

Workplace manslaughter

Understanding the proposed model

This document discusses the current proposed laws for the proposed offence as reflected in the Consultation Paper to facilitate discussion around the best approach for implementing the Victorian Government's election commitment

Disclaimer

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The proposed laws and information included in this document are a starting point only, and are provided to facilitate discussion. The document does not reflect the views of the Victorian Government, the Attorney-General, or any member of the Implementation Taskforce.

Confidentiality

This document is confidential.

Overview

What is the proposed offence?

The proposed offence of 'workplace manslaughter' would be introduced into the *Occupational Health and Safety Act 2004* (Vic) (OHS Act).

Who will the proposed offence apply to?

The proposed offence would apply to persons other than employees who currently hold duties under Part 3 of the OHS Act (such as employers and self-employed persons) and their officers.

What victims will be covered by the proposed offence?

The proposed offence is broad and will apply to the death of anyone who is owed a duty under Part 3 of the OHS Act. This includes employees, contractors and members of the public (such as bystanders).

What penalties will apply?

A maximum penalty of 20 years imprisonment would apply to individuals (this is the same maximum penalty as manslaughter) and a maximum fine of 100,000 penalty units (around \$16 million) would apply to companies.

Details of the proposed offence

In what circumstances will the proposed offence apply?

The proposed offence will apply where:

- a 'person' (A) (e.g. an employer) owes a duty under the OHS Act to ensure the health and safety of another person (B), and
- A, or an 'officer' of A, engages in conduct relating to A's business, and
- the conduct causes B's death, and
- the conduct is negligent.



This proposed offence is based on an industrial manslaughter offence in Queensland. However, it is broader than that offence as it applies to the death of members of the public (and not just employees).

Who would be subject to the proposed offence?

The proposed offence would apply to a person other than an employee who holds duties under Part 3 of the OHS Act and their officers. The proposed offence would not apply to volunteers.

Under the OHS Act, a 'person' includes a body corporate, unincorporated body or association or a partnership. The main category of 'persons' covered will be 'employers' and 'self-employed persons'.

'Officers' include directors or secretaries (of corporations), partners (of partnerships), office holders (of unincorporated associations), persons who participate in the making of decisions that affect a substantial part of the organisation's business, and persons who have the capacity to affect significantly the organisation's financial standing.

What conduct will be covered?

The proposed offence would apply to conduct by A, either directly or through the act/s of A's employees, agents or officers. It is not confined to senior managers. The relevant conduct could include a failure to act.

What does 'negligent' mean?

Conduct is 'negligent' if it involves a great falling short of the standard of care that a reasonable person would have exercised in the circumstances and involves a high risk of death or serious injury. It is a test that looks at what a reasonable person would have done in the circumstances.

For organisations, it would not be necessary to pinpoint negligence by one particular person. A death may occur because of one person's negligence or because of the acts of a number of people. The question to be asked is: "was the organisation negligent?"

An organisation may be found to be negligent where its unwritten rules, policies, work practices or conduct implicitly authorise non-compliance, or fail to create a culture of compliance, consistent with the organisation's responsibilities and duties under the OHS Act.

When does A owe a duty to B under the OHS Act?

The OHS Act currently imposes a number of duties on employers and others. For example:

- an employer must, so far as is reasonably practicable, provide and maintain for their employees a working environment that is safe and without risks to health, and
- an employer must ensure, so far as is reasonably practicable, that persons *other than employees* are not exposed to risks to their health or safety arising from the conduct of their undertaking.

This reform would not impose any new duties under the OHS Act.

What determines if conduct caused the death of a person?

This will be determined on the facts of each case. Based on general criminal law principles, the question is whether A's conduct contributed significantly to B's death.

Will the offence apply if someone dies from a workplace injury or illness?

The proposed offence may apply where A's conduct caused an injury or illness to B, who later dies from that injury or illness. This will depend on the circumstances, including the nature of B's injury or illness and any other factors that may have contributed to their death.

What are some examples of negligent conduct?

Examples of negligent conduct include where a company:

- does not adequately manage, control or supervise its employees
- does not take reasonable action to fix a dangerous situation
- does not hire contractors who are reasonably able to perform their necessary duties.

Will the proposed offence apply retrospectively?

It is important to note that in line with fundamental principles of criminal law, particularly for such a serious offence, the proposed offence would apply prospectively (that is, to conduct that occurs *after* the offence is introduced).