INDUSTRIAL MANSLAUGHTER – UP TO 20 YEARS IMPRISONMENT AND MAXIMUM AUD10 MILLION FINE FOR CORPORATE OFFENDERS

Date: 13 October 2017

Australia Labour, Employment and Workplace Safety Alert

By: Paul Hardman, Alanna Fitzpatrick

On Thursday 12 October 2017, the Queensland Parliament introduced legislation creating the criminal offence of 'Industrial Manslaughter' despite strong opposition from business and industry groups and concerns about the effect this will have on the national harmonisation of Workplace Health and Safety laws.

INDUSTRIAL MANSLAUGHTER

The Queensland Government has passed the *Work Health and Safety and Other Legislation Amendment Bill*, which can expose senior officers to a maximum of 20 years imprisonment if their conduct substantially contributes to the death of a worker.

Companies can now also be penalised up to AUD10 million if the company's gross negligence results in the death of a worker.

The offence of industrial manslaughter will be committed where a Company or Executive Officer's conduct substantially contributes to the death. Industrial manslaughter may be considered in circumstances where an act or omission amounts to gross negligence causing death.

Importantly, by way of amendments made prior to the bill passing, defendants will not be able to rely on the defence of 'accident' to avoid liability.

PRACTICAL IMPACT?

Advocates for this legislation have focussed on the desire of parliament to hold individuals in large corporations liable for the deaths of workers where their conduct substantially contributes to the death of a worker.

The amendments define 'Executive Officers', as a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer. It appears that this is aimed at senior executives and directors of large organisations.

The difficulty which is not contemplated by the amendments to the *Work Health and Safety Act 2011* (WHS Act) is that workplace safety is never the responsibility of one person in an organisation. Workplace fatalities are complex and rarely as a direct result of acts or decisions made by an individual or an executive officer within an organisation.

Ordinarily, a workplace fatality can be traced back to a number of small and seemingly inconsequential decisions made by various employees at different levels in an organisation, sometimes over many years. Typically, these

©2005-2026 K&L Gates LLP. All Rights Reserved.

decisions will not meet the common sense threshold of being considered to significantly contribute to a workers' death.

It is difficult to predict how Workplace Health and Safety Queensland will grapple with this when undertaking workplace fatality investigations and how what might be run-of-the-mill decisions made by senior officers and individuals will be scrutinised.

INVESTIGATION AND ENFORCEMENT

The Industrial Manslaughter offences are serious criminal offences, which expose individuals to the prospect of up to 20 years imprisonment. It is significant that the new offences are dealt with in the WHS Act, and not the Criminal Code.

The inclusion of these offences within the WHS Act allow Inspectors to exercise coercive powers to require individuals to answer questions or produce documents even if the answers or documents would incriminate them personally.

There is statutory protection which restricts the information derived from the exercise of these powers being used against an individual, but it remains to be seen how inspectors will exercise these powers when conducting investigations following a workplace fatality.

IMPACT ON HARMONISATION

The new industrial manslaughter law will take Queensland out of step with approaches in other states. Only the Australian Capital Territory currently has similar laws, which have never been tested or used. The Queensland Government has indicated that it will push for the industrial manslaughter provisions to be adopted across all harmonised jurisdictions as part of an upcoming Safe Work Australia review of the national model health and safety laws.

The new industrial manslaughter provisions create a significant new burden for those businesses that operate across interstate borders and are a considerable departure from harmonised workplace health and safety laws.

HOW CAN QUEENSLAND EMPLOYERS PROTECT THEMSELVES AND THEIR OFFICERS?

Employers must ensure WHS Act compliance and take active steps to preserve the safety of all people at work. The purpose of the WHS Act, including these recent amendments, is to set up practices to prevent workplace injuries and deaths.

Organisations need to carefully consider how these support and guide their officers and executives in decision-making. Policies should be developed and training delivered regularly to stress the importance of considering workplace safety in all decision-making and regular audits undertaken to ensure that this is occurring.

©2005-2026 K&L Gates LLP. All Rights Reserved.

KEY CONTACTS



PAUL HARDMAN
PARTNER

BRISBANE
+61.7.3233.1248
PAUL.HARDMAN@KLGATES.COM



ALANNA FITZPATRICK
PARTNER

BRISBANE
+61.7.3233.1251
ALANNA.FITZPATRICK@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.