

Workplace manslaughter laws will come into effect on 1 July 2020 and carry maximum penalties of \$16.5m and 20 years' jail – preparation is key



It is important to be prepared for the workplace manslaughter laws which come into effect on 1 July 2020.

The Victorian Parliament has created Australia's highest safety fine and made Victoria the third Australian jurisdiction to make industrial manslaughter a criminal offence.

What is the scope of the new workplace manslaughter laws?

The new workplace manslaughter laws have been added to the Occupational Health and Safety Act 2004 (Vic) (**OHS Act**) and will apply to organisations (including bodies corporate, partnerships, unincorporated bodies and unincorporated associations), self-employed persons as well as officers.

The new laws will attract the highest penalty in the OHS Act, introducing maximum fines of approx. \$16.5m for employers and jail terms of up to 20 years and fines of up to \$1.65m for officers whose actions or omissions:

- ⇒ cause the death of a worker or member of the public;
- ⇒ involve a breach of an OHS duty;
- ⇒ were negligent.

The negligence standard is the criminal negligence standard and applies where there is a great falling short of the care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in, and involves a high risk of death or serious injury or serious illness.

Under the new laws, senior officers of a company, sole traders and partnerships could be separately liable (in addition to the employer) where they are negligent by failing to take reasonable steps on workplace safety to prevent fatalities, including managing mental injury that leads to suicide.

How to prepare your organisation for the new workplace manslaughter laws

The legislation highlights a strong focus on organisations achieving a culture of compliance which we expect WorkSafe Victoria's investigations will target in relation to possible offences of industrial manslaughter. With this in mind, it is important for businesses that they ensure adequate OHS systems, instruction training and supervision, but also place a heavy focus on worker engagement and a strong safety culture.

In preparation for the new legislation which will come into effective on 1 July 2020, ensure you have a strong safety leadership culture in place and the following four-steps will support your organisation, which include:



- **Review all the potential hazards and risks in the workplace, including mental health risks** and ensuring that these are incorporated in the OHS approach;
- **Complete a formal review of all the safety systems and controls** currently in place and ensure they are fully effective (including a mental health risk assessment and compliance plan);
- **Review all existing policies** including "unwritten practices" relating to health and safety;
- **Review OHS leadership and culture** to ensure that any alleged negligent conduct is not authorised or permitted by the company or culture;
 - ⇒ Undertake education and awareness sessions / webinars for directors, senior officers and managers on the new legislation and offences;
 - ⇒ Review incident action plans and responses; and
 - ⇒ Consider your insurance arrangements for your organisation and officers.

Further Support

If you would like to know more information, please contact Taraia at the Centre on taraia.brown@cfecfw.asn.au.