

South Australia

# Work Health and Safety (Industrial Manslaughter) Amendment Act 2023

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

This Act may be cited as the *Work Health and Safety (Industrial Manslaughter) Amendment Act 2023*.

### 2—Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.
  - (2) Part 2 of this Act (other than section 7(2) and (3)) comes into operation on a day to be fixed by proclamation.
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## Part 2—Amendment of *Work Health and Safety Act 2012*

### 3—Amendment of section 4—Definitions

- (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:
- (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,
- 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.
  - (4) To avoid doubt, an offence against this section is a major indictable 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**

- (1) Section 230(6)—before paragraph (a) insert:
  - (a1) an industrial manslaughter offence; or
- (2) Section 230(7)—delete "Committal proceedings for an indictable" and substitute:

Subject to subsection (10), committal proceedings for a minor indictable

(3) Section 230—after subsection (9) insert:

(10) Despite subsections (7) and (8) or any other provision of this Act, a summary or minor indictable offence against this Act that is charged on the same information as a major indictable offence against this Act or any other Act will be dealt with according to the procedures applicable to major indictable offences under the *Criminal Procedure Act 1921*.

**Note—**

See section 102(3) of the *Criminal Procedure Act 1921*.

(11) Section 6A(3) of the *South Australian Employment Tribunal Act 2014* does not apply in relation to a summary or minor indictable offence referred to in subsection (10).

(12) To avoid doubt, an information for a major indictable offence against this Act must be laid in the Magistrates Court and be dealt with according to the procedures applicable to major indictable offences under the *Criminal Procedure Act 1921*.

## **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.

# **Schedule 1—Transitional and saving provisions**

## **1—Transitional and saving provisions**

(1) Section 230 of the *Work Health and Safety Act 2012* (as amended by section 7(3) of this Act) will be taken to apply in relation to an information containing a charge of—

- (a) a major indictable offence against the *Criminal Law Consolidation Act 1935* or any other Act; and
- (b) a summary or minor indictable offence against the *Work Health and Safety Act 2012*,

laid before the commencement of this clause (and to avoid doubt, section 6A(3) of the *South Australian Employment Tribunal Act 2014* will be taken not to apply in relation to the offences referred to in paragraph (b)).

- (2) Despite section 230(7) of the *Work Health and Safety Act 2012* (as in force immediately prior to the commencement of section 7(2) of this Act) committal proceedings for a minor indictable offence referred to in subclause (1)(b) may be conducted in the Magistrates Court in accordance with the *Criminal Procedure Act 1921*.