

VICTORIA LEGISLATES WORKPLACE MANSLAUGHTER

Date: 6 December 2019

Australia Labour, Employment and Workplace Safety Alert

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WHAT IS HAPPENING?

The State of Victoria has become the latest Australian jurisdiction to make *'Workplace Manslaughter'* a criminal offence, with significant penalties and potential imprisonment for individuals guilty of the offence.

Two new indictable Victorian offences will be inserted under the *Victorian Occupational Health and Safety Act 2004* (OH&S Act) and will commence on a day to be proclaimed or on the default commencement date of 1 July 2020. The maximum penalty for an employer is 100,000 penalty units (currently AUD16.5 million) and for an officer of a company 20 years in jail.

According to the Explanatory Memorandum, the maximum penalties are intended to deter organisations and officers from breaching their occupational health and safety duties, and encourage them to allocate appropriate resources and training to improve workplace safety. ¹

Northern Territory has also followed suit and passed the *Work Health and Safety (National Uniform Legislation) Amendment Bill 2019* on 27 November 2019, introducing the offence of industrial manslaughter, with maximum penalties of life imprisonment for individuals and 65,000 penalty units (currently AUD10.205 million) for bodies corporate.

The *Work Health and Safety Bill 2019* (WHS) WA was introduced to WA parliament last week and proposes the introduction of two separate industrial manslaughter offences, carrying a maximum penalty of AUD10 million for bodies corporate and up AUD5 million and 20 years jail for an individual. We will watch the WHS bill closely as it progresses through WA parliament.

WHAT ARE THE DETAILS OF WORKPLACE MANSLAUGHTER?

Under the new sections in Victoria, a body corporate or individual may be guilty of the offence of workplace manslaughter if they have engaged in negligent conduct in breach of an applicable duty and that conduct causes the death of a person.

The key concept introduced by the new provisions is "negligent conduct", which is defined to mean:

- a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in; and
- causes a high risk of death, serious injury or serious illness. ²

This definition is based on the common law standard of criminal negligence in Victoria and the Explanatory Memorandum makes it clear that the new provisions are intended to apply to occupational diseases which would be deemed a serious illness. In addition, the legislation will cover suicide that arises as result of workplace conduct, such as extreme workplace bullying.

In determining whether conduct is negligent, what matters is the conduct engaged in by the body corporate itself. The standard of care to be applied when assessing the conduct is that which would have been taken by a reasonable body corporate in the circumstances.³

Conduct is only to be imputed to a body corporate when an individual is acting within the actual or apparent scope of their employment or authority⁴. This means that a body corporate will not be held accountable for a rogue employee, agent or officer who acted contrary to the actions or directions of a body corporate.

When assessing whether an individual officer is negligent and guilty of workplace manslaughter, a Court may have regard to the officer's knowledge of the matter concerned, the extent of the officer's ability to make or participate in decisions affecting the corporation relating to the matter, and whether the contravention by the body corporate is attributable to an act or omission of another person.

NOW WHAT?

The key objects of the new Victorian provisions are to prevent workplace deaths and to deter those that owe duties under the legislation from breaching those duties.

You can prepare your organisation for the introduction of these offences in Victoria and likely more broadly across the country by:

- reviewing your safety standards and the steps taken to prevent or minimise the risk of death, or serious injury or serious illness and considering whether they meet the standard of care to avoid a finding of negligent conduct
- reviewing compliance with occupational health and safety obligations
- reminding all officers that they owe personal duties and that the safety of all people in the workplace (employees or otherwise) must be the priority
- conducting training with officers within your organisation to increase awareness on what these laws mean.

Footnotes

¹[Workplace Safety Legislation Amendment \(Workplace Manslaughter and Other Matters\) Bill 2019, Explanatory Memorandum.](#)

²[New section 39E](#)

³[New section 39E\(2\)\(d\)](#)

⁴[New section 39E\(2\)](#)

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