

Legislative Council—No 71

As introduced and read a first time, 23 September 2020

South Australia

**Work Health and Safety (Industrial Manslaughter)
Amendment Bill 2020**

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 2020*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

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

3—Insertion of section 268A

10 After section 268 insert:

268A—Industrial manslaughter

- 15 (1) An employer is guilty of an offence if—
 - (a) the employer breaches a duty imposed under Part 2 Division 2; and
 - (b) the employer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and
 - 20 (c) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty:

- 25 (a) in the case of an employer who is a natural person—20 years imprisonment;
- (b) in any other case—\$13 000 000.

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- (2) An officer of an employer that is a body corporate is guilty of an offence if—
- (a) the officer engages in conduct that, had the officer been acting within the scope of the officer's actual or apparent authority, would be imputed to the employer pursuant to section 244; and
 - (b) the conduct would, if so imputed, constitute a breach by the employer of a duty imposed under Part 2 Division 2; and
 - 10 (c) the officer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and
 - (d) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not
15 the death occurred in a workplace).

Maximum penalty: Imprisonment for 20 years.

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- (3) It is a defence to a charge of an offence against this section for the defendant to prove that the act or omission alleged to constitute the breach—
- (a) occurred in the course of an emergency; or
 - (b) was authorised under this or any other Act or law of the State or the Commonwealth.
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- (4) Nothing in this section prevents an employer and an officer of the employer from both being guilty of an offence against this section in respect of a particular death.
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- (5) For the purposes of this section—
- (a) the way in which the activities of the employer were managed or organised causes a breach of a duty if it substantially contributes to the breach;
 - (b) a breach of a duty causes the death of a person if it substantially contributes to the death.
- (6) An offence against this section is a major indictable offence.
- (7) Section 267 of the *Criminal Law Consolidation Act 1935* does not apply in respect of an offence against this section.
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- (8) If at the trial of a person for an offence against this section the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under Part 2 Division 5, the jury may bring a verdict that the accused is guilty of that offence.