) Act 2011</a> s 34B	A PCBU or an officer of a PCBU	The person intentionally engages in conduct that breaches their health and safety duty and causes the death of an individual to whom the duty is owed	The person is reckless or negligent about the conduct breaching the health and safety duty and causing the death of that individual	Individual – life Body corporate – \$11.4m
Queensland	<a href="#">Work Health and Safety Act 2011</a> s 34C, 34D	A PCBU or a senior officer of a PCBU	The person’s conduct causes the death of a worker	The person is negligent about causing the death of the worker by the conduct	Individual – 20 years Body corporate - \$15.5m

	Legislation	Person	Conduct	Culpability	Maximum penalty
South Australia	<a href="#">Work Health and Safety (Industrial Manslaughter) Amendment Act 2023</a> Inserting section 30A into the <a href="#">Work Health and Safety Act 2012</a>	A PCBU or an officer of a PCBU	The person engages in conduct that breaches their health and safety duty and the conduct causes the death of an individual to whom the duty was owed	The person engages in the conduct with gross negligence as defined in section 4 or is reckless as to the risk to an individual of death or serious injury or illness	Individual – 20 years Body corporate- \$18m
Victoria	<a href="#">Occupational Health and Safety Act 2004</a> s 39G	A person or an officer of a body corporate, an unincorporated body or association, or a partnership	The person's conduct constitutes a breach of an applicable duty that the person owes to another person and that causes the death of that other person*	The person's conduct is negligent as defined in s 39E	Individual – 25 years Body corporate – \$19.2m
Western Australia	<a href="#">Work Health and Safety Act 2020</a> s 30A	A PCBU or an officer of a PCBU	The person's conduct constitutes a failure to comply with the person's health and safety duty and causes the death of an individual*	The person knows that the conduct is likely to cause the death of, or serious harm to, an individual and the person disregards that likelihood*	Individual – 20 years and a fine of \$5m Body corporate – \$10m

\* In these jurisdictions, the provisions relating to this element of the offence are different depending on whether the relevant person is a PCBU or an officer of a PCBU.

### 8.3 Prosecutions of these offences

Since 2017, it appears that there have been 4 successful prosecutions for industrial manslaughter in other states and territories. Two of these cases have been finalised whereas the other 2 have not yet reached the sentencing stage.

In one Queensland case, a worker suffered fatal injuries when a forklift reversed and crushed him against a truck.<sup>79</sup> The business had no documented safety systems and the driver of the forklift was unlicensed. The company plead guilty to industrial manslaughter and was fined \$3 million. Two directors of the company also plead guilty to a Category 1 offence and received a suspended sentence of 10 months imprisonment.

In another Queensland case, a worker was fatally injured when he was crushed by a falling generator that was being moved from the back of a truck by forklift.<sup>80</sup> The business had no documented safety systems and the driver of the forklift, who was also the business owner, was unlicensed. The business owner was found guilty of industrial manslaughter and was sentenced to 5 years imprisonment, suspended after 18 months.

In 2 other cases reported in the media, an individual or company has plead guilty to industrial manslaughter but has not yet been sentenced. In a Victorian case, a worker died when a forklift moving stone slabs tipped over on top of him.<sup>81</sup> In a Queensland case, a worker spotting for a crane operator died when the crane crashed into him.<sup>82</sup>

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<sup>79</sup> Office of the Work Health and Safety Prosecutor, [Independent WHS Prosecutor secures \\$3M fine in first industrial manslaughter conviction](#) [media release], Queensland Government, 11 June 2020. See also [R v Brisbane Auto Recycling Pty Ltd & Ors \[2020\] QDC 113](#).

<sup>80</sup> Office of the Work Health and Safety Prosecutor, [First conviction of an individual for industrial manslaughter in Queensland](#), Queensland Government, n.d., accessed 15 November 2023. See also [R v Jeffrey Owen \[2022\] QDC 325](#). See also A Girle, [Industrial manslaughter – 5 years in](#), *Proctor*, 7 September 2022.

<sup>81</sup> B Carlson, [Laith Hanna pleads guilty to workplace manslaughter after death of Michael Tsahrelis at Somerton stone warehouse](#), *Herald Sun*, 10 October 2023, accessed 15 November 2023; and M Proust, [Man fronts court on workplace manslaughter charge after new laws introduced in Victoria](#), *Herald Sun*, 2 November 2023, accessed 15 November 2023.

<sup>82</sup> E Turner, [Kamndiin Turner killed in Gold Coast crane crash, driver Lyall Tadman faces Beenleigh Court](#), *Mercury*, 31 January 2024, accessed 7 February 2024.



**Industrial manslaughter laws**

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Research Paper No. 2024-02

ISSN 2653-8318

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