



# Industrial Manslaughter to become a criminal offence in Victoria- Maximum penalties of \$16.5m and 20 years jail- Are you prepared?

## What you need to know?

The new industrial manslaughter laws to be contained in the *Occupational Health and Safety Act 2004 (Vic) (OHS Act)* will commence in Victoria from 1 July 2020.

The offence of industrial manslaughter attaches criminal responsibility to negligent conduct by an employer or officer of the employer that causes death to a person (worker or member of the public) and amounts to a breach of an applicably OHS duty. Negligent conduct will consist of conduct that involves a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in and that involves a high risk of death, serious injury, or serious illness.

Under the OHS Act, WorkSafe will be empowered to seek fines of up to \$16.5m and jail terms with sentences up to 20 years, consistent with the maximum prison term for manslaughter under Victorian criminal law.

The Victorian government has stated that "the purpose of the workplace manslaughter offences is to hold those with the power and resources to improve safety to account, such as organisations and their officers."

In addition to protecting physical safety, employers should also consider the importance of managing mental safety and wellbeing of their employees. The scope of the new legislation could conceivably apply to deaths by suicide arising from mental injury / illness sustained by an employee due to workplace bullying and harassment.

## Summary of the new provisions

	Nature of Offence	Who is liable?	Maximum Penalties
OHS Act (Vic) from 1 July 2020	A person will be guilty of industrial manslaughter where they:	Section 39G(1) Bodies corporate and applicable entities including unincorporated bodies and associations and partnerships.	Fine of up to \$16.5m for a body corporate

	<p>a. engage in negligent conduct; and</p> <p>b. that conduct amounts to a breach of an OHS duty owed to another person; and</p> <p>c. that conduct causes the death of the other person.</p>	<p>Section 39G(2) Officers of organisations, for example, directors, company secretaries, CEOs, CFOs and partners of partnerships</p>	<p>20 years' imprisonment and or a fine of up to \$1.66m</p>
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### What you need to do to prepare?

Company directors and officers should conduct a formal review of their existing occupational health and safety system. This is important for all industries, but particularly pertinent for those in the transport, construction and manufacturing sectors. This undertaking should involve:

- Reviewing your organisations existing occupational health and safety policies and procedures.
- Reviewing recent compliance levels with such policies and procedures.
- Identifying health and safety hazards and risks (risk assessments) relevant to your company specific work activities to ensure your workers are adequately protected.
- Ensuring that work activities which present an unreasonable level of risk to workers are eliminated.
- Ensuring that all workers have received relevant training and hold relevant certification and licencing.
- Ensuring that appropriate education and training is provided to your organisation on the new legislation.
- Reviewing any anti-bullying and harassment policies and consider providing refresher training to all employees.
- Assessing whether a strong safety culture is perceived amongst workers in your organisation.

Peer Legal is experienced in navigating the complexities surrounding workplace law compliance. We can assist your business with complying with your occupation health & safety obligations. Please contact us if you require more considered and individualised advice.



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