

Industrial manslaughter laws in Australia

WESTERN AUSTRALIA

The new Work Health and Safety Bill was introduced to Parliament in November 2019. The Bill includes simple and indictable IM offences with maximum penalties of 20 years' imprisonment or a fine of \$5m for an individual, and \$10m for a body corporate, and includes an offence for insuring or indemnifying the cost of WHS penalties.

NATIONAL MODEL LAWS

The national review of the model WHS laws was released in February 2019. It recommended national adoption of IM offences. At the 2018 ALP National Conference the party passed a resolution calling for IM offences.

The 2017 Best Practice Review of WHS Queensland made a number of recommendations, including considering re-introducing the reverse onus of proof to require the defendant to establish that it met its duties, and creating an offence for insuring the cost of WHS penalties (as already exists in New Zealand).

NORTHERN TERRITORY

The *Work Health and Safety (National Uniform Legislation) Amendment Act 2019 (NT)* commenced on 1 February 2020. It includes an IM offence with a maximum penalty of life imprisonment or 65,000 penalty units (>\$10m).

WHS IM OFFENCE ESTABLISHED
23 OCTOBER 2017

WHS IM OFFENCE ESTABLISHED
1 MARCH 2004

SOUTH AUSTRALIA

The Work Health and Safety (Industrial Manslaughter) Amendment Bill 2019 was tabled by the Greens in May 2019, but has since lapsed.

It is not clear if it will be re-introduced. The ALP has indicated that it would "carefully consider" the introduction of IM laws. However, the incumbent Liberal Government is unlikely to support any proposed IM law.

WHS IM OFFENCE COMMENCED
1 FEBRUARY 2020

WHS IM OFFENCE TO COMMENCE
1 JULY 2020

VICTORIA

The *Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019 (VIC)* was passed in November 2019, and comes into operation on a day to be proclaimed or 1 July 2020, at the latest. It includes an IM offence with a maximum penalty of 100,000 penalty units (\$16,522,000) or 20 years' imprisonment. The Victorian Government has introduced the Crimes Amendment (Manslaughter and Related Offences) Bill 2020 which, when passed, will increase the maximum penalty for workplace manslaughter from 20 to 25 years' imprisonment.

QUEENSLAND

The first prosecution under the IM provisions of the *Work Health and Safety Act 2011* is currently underway. An IM offence was introduced in this Act, the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011 (Qld)*, commencing 2017. The Queensland Government has also introduced the *Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Qld)* which, if passed, will extend the IM offence to the resources sector.

NEW SOUTH WALES

The NSW state government recently rejected the case for introducing IM laws. Recently the NSW Government (which has not yet proposed the introduction of an IM offence), introduced a Bill to amend its Crimes Act to include a note that work-related manslaughter offences may be prosecuted under the ordinary criminal law. The Bill also lowers the threshold of the legal test required to be established in order to achieve a Category 1 prosecution under the NSW WHS Act.

TASMANIA

The current Coalition Government has no policy to introduce new IM laws. The ALP (Tas) promised to introduce the new IM offence if it was elected, and we presume it will carry the same promise to the next election in or before 2022.

AUSTRALIAN CAPITAL TERRITORY

The ACT IM offence sits outside the WHS regime. It was introduced into the *Crimes Act 1900 (ACT)* and commenced operation in 2004. It carries maximum penalties of 20 years' imprisonment or 2000 penalty units (\$320,000 for an individual or \$1,620,000 for a corporation).