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Industrial Manslaughter

Recently, considerable concern has been expressed by unions, families of employees killed in work incidents, and the general public about the ability of traditional occupational health and safety legislation to properly deal with workplace fatalities. Firstly, there has been criticism about the adequacy of penalties imposed for breaches, particularly monetary fines on large profitable companies. Secondly, there are considerable legal difficulties in prosecuting corporations for criminal negligence or recklessness.

There are two possible ways of dealing with workplace death resulting from negligent or reckless conduct of the employer. The first is through specific industrial manslaughter offence provisions in a state or territory’s criminal laws, as exists in the Australian Capital Territory which was the first jurisdiction to introduce industrial manslaughter laws. The second is under occupational health and safety legislation as a separate category, which appears to be the preferred choice by other states and territories. In Queensland, the approach has been to impose harsh penalties under the Workplace Health and Safety Act 1995, including imprisonment, for breach of health and safety obligations that result in a workplace death.

This Research Brief considers the perceived difficulties of prosecuting corporations for workplace fatalities caused by negligent or reckless conduct and the arguments in support of, and against, an industrial manslaughter offence. Recent legislative changes to deal with workplace deaths in a number of jurisdictions, including the Australian Capital Territory, New South Wales, Victoria and Western Australia, are also discussed.

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EXECUTIVE SUMMARY

National Occupational Health and Safety Commission data reveals that in the period from 1 July 2003 to 30 June 2004 there were 144 notified work-related fatalities in Australia (126 workers and 18 bystanders). A recent International Labour Organisation factsheet reveals that 2.2 million deaths worldwide each year are work-related. This surpasses war-related deaths: pages 1-3.

Work-related injuries in Queensland have decreased over recent years. The annual rate for severe injuries is 16.4 compensated claims per 1,000 employees during 2004-2005, a drop of over 30% since the 1999-2000 financial year. The Queensland Workers’ Compensation Regulatory Authority (Q-Comp) Statistical Report 2004-2005 recorded that compensated intimated fatalities for the 2004-2005 financial year were 124 (although 29 deaths were from journeys to and from work): pages 3-5.

All Australian jurisdictions have workplace health and safety legislation and workplace safety policies. In Queensland, the major piece of relevant legislation is the Workplace Health and Safety Act 1995 (Qld). Until recently, such legislation in Australia and many other countries was based on the Roben’s model. Under this model, broad obligations, supported by offences and penalties, are imposed on employers, designers and others to ensure, as far as practicable, the health and safety of workers and others. However, sanctions are seen a last resort based on the belief that improvements in safety at work could be achieved through employer and employee consultation and the activities of diligent health and safety inspectors: pages 5-8.

Recently, considerable concern has been expressed by unions, families of employees killed in work incidents, and the general public about the ability of traditional occupational health and safety legislation to properly deal with workplace fatalities. Firstly, there has been criticism about the adequacy of penalties imposed for breaches, particularly monetary fines on large profitable companies. Secondly, there are considerable legal difficulties in prosecuting corporations for criminal negligence or recklessness. While corporations act through directors and chief executives – the directing minds and wills of a corporation – it is rare that directors and chief executives actually engage in the negligent or reckless conduct causing the death in question. Thus, there has been only one successful prosecution of a company for manslaughter work-related death so far in Australia: pages 8-11.

There are conflicting views regarding the introduction of specific industrial manslaughter laws, with opponents believing that the current occupational health and safety legislation provides sufficient scope (albeit underutilised) for prosecuting negligent or reckless employers. On the other hand, supporters of industrial manslaughter laws believe that it puts the punishment for reckless or negligent acts causing death in the workplace on a level with such conduct outside the workplace, such as negligent driving: pages 11-14.

There are two possible ways of dealing with workplace death resulting from negligent or reckless conduct of the employer. The first is through specific
industrial manslaughter offence provisions in a state or territory’s criminal laws, as exists in the Australian Capital Territory. The second is under occupational health and safety legislation as a separate category, which appears to be the preferred choice by other states and territories. The arguments for each approach are set out on pages 14-16.

The Australian Capital Territory became the first Australian jurisdiction to introduce an actual offence of ‘industrial manslaughter’ when the Crimes (Industrial Manslaughter) Act 2003 inserted Part 2A into the Crimes Act 1900 to create two industrial manslaughter offences – an ‘employer offence’ (which includes corporations) and a ‘senior officer offence’. The laws commenced on 1 March 2004. The maximum penalty is 20 years imprisonment or a fine of $200,000, or both, for an individual. The maximum penalty for a corporation is $1 million: pages 16-19.

The New South Wales Government amended the Occupational Health and Safety Act 2000 in June 2005 to cover a workplace death due to the conduct of a person or corporation owing a health and safety duty in circumstances in which the person or corporation is reckless as to the danger of death or serious injury. The consequences are a fine of up to $1.65 million for a corporation and up to $165,000 and/or up to five years imprisonment for an individual (with no differentiation between first and subsequent offenders): pages 19-22.

The Victorian Occupational Health and Safety Act 2004 came into effect on 1 July 2005. The maximum penalty for contravention of the general safety duties in Part 3 is $943,290 for a corporation and up to $188,658 and/or five years imprisonment for an individual. Pursuant to s 32, a person who, without lawful excuse, recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence and liable to a term of imprisonment of up to 5 years, or a fine of up to $188,658 for an individual; and a fine of up to $943,290 for a corporation: pages 22-25.

The amendments made to the Western Australian Occupational Health and Safety Act 1984 came into effect on 1 January 2005. These include an expansion of the general duties of care and substantial increases in penalties, especially for corporations, including a provision for imprisonment in cases involving serious harm or death when the breach constitutes gross negligence. A corporation will face a maximum penalty of $500,000 for a first offence and a subsequent offence will attract a maximum fine of $625,000. An individual can be fined a maximum of $250,000 for a first offence and $312,500 for a subsequent offence and, in each case, is liable to be imprisoned for up to two years: pages 25-26.

In Queensland, Part 3 of the Workplace Health and Safety Act 1995 imposes obligations on a number of persons, including employers, to ensure workplace health and safety. The laws were strengthened by legislation taking effect in 2003. If there is a breach of duty and the breach causes multiple deaths, the penalty is a fine of up to $150,000 or three years imprisonment (and $750,000 for a corporation). If the breach causes death or grievous bodily harm, the penalty is a fine of up to $75,000 or 2 years imprisonment ($375,000 for a corporation). If the breach causes bodily harm, or involves exposure to a substance likely to cause death or grievous bodily harm, the person can be fined up to $56,200 or imprisoned for up to 1 year ($281,250) for a corporation. On 18 September 2000, the
Queensland Government released a *Dangerous Industrial Conduct Discussion Paper* which canvassed offences similar to those in the ACT industrial manslaughter legislation *pages 26-31*.

The position in other *Australian jurisdictions* is also considered on *pages 31-34* as well as recent developments in the *United Kingdom*, on *pages 34-36*. 
1 BACKGROUND

National Occupational Health and Safety Commission data reveals that in the period from 1 July 2003 to 30 June 2004 there were 144 notified work-related fatalities in Australia (126 workers and 18 bystanders). It was found that 34% of all worker fatalities were aged 55 or more although this age group represents only around 12% of the nation’s workforce. Workers under 20 years of age made up 8% of worker fatalities, with this age group making up 7% of the labour force.

The majority (49%) of worker fatalities occurred in the following industries: agriculture, forestry and fishing (33%) and construction (23%) followed by transport and storage (8%).

The bulk of notified fatalities occurred in the labourer and related workers group, making up 38% of the total number of notified deaths. However, this group represents just 9% of the workforce. There were 23 deaths among intermediate production and transport workers and 22 deaths of tradespersons and related workers.

The main causes of death were being hit by moving objects (29 incidents, 12 of which were pedestrians hit by moving vehicles), falls from a height (22 deaths), electrocution (12 deaths), being trapped between stationary and moving objects or being trapped by moving machinery (24 fatalities). Tractors, trucks, semi-trailers and lorries were responsible for 29 deaths. 24 deaths were caused by ‘machinery and mainly fixed plant’ such as power lines. Activities relating to the outdoor environment accounted for 21 notified deaths.

It should also be noted that bystanders made up 12 of all notified fatalities, mainly from motor vehicle accidents.

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Some samples from the NOHSC’s Statistical Report include the following incidents between July 2003 and June 2004 –

- a man was fatally crushed when he was attempting to load a ride-on mower onto a trailer and it rolled back onto him;

- an electrician repairing a faulty valve in an air-conditioning duct made a circuit between the motor and the metal frame of the roof causing him to sustain a fatal electric shock;

- a man supervising the operation of a wood chipper was killed when he was struck by a disc from the chipper which had broken free due to machinery failure;

- a sub-contractor was carrying out roof installation works at a site when he fell 14.5 metres to the ground and was killed; and

- a man sustained fatal head injuries when an end cap weighing about 40 kg attached to a water pipe blew off during pressure testing.\(^5\)

Expanding on methodology used in a previous study and including additional estimates for particular items, the NOHSC presented a Report, ‘The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community’, that outlined the costs of workplace injury and illness to the Australian economy for the 2000-2001 reference year. In that period, such cost was estimated to be $34.3 billion, equal to 5% of Australia’s Gross Domestic Product (GDP) for the 2000-2001 financial year. The Report noted that the figure represented forgone economic activity rather than the proportion of GDP that is lost as a result of the injury or illness.\(^6\) It needs also to be noted that the total cost estimate of $34.3 billion does not include the cost of pain, suffering and early death.\(^7\) In attempting to distribute estimated costs by jurisdiction (which was limited to some extent by differing treatment of compensation claims by workers between states and territories), it was estimated that the cost of work-related injury and illness in Queensland during 2000-2001 was $5,600 million, representing 4.9% of Gross

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\(^7\) NOHSC, ‘The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community’, p 27.
State Product. Generally, the greatest total cost is associated with the more severe incidents, such as permanent incapacity or fatality.

A further NOHSC Report, *Fatal Occupational Injuries – How does Australia compare internationally?*, found that, based on non-standardised, non-harmonised international fatalities data obtained from the International Labour Office, Australia has the 7th lowest fatality rate of 20 established market economies after the United Kingdom, Sweden, Norway, Denmark, Switzerland and Finland. Over the five years up to 2004, Australia’s rate of improvement was an average of 11%.

An International Labour Organisation (ILO) factsheet, released to mark World Day for Safety and Health at Work on 28 April 2005, reveals that 2.2 million deaths worldwide each year are work-related. The figure equates to 6,000 deaths each day or one death every 15 seconds. This surpasses war-related deaths. The factsheet also indicated that, of these deaths, around 350,000 resulted from injuries and the remainder from work-related illness. Thus, more than 400,000 deaths were the result of exposure to chemicals.

### 1.1 Recent Queensland Examples of Workplace Fatalities

Work-related injuries in Queensland have decreased over recent years. The annual rate for severe injuries is 16.4 compensated claims per 1,000 employees during 2004-2005, a drop of over 30% since the 1999-2000 financial year.

The Queensland Workers’ Compensation Regulatory Authority (Q-Comp) *Statistical Report 2004-2005* recorded that compensated intimated fatalities for the 2004-2005 financial year were 124 (although 29 deaths were from journeys to and

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8. NOHSC, *The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community*, p 24. Gross State Product (GSP) is defined by the Australian Bureau of Statistics ([www.abs.gov.au](http://www.abs.gov.au)) as the total market value of goods and services produced in a State within a given period after deducting the cost of goods and services used up in the process of production, but before deducting allowances for the consumption of fixed capital.


from work). Considerable time can elapse between lodging the workers’ compensation claim and the death of the injured worker so the figures are subject to development over time. It was found that 19.4% (or 24) of intimated fatalities were due to injury at work and 18.5% (23) of fatalities were from mesothelioma/asbestosis-related disease. Other disease-related deaths accounted for 25 (20.2%) fatalities in 2004-2005. 31.5% of deaths resulted from journeys to or from work and another 10.5% were due to journeys occurring as part of a person’s work. The industries in which most fatal injuries occurred during 2004-2005, in terms of compensation claims, were in transport and storage (16.9%), agriculture, forestry and fishing (9.7%), construction (8.9%), and property and business services (8.1%).

Workplace Health and Safety Queensland (WHSQ), within the Queensland Department of Industrial Relations, administers the Workplace Health and Safety Act 1995 (Qld). WHSQ visited over 17,000 workplaces during 2004-2005 and issued 16,557 improvement notices. Notices most commonly related to falls from heights, unsafe plant and machinery, and hazardous substances. As of 30 June 2005, WHSQ had carried out 156 successful prosecutions which produced guilty verdicts. Offending employers were ordered to pay fines and costs totalling $3.3 million, a 65% increase over 2003-2004. During 2004-2005, 12 prosecutions yielded fines of $40,000 or more, with the average level for the period being $21,435 (representing a 27% increase over 2003-2004). 10 enforceable undertakings were also accepted, which are estimated to deliver a total benefit of around $1.6 million to workplace, industry and the general community.

However, there were a number of workplace fatalities among these statistics. Examples of these are as follows –

- a Mackay-based meat packing company was fined $40,000 after a worker was killed after a stack of pallets of frozen meat weighing over 2 tonne fell onto him

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15 DIR, Annual Report 2004-2005, p 13. An enforceable undertaking under the Workplace Health and Safety Act 1995 is a legally binding agreement under which an employer agrees to undertake specified activities to improve health and safety or to develop health and safety management systems. It is only accepted in particular circumstances.
after a stocktake in the storeroom. Although the company had procedures to be followed by workers regarding cold storage, they were not documented;

- a sawmilling company in south-west Queensland was fined $60,000 following the death of a sawmiller who received crush injuries when a piece of timber ejected from a saw and struck him in the head. The sawmiller’s console was found to be within a hazardous zone, according to Australian Standards for such machinery and no risk assessments on the safe use of the saw had been carried out. There was no evidence indicating that operators had been trained in the safe use of the saw in question;

- a partner in a Toogoolawah sawmill company was fined $20,000 after a sawmiller was killed when a piece of wood flew from a bench saw and pierced his chest. The bench was not properly guarded and did not have protective devices to prevent wood being ejected while the saw was being used. It was found that the employers were aware of the machine’s condition and of previous occasions when timber had been ejected from it but had taken no action to ensure the saw’s proper use.16

Of course these statistics reveal little about the personal trauma and pain that the worker suffers, the long term effects that may ensue, and consequential hardship for their families.

1.2 WORKPLACE HEALTH AND SAFETY ISSUES

All Australian jurisdictions have workplace health and safety legislation and workplace safety policies. In Queensland, the major piece of legislation relevant to workplace safety is the Workplace Health and Safety Act 1995 (Qld). Part 3 imposes obligations on a number of persons, including employers; persons in control of workplaces; owners, designers, manufacturers, suppliers, erecters and installers of plant; manufacturers and suppliers of substances, among others, to ensure workplace health and safety. For example, an employer must ensure that each of the employer’s workers is not exposed to risks to their health and safety arising out of the employer’s business or undertaking. Employees also have a duty to comply with safety instructions and the like. Dangerous events must be recorded in an approved form within 24 hours of their occurrence by every employer and self-employed person in the workplace: s 52(1) of the Workplace Health and Safety Regulation 1997.

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Occupational health and safety legislation must be rigorously enforced by government authorities, such as WHSQ. Education and awareness in the workplace are also essential ingredients for a safe work environment as is a degree of proactivity by employers in assessing and managing risks and adopting appropriate precautions. For instance, employers may need to think even more carefully about their employees’ training and capabilities before sending them to potentially hazardous duties. Workplace laws are essentially just the first step to ensuring a safe workplace.

Prior to the 1970s most Western Governments took a prescriptive approach to workplace safety by engaging in heavy regulation of industries and employing inspectors to visit workplaces and impose sanctions where necessary. By the mid-1970s, there was a trend towards occupational health and safety legislation based on the ‘Robens’ model of prevention rather than sanction as a preferred approach. The latter concept was based on the reasoning of a British inquiry headed by Lord Robens which concluded that the prescriptive approach of the existing legislation was outdated because workplace laws needed to cover the entire workforce not just factories, shops, construction sites and mines. The proposals, adopted by the British Government soon after, were for the imposition of broad obligations on employers, designers and others to ensure, as far as practicable, the health and safety of workers and others. The obligations were supported by offences and penalties. However, sanctions were seen as a last resort with the inquiry of the belief that improvements in safety at work could be achieved through employer and employee consultation and the activities of diligent health and safety inspectors.

It appears that occupational health and safety laws in Australia have, until recently, embraced the concept of an ‘enforcement pyramid’. As a first step (bottom of the pyramid), regulators respond in an informal manner with cautions, warnings, notices, undertakings and similar sanctions. This will often resolve the problem and improve the conduct of the employer. The next step, particularly where the conduct is more serious, meets with a stronger response such as civil actions to recover damages and fines. Up from this are criminal prosecutions. At the apex of the pyramid are harsh criminal sanctions (such as imprisonment).

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17 Richard Kerbaj, citing the deputy head of the University of Melbourne’s Criminology Department.


Governments are becoming inclined to the belief that while the provision of education, information and support aids employers in understanding and complying with their workplace obligations, there must also be a strong focus on enforcement of those responsibilities which includes effective deterrents and the ability to prosecute when an employer is at fault.\(^{20}\)

Queensland’s *Workplace Health and Safety Act 1995* is based on workplace health and safety legislation in the United Kingdom, adopting an outcomes/performance based approach rather than prescribing specific procedures. However, in 2003, penalties for non-compliance with obligations under the Act were considerably strengthened, including the length of terms of imprisonment.

Section 24 of the *Workplace Health and Safety Act 1995* sets out a range of penalties for breaches of a workplace health and safety obligation which increase in severity according to the consequences of the breach. For example, if the breach causes multiple deaths, the penalty is a fine of up to $150,000 or 3 years imprisonment (and a fine of up to $750,000 for a corporation).\(^{21}\) If it causes death or grievous bodily harm, the penalty is up to $75,000 or 2 years imprisonment (up to $375,000 for a corporation). When the legislation was being introduced to increase the foregoing penalties, among other changes, the then Minister for Industrial Relations made some comments about the aims of the Act. Mr Nuttall said that while the key focus of the legislation must be on prevention, particularly through increasing knowledge and awareness of risks to health and safety and strategies for minimising such risks, it is the case that enforcement activity has a direct link with the level of compliance with safety standards and the incidence of injury and illness at work. Therefore, there must be a regime that secures optimum compliance which also means that there needs to be consideration of penalties, incentives and tools available to inspectors to properly perform their role.\(^{22}\)

During the past few years, a number of jurisdictions have moved to toughen laws to deal with workplace fatalities. This has been through inserting new provisions into their criminal law legislation to create a new offence of ‘industrial manslaughter’

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\(^{20}\) See, for example, the Second Reading Speech by Mr S Corbell MP, Minister for Education, Youth, Family Services, Minister for Planning and Minister for Industrial Relations, Crimes (Industrial Manslaughter) Bill 2002 (ACT), *Legislative Assembly for the ACT Hansard*, 12 December 2002, pp 4381-4384, p 4384.

\(^{21}\) If a body corporate is found guilty of an offence, the maximum fine imposed is an amount equal to 5 times the maximum fine for an individual: *Penalties and Sentences Act 1992* (Qld), s 181B(3).

or by passing amendments to their occupational health and safety legislation to target situations where employers are responsible, through gross negligence or recklessness, for a worker’s death.

2 PROBLEMS WITH EXISTING OCCUPATIONAL HEALTH AND SAFETY LAWS

2.1 ADEQUACY OF SANCTIONS

Workplace health and safety legislation has traditionally imposed fines and penalties as punishment for offences. However, the adequacy of such sanctions has frequently been criticised. It often appears that the monetary penalty for breach of occupational health and safety legislation is not sufficiently onerous to force employers, particularly large corporate bodies, to spend money on safety measures for preventing workplace incidents. It may be that the fine imposed is much less than the cost of complying with occupational health and safety obligations.

Some commentators cite the Victorian incident of Anthony Carrick as an example of inadequacy of fines as a deterrent. Mr Carrick was 18 years old when he was crushed and killed by a five tonne concrete panel on his first day at work at a Melbourne bulk feedlot store in 1998. Another man was badly injured in the incident. The employer company was found guilty of a breach of occupational health and safety laws and fined $50,000 and two supervisors were fined $10,000 and $5,000 respectively. The print media reported that the family of the dead man and the union were angry about the insufficiency of the penalty and some people called for the corporation to be charged with manslaughter and the officers imprisoned if found guilty.

2.2 DIFFICULTY IN ESTABLISHING LIABILITY

Manslaughter by criminal negligence requires a very high degree of negligence before liability is found – much higher than for civil negligence. Under the Queensland Criminal Code, if death is caused by a criminally negligent act or

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23 Dr R Sarre & J Richards, p 59.

omission which breaches a statutory duty under the Code, the defendant is liable for manslaughter.\textsuperscript{25}

To establish manslaughter due to criminal negligence, the prosecution must show that the act causing the death was done by the defendant ‘consciously and voluntarily, without any intention of causing death or grievous bodily harm, but in circumstances which involved such a great falling short of the standard of care which a reasonable person would have exercised and which involved such a high risk that the death or grievous bodily harm would follow that the doing of the act merited criminal punishment.’\textsuperscript{26}

There are a number of problems when it comes to prosecuting employers under existing manslaughter provisions of legislation. This is mainly because most employers are corporations – which, unlike a natural person, do not possess the necessary guilty or reprehensible mind for an offence to be committed.\textsuperscript{27} In more recent times it became recognised that a corporation could act through officers and agents, both directly and indirectly. Corporations are, essentially, a legal fiction and act through directors, employees, agents and others.

A corporation is liable for a crime where the elements of the crime have been performed on behalf of the corporation by the board of directors, its managing director or any other person to whom the board’s functions have been delegated – that is by a person acting as the company and whose mind directing his or her acts is the mind of the company.\textsuperscript{28} It is only those persons who are the directing mind and will of the company whose conduct (or negligent conduct) can be attributed to the corporation – someone such as the managing director or chief executive.

Criminal negligence is a criminal offence. To establish it, the prosecution must prove, beyond reasonable doubt, that the conduct (an act or omission) of the officer caused the death of the worker and that that conduct amounted to criminal negligence. The person whose conduct is criminally negligent and causes the worker’s death must be acting as the directing mind and will of the company (e.g. a managing director or chief executive) before corporate liability is established. The difficulty is that most decisions and conduct that affect health and safety of workers are made or engaged in on a day-to-day workplace level – by supervisors, foremen and so on – and not by a person, such as a director or a chief executive,

\textsuperscript{25} Halsbury’s Laws of Australia, [130-3640], citing R v Scarth [1945] St R Qd 38 at 43, among other cases.

\textsuperscript{26} Nydham v R [1977] VR 430 at 445.

\textsuperscript{27} Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705, cited in Halsbury’s Laws of Australia, [120-3140].

\textsuperscript{28} Tesco Supermarkets Ltd v Nattrass [1972] AC 153 at 170. Approved by the High Court in Hamilton v Whitehead (1988) 82 ALR 626.
who is a ‘directing mind and will’ of the corporation.  

A director or chief executive will rarely engage in the negligent act or omission that directly results in a worker’s death.

The reality is that there needs to be evidence of fault by a high-level employer or director which will be difficult in most larger corporations where the offence usually occurs at a lower level. An additional hurdle for the prosecution is that in a large corporation, decisions are not usually made by just one person nor is one person responsible for all corporate actions. Many people participate in decision making and the negligence of a specific person deemed to be the ‘guiding mind’ may be insufficient to meet the high degree of negligence required. The law focuses only on each person not the corporation as a whole. The prosecution must find the person who is the directing mind of the company to be guilty of the relevant offence and will not aggregate the conduct of a number of persons and attribute that to the corporation.

A further difficulty is that the main sanction for manslaughter is imprisonment. A corporation cannot be sent to prison.

The consequence is that few companies are successfully convicted of manslaughter. As of October 2004, there had only been three corporate prosecutions in Victoria with two companies being acquitted and the other pleading guilty. In NSW, no company had been charged with industrial manslaughter up to that date.

It appears that the only successful prosecution of a company for manslaughter for a work-related death in Australia was in *R v Denbo Pty Ltd* where an employee in a Victorian earth moving contracting company died of head injuries when the truck he was driving veered out of control down a steep track and overturned. The company pleaded guilty to manslaughter and was fined $120,000.

Even the explosion at Esso Australia Pty Ltd’s gas processing plant at Longford in Victoria on 25 September 1998 did not result in laying of any charges for industrial manslaughter. Two employees were killed in the explosion and eight persons were seriously injured. Esso was charged with offences under the Victorian *Occupational Health and Safety Act 1985* and found guilty on 11 counts. Among other breaches, Esso had failed to conduct hazard identification in a very hazardous

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29 NSW Legislative Council General Purpose Standing Committee No.1, ‘Inquiry into Serious Injury and Death in the Workplace’, *Report 24*, May 2004, p 128, quoting evidence provided by Mr Rozen, an occupational health and safety law barrister practising at the Victoria Bar.


workplace; had failed to train employees about the risks they were subject to; had not provided and maintained a safe plant; and failed to monitor the dangerous workplace.  

A Royal Commission had previously found that the “real causes” of the explosion were the failure of Esso’s management systems to ensure there was proper assessment of the hazards associated with the plant, and to provide appropriate training and supervision of employees in operating procedures to deal with the disaster that transpired.

Esso was fined $2m, the largest fine for a workplace death to date. In imposing the $2m fine, Cummins J considered that Esso had not expressed much in the way of corporate remorse (although a number of Esso witnesses had expressed personal regret). Esso had, during the litigation, attempted to attribute blame to its employees when the employees were not at fault and had refused to accept responsibility even when found guilty on all counts.

The Commonwealth Criminal Code Act 1995 Part 2.5 goes some way to capturing corporations for certain federal crimes. The Act provides that the Criminal Code applies to corporations and that they can be found guilty for offences including those punishable by imprisonment. The laws, however, apply only to a limited range of federal criminal offences such as bribery of foreign officials. For it to apply to manslaughter, it would have to be adopted by state and territory criminal laws, as has been done by the ACT Criminal Code 2003 which now includes the offence of industrial manslaughter.

3 ARGUMENTS FAVOURING AND OPPOSING A SPECIFIC INDUSTRIAL MANSLAUGHTER OFFENCE

Occupational health and safety (OHS) laws focus on attempting to prevent workplace deaths and injuries. There are some commentators who argue that workplace incidents are best prevented through laws which encourage safe conduct and systems rather than impose punitive sanctions for a safety breach. It has also been argued that existing OHS laws provide enough scope for prosecution of

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32 DPP v Esso Australia Pty Ltd [2001] VSC 263.


35 As noted by Dr R Sarre & J Richards, p 59.
negligent or reckless employers and, until that scope is explored and utilised more, there is little to be gained from separate new industrial manslaughter laws.\textsuperscript{36}

When the NSW Legislative Council’s General Purpose Standing Committee No.1 was considering the issue of workplace deaths during 2004, it received a number of submissions, and heard evidence from, a diverse range of stakeholders expressing opposing views on the need for industrial manslaughter laws in NSW.

For example, the Chamber of Commerce (NSW) told the Committee that the NSW \textit{Occupational Health and Safety Act 2000} (as it stood in 2004) already provided for financial penalties or imprisonment for contraventions of the laws.\textsuperscript{37} It also believes that industrial manslaughter legislation would do little to improve on OHS culture and do nothing to prevent accidents in unsafe workplaces. Rather, the Chamber of Commerce (NSW) believes the emphasis should be on preventing injury and death, not ‘demonising’ business or responsible employers.

The NSW Law Society has raised the argument that the creation of a special industrial manslaughter offence would offend the long-standing criminal law principle regarding equal justice and equal punishment. The fact that a death occurs in the workplace should not mean that the accused is treated more or less favourably than had the crime of manslaughter been committed in a non-industrial context.\textsuperscript{38} This view was countered by a barrister practising in OHS law, Mr Rozen, who gave evidence that an industrial manslaughter offence would not ‘lower the bar’ for corporations but would ‘level the playing field’. At present, a small company with a ‘hands-on’ director or manager, faces the same consequences as would any individual charged with gross negligence but the larger the corporation, the higher the bar (due to the need to find the offender is the ‘directing mind and will’ of the company). So, if the company is very big, it is an impossibly high standard for the prosecution.\textsuperscript{39}

At the Sydney Safety Conference 2004, a panel of safety leaders offered their views about the then proposals to introduce industrial manslaughter legislation in NSW. The consensus was that arguments about the industrial manslaughter laws really just muddied the issue about penalties for workplace deaths. The chief

\textsuperscript{36} An argument noted by the NSW Legislative Council General Purpose Standing Committee No.1, p 131.

\textsuperscript{37} NSW Legislative Council General Purpose Standing Committee No.1, p 132, quoting NSW Chamber of Commerce Submission, p 2.

\textsuperscript{38} NSW Legislative Council General Purpose Standing Committee No.1, p 134, quoting The Law Society of NSW Submission, p 6.

\textsuperscript{39} NSW Legislative Council General Purpose Standing Committee No.1, p 134, quoting Mr Rozen’s evidence given on 1 March 2004.
executive officer of Employers First believed that industrial manslaughter legislation would be hard on employers because it was difficult to guarantee workplace safety. On the other hand, the National Secretary of the Australian Workers Union, Bill Shorten, said that industrial manslaughter laws were not the only way to deal with workplace deaths, although it could be seen as a deterrent. He considered that it would be better to refocus debate on the severity of penalties. Mr Shorten questioned whether, if employers do not go to jail, would other big corporations pay attention?40

Those who support industrial manslaughter offences believe that dangerous acts need to be criminalised with the offender facing the full force of the law, such as prison, in very serious cases.41 Some feel that such laws are necessary because they hold those persons ultimately responsible for safe systems of work liable, regardless of their status within the organisation.42 The ACT Minister for Industrial Relations advanced two reasons for introducing the Crimes (Industrial Manslaughter) Bill (discussed below) to introduce a specific industrial manslaughter offence. The first was the desire to be seen to be sanctioning corporations in appropriate circumstances and the second was to counter a possible reluctance by juries to convict corporations of manslaughter where the death happens at a workplace.43

There has also been a mounting belief, particularly among union bodies, victims’ families and some members of the public, that if an employer has been reckless or negligent and causes the death of a worker, the employer should face criminal prosecution in addition to sanctions under health and safety laws, just as a person would in the general community. It has been argued that it does not seem justifiable for an employer to be immune from going to prison when their negligence kills a worker at the place of employment but they would be so liable if they negligently killed that same person on the road.44

41 As noted by Dr R Sarre & J Richards, p 59.
42 NSW Legislative Council General Purpose Standing Committee No.1, p 131, citing a submission from Mr A Ferguson, Secretary, Construction, Forestry and Mining Union, p 41.
43 Mr S Corbell MLA, Minister for Industrial Relations, Legislative Assembly of the ACT, Hansard, 12 December 2002, pp 4382.
44 See, for example, the Second Reading Speech by Senator K Nettle MP when introducing the Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004 (Cth) into the Senate (4 August 2004, Senate Hansard, pp 25661-25663, p 25661.
In addition, health and safety authorities have been seeking to raise awareness about safety in the workplace by using highly publicised incidents of criminal convictions as a deterrent.\textsuperscript{45}

\section*{4 APPROACHES TO LEGISLATING FOR INDUSTRIAL MANSLAUGHTER}

Much of the debate has ranged beyond merely that of whether to introduce an industrial manslaughter offence at all to whether industrial manslaughter should be enshrined in occupational health and safety legislation or created as a new offence under a jurisdiction’s criminal legislation.

There are two possible ways of dealing with death in the workplace resulting from negligent or reckless conduct of the employer. The first is through specific offence provisions in a state or territory’s criminal laws, as exists in the Australian Capital Territory. The second is under occupational health and safety legislation as a separate category, which appears to be the preferred choice by other states and territories.

In submissions to the NSW Legislative Council General Purpose Standing Committee No.1, the NSW Law Society did not express an opinion about whether industrial manslaughter offences should be introduced in NSW but did suggest that the most appropriate place for such laws, if they were introduced, would be in the \textit{Crimes Act}. The Law Society did not believe that inclusion in the \textit{Occupational Health and Safety Act 2000} would be suitable for a number of reasons. These included, firstly, that terms of imprisonment had rarely been given for breaches of the Act. Secondly, OHS offences are ‘strict liability’ offences (meaning that liability is established irrespective of subjective intention of the person charged) and to introduce an industrial manslaughter offence in respect of which individuals could be imprisoned would involve concepts at odds with the strict liability character of the OHS laws. The Law Society also had concerns about procedural issue such as who would be allowed to bring proceedings (which is broader under OHS legislation than under criminal legislation); and time limits (which are more constrained under OHS laws).\textsuperscript{46}

On the other hand, there are points in favour of introducing industrial manslaughter provisions into existing OHS legislation. These are: OHS laws are aimed at

\textsuperscript{45} J Catanzariti, ‘Corporate liability for manslaughter firmly established’, \textit{NSW Law Society Journal}, 35(2) (1997) 26 (online service at \url{www.lawsocnsw.asn.au}).

\textsuperscript{46} NSW Legislative Council General Purpose Standing Committee No.1, p 143, citing The Law Society of NSW Submission.
workplace safety issues; OHS laws are designed to deal with corporate defendants as well as individuals; the industrial manslaughter offences would require negligence in relation to duties already existing in the OHS laws (e.g. to provide a safe workplace for employees). It has also been suggested that including a serious crime such as manslaughter in OHS laws could encourage the community to view these laws as ‘serious’ provisions and raise a perception that workplace offences are ‘real crimes’, thus ultimately improving workplace safety. In addition, having the offences within the same jurisdiction as OHS inspectors would enable better assistance and education about the new laws.\textsuperscript{47}

An alternative approach, as has been taken in the Queensland \textit{Workplace Health and Safety Act 1995}, is providing higher penalties for breach of duty depending upon the outcome of the breach. That means a term of imprisonment and harsh fines for a workplace death and even higher sanctions for multiple deaths. The Tasmanian Law Reform Institute noted that a criticism that could be levelled at such a provision is the perceived injustice of the maximum penalty reflecting the outcome of the breach rather than the blameworthiness or state of mind of the offender. The comment was made, however, that there are already criminal laws where there is no difference in the necessary mental elements of the offence.\textsuperscript{48}

The Australian Capital Territory has adopted the approach of introducing a specific ‘industrial manslaughter’ offence into its \textit{Crimes Act 1900} but other jurisdictions that have legislated on the matter have tended to go down the path of inserting new provisions into their OHS laws to include breaches of duty that result in death in the workplace.

A Panel of legal experts established to advise the New South Wales Government about the effectiveness of the \textit{Occupational Health and Safety Act 2000} favoured the approach taken in the Queensland \textit{Workplace Health and Safety Act 1995} rather than the ACT legislation as it keeps workplace death cases within the framework of OHS law and maintains the ‘strict liability approach’ whilst giving emphasis to breaches by employers of their legal health and safety obligations which result in death or serious injury.\textsuperscript{49}

The Australian Chamber of Commerce and Industry made a statement in April 2005 that the trend in workplace safety legislation across jurisdictions has been to

\begin{footnotesize}
\textsuperscript{47} Tasmanian Law Reform Institute, ‘Criminal Liability of Organisations’, \textit{Issues Paper No.9}, 21 June 2005, para 5.2.5. However, the Institute did not support introducing industrial manslaughter offences into the Tasmanian \textit{Workplace Health and Safety Act 1995}.

\textsuperscript{48} Tasmanian Law Reform Institute, pp 33-34.

\end{footnotesize}
broaden legal duties beyond reasonable limits, increase penalties, extend liability to individuals in the management and supply chain and seek to punish rather than prevent.\(^50\)

5 PIONEERING AUSTRALIAN CAPITAL TERRITORY LEGISLATION

The Australian Capital Territory (ACT) became the first Australian jurisdiction to introduce an actual offence ‘industrial manslaughter’ when the *Crimes (Industrial Manslaughter) Act 2003* was passed by the ACT Legislative Assembly on 27 November 2003 to amend the *Crimes Act 1900*. The laws commenced on 1 March 2004.

A new Part 2A was inserted into the *Crimes Act* to create two industrial manslaughter offences. The first is an ‘employer offence’ which applies to all ‘employers’, including corporations, government entities or unincorporated entities. The ‘employer offence’ of industrial manslaughter is committed if –

- a worker dies in the course of his or her employment by, or providing a service to, or in relation to, the employer; or is injured in the course of his or her employment by, or providing a service to, or in relation to, the employer and later dies; and
- the employer’s conduct causes the death of the worker; and
- the employer is reckless about causing serious harm to the worker or is negligent about causing the death of the worker, by the employer’s conduct (which can be an act or omission to perform a duty).

A ‘worker’ is defined broadly to include employees under contracts of service, outworkers, trainees, apprentices, volunteers and independent contractors. The wide definition covers most contracting arrangements so that employers cannot use complicated contracting schemes to avoid liability – any of the persons in the chain of contracting above the worker can be prosecuted.

Part 2.5 of the Model Criminal Code is incorporated into the *Crimes Act* and provides (in s 501.2) that if intention, knowledge or recklessness is a required fault element of an offence, that fault element exists on the part of a body corporate (which will often be the employer) that expressly, tacitly or impliedly authorised or permitted the commission of the offence. Section 501.2 sets out how this test is proved –

• by proving that the board of directors intentionally, knowingly or recklessly engaged in that conduct and expressly, tacitly or impliedly authorised or permitted the commission of the offence;

• by proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in that conduct and expressly, tacitly or impliedly authorised or permitted the commission of the offence (which can be countered by a defence of having exercised ‘due diligence’ to prevent the conduct);

• by proving that a ‘corporate culture’ existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with relevant laws or that the body corporate failed to create and maintain a corporate culture that required compliance. ‘Corporate culture’ refers to a corporation’s policies, rules, practices or course of conduct within the corporation generally or in the relevant area. Thus, positive safe systems of work must be in place. An example of a corporate culture of non-compliance is where employees know that unless they remove safety guards on equipment so that they can meet production schedules, they will be dismissed. In such a case, the corporation would be guilty of an intentional breach of the legislation.\(^{51}\) This means that rather than having to find the ‘guiding mind’ of the corporation, liability can be found according to the behaviour of the corporation as a whole.\(^ {52}\)

The second type of industrial manslaughter offence is a ‘senior officer offence’ which applies to (among other specified persons) senior officers of corporations such as executives; or directors; or officers who make, or participate in making, decisions that affect the whole or a substantial part of the business of the corporation; or Ministers and chief executives and senior executives of government agencies and government owned corporations. Such senior officers commit an offence where their reckless or negligent conduct causes the death of a worker.

The maximum penalty is 20 years imprisonment or a fine of $200,000, or both, for an individual. The maximum penalty for a corporation is $1 million. Corporations can also be ordered to undertake specified actions such as publicising the offence in the media and undertaking community-focused projects for the public benefit.


\(^{52}\) Dr R Sarre & J Richards, p 60; *Criminal Code Act 1995* (Cth).
An officer at the Office of the ACT Director of Public Prosecutions has advised that, to date, there have been no prosecutions under the new laws.\(^\text{53}\)

A managing partner of a law firm told the Sydney Safety Conference 2004 that he did not believe that the new ACT laws would have much impact. This was because, to establish ‘recklessness,’ it has to be shown that an employer or senior officer was ‘aware of the substantial risk’ and took the risk despite the fact that it was ‘unjustifiable’. For criminal negligence, the employer must be so grossly negligent as to merit criminal sanction, thereby requiring a very high level of culpability to be proven.\(^\text{54}\) The criminal standard also requires proof beyond reasonable doubt.

These views were echoed by a Panel of legal experts established to advise the New South Wales Government about the *Occupational Health and Safety Act 2000*. The Panel considered that establishing each of the elements required by the offence in the ACT law provided a very high threshold in order to secure a conviction. It was believed that the elements in the ACT law were more onerous to satisfy than those which then existed under the NSW *Occupational Health and Safety Act*. Consequently, it was believed that very few convictions would result, meaning that the deterrent effect of such laws would be diluted.\(^\text{55}\)

In addition, the ACT introduced new provisions into the *Occupational Health and Safety Act 1989*, in June 2004, to improve compliance and enforcement measures. The changes enable a wide range of enforcement tools to be used as well as ‘adverse publicity’ measures that allow the OHS Commissioner to publish details of convictions for breaches of the Act. Fines and penalties have also been increased for reckless or negligent breach of a duty which causes serious harm to workers and others.

### 5.1 Reaction to the ACT’s Industrial Manslaughter Laws

The approach adopted in the ACT, of including industrial manslaughter laws in the *Crimes Act 1900*, rather than in occupational health and safety legislation, has been criticised by some as transferring the focus of workplace safety onto prosecutions

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\(^\text{53}\) Email communication from C Costello, ACT Director of Public Prosecutions, 11 November 2005.


for offences after the event rather than on encouraging better safety measures in the workplace in order to prevent incidents occurring.\textsuperscript{56}

In March 2005, the Commonwealth Minister for Employment and Workplace Relations introduced into the House of Representatives, the Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2005. The Bill seeks to override the ACT’s \textit{Crimes (Industrial Manslaughter) Act} 2003 to exclude Commonwealth employers and employees from that Act as well as from any future state or territory industrial manslaughter laws. The Minister argued that the ACT legislation did nothing to encourage the prevention of accidents and creation of safer workplaces but merely introduced punitive sentencing that did not appear to offer better protection for workers.\textsuperscript{57} The Bill is currently before the House of Representatives, having been reinstated after lapsing due to the prorogation of the Parliament prior to the 2004 federal election.

\section{6 RECENT CHANGES TO LAWS IN NEW SOUTH WALES AND VICTORIA AND WESTERN AUSTRALIA}

New South Wales, Victoria and Western Australia have recently made significant amendments to their \textit{Occupational Health and Safety Acts} to deal with workplace fatalities, by introducing significant increases to monetary penalties (and the imposition of prison terms), and to allow corporations to be held liable.

\subsection{6.1 NEW SOUTH WALES}

New South Wales has passed legislation in response to calls for action against employers whose disregard of their safety obligations results in workplace deaths and to counter concerns about perceived inadequacies of penalties. During 2003, thousands of workers marched through Sydney calling for industrial manslaughter laws in the wake of the construction site death of a 16 year old labourer who fell from a roof on his third day of work.\textsuperscript{58}

\begin{footnotesize}
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\item \textsuperscript{57} Hon K Andrews MP, Second Reading Speech, \textit{House of Representatives Hansard}, pp 10-12.
\end{itemize}
\end{footnotesize}
In November 2003, the NSW Government appointed a Panel of legal experts to advise on the effectiveness of the State’s then current *Occupational Health and Safety Act 2000* and whether it could be strengthened. The Panel reported in June 2004, recommending the introduction of an additional offence targeted at workplace fatalities, coupled with tough new penalties. However, the Panel regarded the introduction of industrial manslaughter offences in the *Crimes Act 1900* as unhelpful and tokenistic.\(^59\) Around the same time, a Report by the NSW Legislative Council’s General Purpose Standing Committee No.1, ‘Serious Injury and Death in the Workplace’ was tabled in Parliament on 17 May 2004. That Report recommended the need for discrete and specific offences of corporate manslaughter and gross negligence by a corporation causing serious injury but did not make any specific recommendations regarding industrial manslaughter laws, other than suggesting that the issue be examined within the broader context of corporate liability.\(^60\)

On 10 June 2005, the New South Wales Parliament passed the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005*, amending the *Occupational Health and Safety Act 2000* to provide for a new workplace death offence. This followed the release of a consultation draft Bill (the *Occupational Health and Safety Amendment (Workplace Fatalities) Bill 2004*) in October 2004. That draft Bill was revised after consultation with stakeholders and the Bill, in its new form, was introduced on 27 May 2005.\(^61\) The new provisions commenced on 15 June 2005. However, unlike the ACT laws, the provisions do not form part of the State’s *Crimes Act 1900* to create an ‘industrial manslaughter’ offence.

Under Part 2A of the Act, persons and corporations can be prosecuted if –

- their conduct (which includes an act or omission) causes, or substantially contributes to, the death of another person at any place of work, and

- they owe a workplace health and safety duty under Part 2 of the Act (which includes duties owed by employers to provide and maintain a safe work environment and also imposes health and safety obligations on employees) to that person, and

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\(^{60}\) NSW Legislative Council General Purpose Standing Committee No.1, Recommendations 26 & 27 (although some members did not support these recommendations).

• they are reckless as to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct: s 32B.

However, the legislation does not seem to make it clear how criminal responsibility is to be proved when a company is being prosecuted.

The consequences are a fine of up to $1.65 million for a corporation and up to $165,000 and/or up to five years imprisonment for an individual (with no differentiation between first and subsequent offenders). It has been reported that the Australian Manufacturing Workers Union NSW was disappointed that the penalties were lower than for other types of manslaughter under the Crimes Act 1900. The union secretary said that there was ‘no difference between a reckless death in the workplace and a reckless death on the road’. 62

It appears that the requirement that a person be ‘reckless as to the danger of death or serious injury’ arising from their conduct is higher than the requirement for negligent manslaughter, making the new offence more akin to murder. 63

A defence of ‘reasonable excuse’ can be used by a person charged with an offence. In his Second Reading Speech, the Minister said that a ‘reasonable excuse’ would need to be a compelling and overriding reason why reckless conduct causing a workplace death might be excused. An example might be an emergency situation where some action is taken that causes a death. The provision of this defence is intended to allow courts to take into account the inherent dangers and difficulties of certain types of work, such as policing, when considering the application of the offence. 64

In addition, if a corporation owes a duty under Part 2 with respect to the health and safety of any person, any director or other person concerned in the management of the corporation is taken also to owe that duty.

Only WorkCover NSW is allowed to bring prosecutions under the Occupational Health and Safety Act (unless a mine is involved, in which case it is brought by the Department of Primary Industries). A union can ask for reasons why either WorkCover or the Department, as the case may be, makes a decision not to prosecute. An individual (e.g. a union secretary) can bring a prosecution if the Minister consents: s 32B. Under the previous draft Bill, unions were allowed to

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63 Tasmanian Law Reform Institute, para 5.2.3.

64 Mr K Hickey MP, Second Reading Speech, p 16339.
bring prosecutions, a measure opposed by employer groups.\textsuperscript{65} All prosecutions are heard by the NSW Industrial Relations Commission in Court Session before a judge.

The Act also provides that the prosecution cannot appeal against an acquittal for offences against the legislation. However, a person sentenced to a prison term under the new offence has a right of ultimate appeal to the NSW Court of Criminal Appeal.\textsuperscript{66}

The NSW Industrial Relations Minister is reported as saying that the legislation balances employers’ concerns with the need to deter employers who disregard their workers’ safety. Mr Della Bosca MP said that ‘the vast majority of employers have nothing to fear ... it is the rogue employers who may now realise that very harsh consequences will follow their criminally reckless acts.’\textsuperscript{67}

In addition, changes have recently been made at the governmental level, including the establishment of a WorkCover Fatalities Unit and alterations to the way in which WorkCover investigates workplace incidents.

\subsection*{6.2 Victoria}

The impetus for industrial manslaughter laws in Victoria was the explosion at the Esso-BHP Longford gas plant in September 1998 which killed two workers and injured eight people. This was followed by an inquiry by the Longford Royal Commission into the explosion at the Esso-BHP Longford gas plant, chaired by former High Court Justice, Sir Daryl Dawson, the findings of which were released in June 1999. After a long criminal prosecution, Esso was eventually convicted under the Victorian \textit{Occupational Health and Safety Act 1985}. The plea for changes to the law was a result of Esso being fined $2 million, a sum regarded by many people as an inadequate punishment, given Esso’s vast resources. In December 2001, Esso was ordered to pay damages in the sum of $1,025,000 to the family of one of the workers killed in the incident, an amount thought to be the highest award made under Victorian criminal compensation legislation.\textsuperscript{68} Shortly after the penalty was imposed, the Victorian Premier, Steve Bracks MP, stated that

\begin{footnotesize}
\begin{enumerate}
\item \textit{Criminal Appeal Act 1912 (NSW)}, s 5AG.
\item ‘Tough new law targets reckless bosses’.
\item Peter Gregory, ‘Esso must pay $1m damages’, \textit{Age Online}, 20 December 2001.
\end{enumerate}
\end{footnotesize}
the Government planned to introduce tougher workplace safety legislation to create a new industrial manslaughter offence.\textsuperscript{69}

The Crimes (Workplace Deaths and Serious Injuries) Bill 2001 was introduced by Victorian Attorney-General, the Hon R J Hulls MP, on 22 November 2001.\textsuperscript{70} It failed during 2002, being strenuously opposed by the Liberal and National Parties which had a majority in the Upper House at that time.\textsuperscript{71} It was also criticised by employer groups.\textsuperscript{72}

The failed Workplace Deaths Bill sought to impose prison terms and tripled a number of monetary penalties. The negligence of some employers or officers would have been able to be considered cumulatively to determine if the combined result was gross negligence, thus sheeting liability home to the corporation. It would not be necessary to establish negligence on the part of the person who is the ‘guiding mind’ of the corporation. A corporation would have been liable for up to $5 million for death and up to $2 million for serious injury. Senior officers could also have been prosecuted where they knew about the high risk to safety and could have done something to prevent the consequences but did not. The sanctions for senior officers found guilty of an offence included imprisonment for up to two years for serious injury and five years for death.

However, substantial changes to Victoria’s occupational health and safety laws occurred when, following the defeat of the above Bill, the Government turned its attention to increasing penalties within those laws. The \textit{Occupational Health and Safety Act 2004} came into effect on 1 July 2005. This followed the review of the \textit{Occupational Health and Safety Act 1985} by Melbourne barrister, Chris Maxwell

\textsuperscript{69} Peter Gregory & Megan Shaw, ‘Esso fined a record $2m’, \textit{Age Online}, 31 July 2001.


\textsuperscript{71} See, for example, the Second Reading Debate on the Bill in the Legislative Council on 29 May 2002, \textit{Victorian Hansard} (LC), pp 1288-1335. The Bill was defeated 27 votes to 12. See also, the Second Reading Debate in the Assembly on 14 May 2002, \textit{Victorian Hansard} (Assembly), pp 1407-1432.

\textsuperscript{72} See extracts of letters from the Victorian Chamber of Commerce and Industry, the Victorian Congress of Employers’ Associations and the Victorian Farmers Federation quoted during the Second Reading Debate by Mr Wilson MP, Member for Bennettswood, on 14 May 2002, \textit{Victorian Hansard} (Assembly), pp 1431-1432. See also extracts of a letter from 8 employers organisations quoted by the Hon P A Katsambanis MP, 29 May 2002, \textit{Victorian Hansard} (LC), p 1291.
The review recommended changes such as harsher fines and alternative penalties of prison terms, but did not specify whether there should be a new industrial manslaughter offence introduced into the legislation. Note that the *Occupational Health and Safety Act 2004* does not actually create an industrial manslaughter offence.

It has been reported that 11 people died in Victorian workplace accidents in the six months prior to the commencement of the *Occupational Health and Safety Act 2004* on 1 July 2005.

The major amendments introduced by the *Occupational Health and Safety Act 2004* include a new Part 3 which forms the focus of the legislation. It sets out the overriding duties of all workplace parties and those who design, manufacture and supply plant and substances to the workplace. For example, s 21 establishes the main duties of employers, such as the provision and maintenance of a safe and healthy work environment for employees. The maximum penalty for contravention of the general safety duties is $943,290 for a corporation and up to $188,658 and/or five years imprisonment for an individual.

Pursuant to s 32, a person who, without lawful excuse (which is narrower than the NSW defence of ‘reasonable excuse’), recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence and liable to a term of imprisonment of up to 5 years, or a fine of up to $188,658 for an individual; and a fine of up to $943,290 for a corporation. Other sanctions include adverse publicity orders and enforceable undertakings in addition to, or instead of the aforementioned penalties. It may be that this offence, requiring a more culpable mental element, avoids the possible injustice that may occur where the penalty depends on the outcome (as with the strict liability for breach of the general safety duty). Rather, it looks at the blameworthiness of the offender.


75 The monetary penalties will increase each year because the value of penalty units is now indexed.

76 Tasmanian Law Reform Institute, para 5.2.11 but it was also pointed out that the position is somewhat confused by the physical element of the offence being more serious than other breaches of duty offences under the Act.
Note that if a corporation is in breach of the Act, an officer (i.e. a person who makes, or participates in the making of, decisions affecting the corporation’s business and a person who can affect the financial standing of the corporation in a significant way) can be held liable if the breach is due to the officer’s failure to take reasonable care and is then subject to the maximum fine. Thus, if the conduct of the corporation can be attributed to an officer’s failure to take reasonable care, the officer can also be held liable to a fine. When the court is determining if an officer is guilty of an offence, regard will be had to what the officer knew about the matter; the extent of the officer’s ability to make, or participate in the making of, decisions affecting the corporation in relation to that matter; whether the commission of the offence is also attributable to the actions or omissions of another person, and any other relevant matter.\footnote{Occupational Health and Safety Act 2004 (Vic), s 144.}

Authorised representatives of registered employee organisations can obtain a permit from the Magistrates’ Court to enter a workplace if they reasonably suspect that there has been a breach of the legislation.

Just before the \textit{Occupational Health and Safety Act 2004} came into effect, it was welcomed by unions, which considered that the measure of success will be if it results in fewer workplace deaths, but was opposed by the Victorian Chamber of Commerce and Industry which believed that the maximum penalties were too high.\footnote{Lorna Edwards, ‘Unions welcome tougher safety laws’, \textit{Age Online}, 23 June 2005.}

\section*{6.3 Western Australia}

The \textit{Occupational Safety and Health Legislation Amendment and Repeal Act 2004 (WA)} was enacted with the aim of improving and strengthening the \textit{Occupational Health and Safety Act 1984}. The amendments give partial effect to the recommendations of a November 2002 review of the \textit{Occupational Health and Safety Act} by a former Australian Industrial Relations Commissioner, Mr Robert Laing. The review found that there were areas in which improvements could be made.\footnote{Occupational Safety and Health Legislation Amendment and Repeal Bill 2004 (WA), \textit{Explanatory Memorandum}, p 1.} The amendments came into effect on 1 January 2005. While increasing penalties quite substantially, the laws are not industrial manslaughter laws.

The amendments made to the \textit{Occupational Health and Safety Act 1984} have been important. The significant areas of change include an expansion of the general duties of care (particularly to close some identified gaps in coverage); substantial
increases in penalties, especially for corporations, including a provision for imprisonment in cases involving serious harm or death when 'the breach constitutes gross negligence. The penalties increase in accordance with the seriousness of the offence.

The offence of 'gross negligence' is committed where an employer knows that a breach of a duty was likely to cause death or serious harm but acts in disregard of that likelihood and death or serious harm is caused to a worker as a result: s 18A. A corporation will face a maximum penalty of $500,000 for a first offence and a subsequent offence will attract a maximum fine of $625,000. An individual can be fined a maximum of $250,000 for a first offence and $312,500 for a subsequent offence and, in each case, is liable to be imprisoned for up to two years. Where the offence is committed by a corporation, an individual can be charged if the offence occurred with the consent, connivance or neglect of a director or officer of the body corporate.80

Other sanctions provided for include enforceable undertakings such as agreeing to take specified action to improve health and safety or publicising details of an offence.

In addition, the Act enables criminal proceedings to be taken against the Crown (i.e. government departments and agencies).

7 QUEENSLAND

For the present, it appears that the Queensland Government has decided to stay with the current regime – which has existed since 2003 – of having substantial penalties for workplace deaths and injuries, including imprisonment, contained within the occupational health and safety regime of the Workplace Health and Safety Act 1995 (WHS Act). Many of the changes to strengthen the WHS Act in 2003 preceded the more recent efforts of the jurisdictions considered above.

As noted earlier, Part 3 of the WHS Act imposes obligations on a number of persons, including employers, to ensure workplace health and safety. For example, an employer or self-employed person conducting a business or undertaking must ensure that the health and safety of each worker and other persons is not affected by the conduct of the business or undertaking. The duty is discharged if each worker and any other persons are not exposed to risks to their health and safety and includes measures such as providing and maintaining a safe and healthy work environment and safe systems of work: ss 28-29. Workers and other persons at a workplace also have obligations such as to comply with instructions about health

and safety and not to wilfully or recklessly interfere with or misuse health and safety equipment.

When reviewing the need for industrial manslaughter offences in Tasmania, the Tasmanian Law Reform Institute thought that an alternative option to an industrial manslaughter offence was the approach taken by Queensland under s 24 of the WHS Act. It requires a person charged with a workplace health and safety obligation to discharge it. Sanctions are provided as follows for breach of the established duties –

- if the breach causes multiple deaths, the penalty is fine of up to $150,000 or 3 years imprisonment (and $750,000 for a corporation);
- if the breach causes death or grievous bodily harm, the penalty is up to $75,000 or 2 years imprisonment ($375,000 for a corporation);
- if the breach causes bodily harm, or involves exposure to a substance likely to cause death or grievous bodily harm, the person can be fined up to $56,200 or imprisoned for up to 1 year ($281,250 for a corporation).\(^{81}\)

Thus, the maximum penalty faced varies depending on whether death or injury was caused by the breach of the duty.\(^{82}\) As noted earlier, the NSW Panel of experts advising the NSW Government about the adequacy of the previous *Occupational Health and Safety Act 2000* expressed preference for the Queensland approach. The more severe penalties came into effect under the Queensland WHS Act in 2003.

Section 37 provides defences to a proceeding for contravention of an obligation of the WHS Act. The first is that the person followed a Regulation or Ministerial notice about the way to prevent or minimise exposure to the relevant risk. Another defence is that the person adopted and followed a code of practice or another way that managed exposure to risk and took reasonable precautions and exercised proper diligence to prevent the contravention. Finally, it is a defence to show that the commission of the offence was due to causes over which the person had no control.

Under s 167 of the WHS Act, each executive officer of a corporation must ensure that the corporation complies with the Act and if the corporation commits an offence under the Act, the executive officers also commit the offence of failing to ensure the corporation’s compliance with the relevant provision. However, it is a

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\(^{81}\) Employers are responsible for each worker regardless of their employment status such as contractor, labour hire or direct employment as an employee.

\(^{82}\) Tasmanian Law Reform Institute, para 5.2.8.
defence if the executive officer can show reasonable diligence to ensure compliance or that the executive officer was not in a position to influence the conduct of the corporation in relation to the relevant provision.

On 18 September 2000, the Queensland Government released a Dangerous Industrial Conduct Discussion Paper which canvassed offences similar to those in the ACT industrial manslaughter legislation.\(^83\) At the time, there was considerable publicity surrounding a number of workplace fatalities involving electrocution (especially of young apprentices).\(^84\) There was also lobbying from unions to introduce tougher penalties, including prison terms, which considered the then penalties under the WHS Act as insufficient.\(^85\)

The Discussion Paper sought public input into a proposal for a new offence in the Queensland Criminal Code to be tentatively called ‘dangerous industrial conduct’ to cover both individuals and corporations. The observations made in the Discussion Paper include –

- the problem finding that top level decision makers – the ‘directing minds or will’ of the corporation – are directly responsible for the harm and the consequent lack of manslaughter convictions arising out of workplace incidents suggests that any new criminal offence would need to overcome the ‘directing mind or will’ requirement;\(^86\)

- there is difficulty in imposing traditional punishments for criminal behaviour onto corporations other than a fine which may be inadequate where a death has occurred and the company is large. This leads to the suggestion of alternative penalties such as adverse publicity, deregistration as a corporation and other punishments.\(^87\)

The Discussion Paper set out a number of proposals for reform and proposed a new offence of ‘dangerous industrial conduct’. A person could be charged with dangerous industrial conduct if they behave dangerously in a workplace resulting in death or grievous bodily harm. Under the new offence, a corporation and its ‘management’ would be liable for intentional, reckless or negligent behaviour that


\(^84\) See, for example, Sean Parnell, ‘State cranks up electrical safety’, Courier Mail, 29 August 2001, p 3; Peter Morley, ‘Safety laws to hit companies’, Courier Mail, 2 October 2000, p 20.

\(^85\) Chris Taylor, “‘Corporate kill” push’, Courier Mail, 29 May 2000, p 29.

\(^86\) Queensland Department of Justice and Attorney-General, p 6.

\(^87\) Queensland Department of Justice and Attorney-General, p 7.
results in death or injury to employees or members of the public. This liability would be established where the behaviour was unlawful or otherwise fell below what would reasonably be expected (within the current definition of criminal negligence). It would also be established where the behaviour was that of an officer, agent or employee of the corporation acting within their actual or apparent scope of authority. Where the behaviour was intentional or reckless, it is to be attributed to the corporation if the corporation expressly, tacitly or impliedly authorised or permitted the behaviour (e.g. through the existence of a corporate culture of non-compliance or non-existence of a culture of compliance). If the behaviour was negligent, the conduct of any number of the corporation’s employees, agents or officers may be aggregated. Proposed penalties were a maximum of 7 years imprisonment or a fine of up to $502,500.88

At the time, the Queensland Chamber of Commerce and Industry chief executive is reported to have considered that the proposals would place a considerable new burden on directors and it might be difficult to encourage talented people to serve on boards. On the other hand, the Queensland Council of Unions secretary is reported as saying that employers should be found liable in the same way as a person driving dangerously and killing someone is liable.89

While the Discussion Paper does not appear to have progressed further, the changes to the WHS Act to impose new offences and penalties and place more extensive obligations at the workplace, as considered above, were introduced in December 2002 and came into effect in 2003.

In addition, in October 2004, the Queensland Government established a special Construction Industry Taskforce to boost health and safety in the building and construction industry; to oversee new regulations in that industry; and to advise the Government on possible legislative changes. Among its recommendations, the Taskforce proposed that WHSQ continue to prosecute executive officers under s 167 (failure to ensure that the corporation complies with relevant obligations under the WHS Act) and that a decision to prosecute corporations for industrial manslaughter be reviewed once legislation that enables the prosecution of corporations is enacted.90

In September 2004, the State Coroner, Mr Michael Barnes, is reported to have said that more could be done to reduce workplace fatalities and he intended to improve

88 Queensland Department of Justice and Attorney-General, pp 11-12.

89 Jacob Greber.

90 Although it was acknowledged at p 53 that the outcome of the Attorney-General’s work on the issue was unknown at the time of making the recommendations: Queensland Government, Building and Construction Industry (WHS) Taskforce, October 2000.
safety standards by increasing the number of inquests into these incidents. Mr Barnes did not believe that the current system of prosecuting individual companies through agencies such as WHSQ was sufficient to improve safety practices across high-risk industries. What was apparently proposed by Mr Barnes was for coroners to engage specific industry groups, experts in a field, unions and employers and encourage them to take part in inquests as a result of which coroners could consider the information obtained and make recommendations for the relevant industry.\(^9\)

In April 2004, the Queensland Council of Unions is reported to have called for industrial manslaughter legislation in Queensland during the International Day of Mourning commemorating workers who have died or become sick or injured at work. Attendees at a Brisbane church service were asked to sign a petition to the State Government urging for reform. At that time, a spokesman for the then Attorney-General, the Hon Rod Welford MP, is reported to have said that the Government was happy to accept the petition and that the issue remained on the Government’s agenda but there were ‘no immediate plans to go ahead with the legislation.’\(^9\)

Also in April 2004, the State Government launched the *Queensland Workplace Health and Safety Strategy 2004-2012* which arose out of consultation with industry and unions. When announcing the Strategy, the Minister for Employment, Training & Industrial Relations noted that around 100 workers die in workplace incidents each year and up to 400 more may die from occupational diseases acquired during their working lives.\(^9\)

The *Queensland Workplace Health and Safety Strategy 2004-2012* provides a framework for allocating resources and efforts to areas most in need in terms of reducing workplace fatalities. The aim is to reduce workplace deaths by at least 20% and injury by 40% by June 2012. To meet those goals, five industries were identified as priority industries as a focus for improving safety – construction, transport and storage, health and community services, and the rural sector.\(^4\) For example, one major priority is to reduce high incidence/severity of risk; another is to develop the capacity of business operators and workers to effectively manage workplace health and safety through specified measures. It was recognised that a

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\(^9\) Natalie Gregg, ‘Call to punish bosses over work deaths’, *Courier Mail*, 29 April 2004, p 4.


number of actions were needed to achieve better health and safety outcomes including more research on effective methods; reviewing the effectiveness of the current regulatory framework; practical guidance to assist obligation holders; compliance support; deterrence strategies; and improved skills of obligation holders.

In accordance with the *Queensland Workplace Health and Safety Strategy 2004-2012*, QWHS will develop and implement action plans aimed at preventing and controlling work-related injuries, death and disease.

The Minister for Employment, Training & Industrial Relations has noted that the construction industry is of particular concern and is the target of an action plan to promote compliance with safe working practices in high risk industries. Part of this includes the recruitment of 22 new workplace inspectors – specialists in building and construction safety – to attempt to reduce risk taking activity, particularly in areas where the most problems have been identified.95

8 OTHER JURISDICTIONS

8.1 COMMONWEALTH

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cth) is the main piece of legislation covering workplace health and safety of Commonwealth employees. It applies to Commonwealth Government departments, statutory authorities, Government Business Enterprises (GBEs) and to private businesses which manufacture, supply or install plant, equipment and substances used by Commonwealth employees.

The Act contains a number of criminal penalties for breach of relevant OHS laws in the Act and also provides that an employer who exposes an employee to a significant risk of death or grievous bodily harm may be guilty of a criminal offence. Penalties increase in severity in accordance with the seriousness of the particular offence but tend to be monetary penalties rather than terms of imprisonment.

In terms of criminal penalties for a breach of a duty owed by an employer to an employee which results in death or serious bodily harm, a person can be fined up to $495,000 and up to $330,000 for exposure to substantial risk of death or serious bodily harm. Employees also have duties regarding occupational health and safety

and can be fined up to $19,800. Note that the Commonwealth and Commonwealth authorities (unless they are GBEs) are not liable under these offence provisions even if they are ‘employers’.

On 13 September 2004, the Commonwealth Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004 commenced, enabling the Federal Court or state or territory Supreme Courts to make a declaration that a Commonwealth employer has breached a provision of the Occupational Health and Safety (Commonwealth Employment) Act 1991 and then make a pecuniary penalty order. The court can also issue injunctions, make remedial orders, and require undertakings. It is a civil regime, providing an alternative to criminal prosecutions or a ‘fall back’ if the prosecution is unsuccessful. Thus, criminal sanctions will apply where conduct is genuinely negligent or reckless and the civil penalties in lesser cases.\(^\text{96}\) One of the main intentions of the new Act was to overcome the deficit in enforcement powers available to ComCare which has resulted in only 9 prosecutions being brought under the legislation.

In August 2004, Greens Senator, Ms Kerry Nettle, introduced the Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004, a private member’s bill, to create a federal industrial manslaughter offence by amending the Criminal Code Act 1995 (Cth). The proposed laws would apply to Commonwealth entities and those bodies and corporations over which the Commonwealth has constitutional power. The provisions are similar to those in the ACT industrial manslaughter legislation and include significant monetary penalties and terms of imprisonment. Other non-pecuniary sanctions apply such as a requirement that an offending corporation publicise the offence and the deaths or serious harm that resulted and the penalties imposed as a consequence. The Bill is yet to be debated.

### 8.2 South Australia

At present, Part 3 of the Occupational Health, Safety and Welfare Act 1986 (SA) provides that if an employer breaches the duty owed to employees to provide a safe system of work and to ensure, as far as practicable, that employees are safe from injury, the employer is liable to a fine of up to $40,000 for a first offence and $60,000 for a subsequent offence. Duties are also created for other persons such as workers, designers of plant and buildings, and so on.

The Occupational Health, Safety and Welfare (Industrial Manslaughter) Amendment Bill 2004 is a private member’s bill introduced into the SA Legislative Council on 8 December 2004 by an Independent Member, the Hon Nick Xenophon

\(^{96}\) CCH Australia, ‘Managing Occupational Health and Safety’, [5-170].
The Bill seeks to include an industrial manslaughter offence in the Occupational Health, Safety and Welfare Act that will apply to corporate and individual employers and senior officers. The provisions are very similar to the ACT’s Crimes (Industrial Manslaughter) Amendment Act 2003 but amend the State’s occupational health and safety legislation rather than its criminal laws. Under the proposed laws, an employer whose recklessly indifferent or negligent conduct causes the death of a worker stands to be fined up to $5 million and or imprisoned for up to 20 years. The Bill has not been debated.

In June 2005, the South Australian Parliament passed the Occupational Health, Safety and Welfare (SafeWork SA) Amendment Act 2005 to amend the Occupational Health, Safety and Welfare Act 1986 by establishing a new authority, SafeWork SA, and setting out various functions in relation to the operation and administration to the SafeWork scheme. The amendments include clarifying the duty of care of employers and self-employed persons under s 22 of the Act; outlining the powers of inspectors; and a number of other changes. It also provides for non-pecuniary penalties such as requiring publication of a breach. During the Bill’s passage through Parliament, Mr Xenophon sought to amend it to insert an offence of industrial manslaughter which was in virtually identical terms to his private member’s bill. However, the proposed amendment was not supported by the Government, Opposition and other parties which proposed that after SafeWork SA was established, an advisory committee should consider the penalty regime. It is likely that, as part of this agenda, the committee will consider industrial manslaughter.

### 8.3 TASMANIA

Health and safety in Tasmanian workplaces is currently regulated by the Workplace Health and Safety Act 1995 which imposes obligations and safety standards – for instance, the duty to provide a safe workplace: s 9. Currently, the maximum penalty under the Act is $150,000 for a corporation and $50,000 for an individual and there is no prison sanction: s 9. It appears that fines imposed under

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99 Hon C Zollo, Minister Assisting the Minister for Industry and Trade, Committee Stage of Debate, p 2115.
the Act for breaches, even those that have caused serious injury or death, have not exceeded $40,000.\textsuperscript{100}

In June 2005, the Tasmanian Law Reform Institute released an Issues Paper on industrial manslaughter for public comment following a decision by the State Government to investigate whether there was a need to introduce industrial manslaughter legislation in Tasmania. The public comment period closed on 1 August 2005.

\section*{8.4 Northern Territory}

The \textit{Work Health Act} (NT) contains provisions regarding obligations and safety standards, including that employers must provide and maintain a safe working environment: ss 29-31. A breach of the employers duty will incur a penalty of $25,000 for an individual and $125,000 for a corporation: s 29. At present, there do not appear to be any plans for the introduction of an industrial manslaughter offence.

\section*{8.5 United Kingdom\textsuperscript{101}}

For more than a decade, there have been discussions within the British Government about corporate manslaughter provisions. In the United Kingdom, as in Australia, there have been legal difficulties in prosecuting companies for work-related manslaughter, meaning that just six small organisations have been convicted for industrial manslaughter since 1992. In 1996, the Law Commission’s Report, \textit{Legislating the Criminal Code: Involuntary Manslaughter}, began the process of reform in calling for a new offence of corporate manslaughter which formed the basis for the Home Office’s consultation paper in 2000, ‘Reforming the Law on Involuntary Manslaughter: the Government’s Proposals’. There were over 150 responses to the issue of corporate manslaughter. There was considerable support for a new offence of corporate manslaughter across a range of stakeholders including industry, unions and the community. In 2001, the Government committed to reform in this area and, in March 2005, released a draft Corporate Manslaughter Bill for public consultation.

\textsuperscript{100} Tasmanian Law Reform Institute, para 5.2.12.


A new offence of corporate manslaughter proposed by the draft Bill would enable an organisation to be prosecuted if there is a gross failing by senior managers to take reasonable care for the safety of workers or members of the public which causes a person’s death. The law would cover all corporations, including many government corporations and authorities, as well as Government agencies. The proposal is that the corporation will have to be guilty of gross negligence and it will have to be proved that it owed a duty of care to the person who is killed. There must be a clear relationship between the duty imposed by the legislation and when that duty has not been discharged.

It is proposed that the new offence will be based on failures in the way that a corporation’s activities are managed (i.e. management failure) which focuses on the arrangements and practices for carrying out the functions of the corporation. Thus, it would concentrate on corporate failings in managing risks at the senior management level. Corporations will not be liable on the basis of any immediate, operational negligence causing death as the emphasis is on the working practices of the corporation. The definition of ‘senior manager’ will only cover those who play a role in management decisions and that must be a significant (i.e. decisive or influential rather than minor) role in the activities of the corporation as a whole or a substantial part of it.

The draft Bill sets out that corporations found guilty of corporate manslaughter would face an unlimited fine, which can, if the circumstances warrant it, be set at a very high level. The court would also be able to impose remedial orders such as the taking of action to address specified failures within a certain time.

The Government received over 180 responses to the consultation draft Bill which are presently being considered by the Parliamentary Committee considering the draft Bill in pre-legislative scrutiny. This is a process by which Parliament can examine and make recommendations about proposed legislation before the Bill is introduced into Parliament. In July 2005, the Home Affairs and Work & Pensions Select Committee announced that it would scrutinise and report on the draft Corporate Manslaughter Bill.
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