

South Australia

Work Health and Safety (Industrial Manslaughter) Amendment Bill 2022

A BILL FOR

An Act to amend the *Work Health and Safety Act 2012*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Work Health and Safety (Industrial Manslaughter) Amendment Act 2022*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Work Health and Safety Act 2012*

3—Amendment of section 4—Definitions

- 10 Section 4—after the definition of *import* insert:
 - industrial manslaughter offence*—see section 30A;

4—Insertion of section 30A

After section 30 insert:

30A—Industrial manslaughter

- (1) A person (being a person conducting a business or undertaking, or an officer of a person conducting a business or undertaking) commits an industrial manslaughter offence if—

- (a) the person has a health and safety duty; and
- (b) the person engages in conduct that breaches that duty; and
- (c) the conduct causes the death of an individual to whom that duty is owed; and
- (d) the person is reckless or grossly negligent as to the risk to an individual of death.

Maximum penalty:

- (a) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—20 years imprisonment;
- (b) in the case of an offence committed by a body corporate—\$15 000 000.

- (2) For the purposes of this section, conduct causes the death of an individual if it substantially contributes to the death.
- (3) If at the trial of a person for an offence against this section the trier of fact is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of a Category 1 offence, a Category 2 offence or a Category 3 offence, the trier of fact may bring a verdict that the accused is guilty of that offence.
- (4) For the purposes of this section, a person is ***grossly negligent*** as to the risk to an individual of death if the person's conduct involves—
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) such a high risk of causing the death of an individual, that the conduct merits criminal punishment for the offence.

5—Amendment of section 216—Regulator may accept WHS undertaking

Section 216(2)—delete the subsection and substitute:

- (2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is—
- (a) an industrial manslaughter offence; or
 - (b) a Category 1 offence.

6—Amendment of section 231—Procedure if prosecution is not brought

- (1) Section 231(1)—delete "a" first occurring and substitute:

an industrial manslaughter offence, a

- (2) Section 231(3)—delete "a" second occurring and substitute:

an industrial manslaughter,

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7—Amendment of section 232—Limitation period for prosecutions

Section 232—after subsection (2) insert:

- (3) This section does not apply to a proceeding for an industrial manslaughter offence.