

House of Assembly—No 91

As received from the Legislative Council and read a first time, 26 September 2023

South Australia

**Work Health and Safety (Industrial Manslaughter)
Amendment Bill 2023**

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 2023*.

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 (1) Section 4—after the definition of *import* insert:
 - industrial manslaughter offence*—see section 30A;
- (2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
 - 15 (2) For the purposes of Part 2, a person engages in conduct with *gross negligence* if the 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 or serious injury or illness of an individual,
 - 20 that the conduct merits criminal punishment for the offence.

- (3) For the purposes of Part 2, a person is *reckless* as to the risk to an individual of death or serious injury or illness if—
- (a) the person is aware of a substantial risk that death or serious injury or illness will happen; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4) For the purposes of Part 2, the question of whether taking a risk is unjustifiable is a question of fact.

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—
 - (i) engages in the conduct with gross negligence; or
 - (ii) is reckless as to the risk to an individual of death or serious injury or illness.

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—\$18 000 000.
- (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 if the proceedings for the offence charged commenced within the applicable limitation period for the lesser offence.

5—Amendment of section 31—Reckless conduct—Category 1

(1) Section 31, heading—delete "Reckless" and substitute:

Gross negligence or reckless

(2) Section 31(1)(c)—delete paragraph (c) and substitute:

(c) the person—

(i) engages in the conduct with gross negligence; or

(ii) is reckless as to the risk to an individual of death or serious injury or illness.

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

Section 216(2)—delete subsection (2) 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.

7—Amendment of section 230—Prosecutions

Section 230(6)—before paragraph (a) insert:

(a1) an industrial manslaughter offence; or

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

(1) Section 231(1)(a)—after "constitutes" insert:

an industrial manslaughter offence,

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

an industrial manslaughter,

9—Amendment of section 232—Limitation period for prosecutions

Section 232—after subsection (2) insert:

(3) This section does not apply to proceedings for an industrial manslaughter offence.