GILSHENAN & LUTON
LEGAL PRACTICE



Industrial manslaughter in Queensland

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In 2017, industrial manslaughter became an offence in Queensland following amendments to the *Work Health and Safety Act* 2011 ('the WHS Act').

Industrial manslaughter is a serious criminal offence that applies to a fatality at a workplace when:

1. the death of an individual (worker or other person) occurs; and
2. the death is caused by the conduct of:
   - a person conducting a business or undertaking (PCBU); or
   - a senior officer (e.g. an executive officer of a company or an executive who makes or takes part in making decisions affecting all of the company); and
3. the conduct of the PCBU/senior officer is negligent.

In May 2020, the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* was passed in Queensland Parliament, introducing industrial manslaughter as an offence under resources legislation:

- *Electrical Safety Act 2002*
- *Coal Mining Safety and Health Act 1999*
- *Mining and Quarrying Safety and Health Act 1999*
- *Petroleum and Gas (Production and Safety) Act 2004*

- *Explosives Act 1999*
- *Safety in Recreational Water Activities Act 2011*

Importantly, under the resources legislation, the offence of industrial manslaughter applies only to the death of a worker, whereas under the WHS Act, the offence has a broader application as it applies to the death of an individual (which includes a worker, visitor, customer, contractor, volunteer, student) at a workplace.

Penalties for industrial manslaughter

Under all legislation noted above, the maximum penalties applicable upon conviction for industrial manslaughter depend upon the defendant's legal personality:

- for a senior officer: 20 years imprisonment;
- for an individual as a PCBU: 20 years imprisonment; or
- for a body corporate: $10,000,000 fine

Definitions under the WHS Act – PCBU and senior officer

Who is a PCBU?

Under the WHS Act, a PCBU is defined as a person who conducts a business or undertaking alone or with others, whether or not for profit or gain. It can include a sole trader, partnership, company, unincorporated association, or government department.

Who is a senior officer?

The term 'senior officer' is unique to the offence of industrial manslaughter. The definition of the term is broad and applies to executive officers of a corporation or holders of executive positions who make, or take part in making, decisions affecting all, or a substantial part, of the PCBU.

You can read more detail about health and safety roles and duties here.

Proving industrial manslaughter

To prove the offence of industrial manslaughter, the prosecution must prove beyond reasonable doubt that the PCBU or senior officer was negligent in their conduct and that conduct substantially contributed to the death (of the worker or individual).

The existing standard of proof in Queensland for criminal negligence applies.

To establish criminal negligence, the prosecution must prove beyond reasonable doubt that the conduct was so far below the required standard of care a reasonable member of the community would use in similar circumstances. The conduct must go substantially beyond a situation in which payment of compensation is adequate punishment - the conduct must be behaviour where the only adequate punishment for the lack of care in the circumstances requires punishment by the State.

Defences to industrial manslaughter

Defences may be available to a charge of industrial manslaughter, as per the *Criminal Code 1899*, including:

1. ignorance of the law;
2. mistake of fact;
3. extraordinary emergencies;

Notably, the offence of industrial manslaughter specifically excludes the operation of defences under section 23 of the *Criminal Code* (Qld). For that reason, there is no defence of 'unwilled act' or 'accident' to a charge of industrial manslaughter.

You can read more about potential defences in our earlier article, "Defences to criminal charges".

Alternative offences to industrial manslaughter

Under the WHS Act, a defendant charged with industrial manslaughter can be acquitted of the offence but still found guilty of a less serious offence (i.e. a category 1 offence) if the alternative offence is established by the evidence.

Examples of industrial manslaughter prosecutions in Queensland

Industrial manslaughter prosecutions are infrequent. There have been three convictions for industrial manslaughter since the inception of the offence in 2017.

R v Brisbane Auto Recycling Pty Ltd [2020] QDC 113

This was the first industrial manslaughter prosecution in Queensland, and nationally.

In 2019, a worker was struck and crushed by a forklift at a Brisbane auto-wrecking company. The forklift was being driven in reverse by an unlicensed and inexperienced worker. The worker died in hospital 8 days later.

The prosecution alleged the company had no written safety policies or procedures and told workers to "be safe and look after themselves". The company pleaded guilty and was convicted of industrial manslaughter and fined $3 million.

Two company officers were also prosecuted for offences under section 31 of the WHS Act (Category 1 – reckless conduct). Both officers pleaded guilty and were sentenced respectively to 10 months' imprisonment, wholly suspended.

R v Jeffrey Owen [2022] QDCSR 168

Mr Owen was the first individual found guilty of industrial manslaughter after a trial.

Mr Owen owned and operated an electric motor repair business. A worker sustained fatal injuries when he was crushed by a generator after it fell from a forklift operated by Mr Owen.

Mr Owen was charged as a PCBU for negligently causing the death of the worker. The prosecution alleged that the forklift was overloaded by Mr Owen. Evidence identified that the generator weighed three tonnes and that the forklift was rated to lift not more than 2.7 tonnes.

The prosecution also established that Mr Owen did not hold a valid licence to operate a forklift.

Mr Owen was sentenced to five years' imprisonment, to be suspended after serving 18 months in actual custody.

R v Narellan Pools Pty Ltd (14 June 2024 – Brisbane District Court)

The defendant company was convicted and fined $1.5 million after pleading guilty to industrial manslaughter.

The company was charged following the death of a worker who was struck by a mobile crane while moving a fibreglass pool.

An investigation into the incident identified that the company:

- did not have a traffic management system;
- did not have a safe work method statement or documented safe operating procedure for the operation of the crane;
- did not have a procedure in place for exclusion zones; and
- did not provide training on dogger or rigging duties.

Neither were spotters used, nor was there a communication system in place between the dogger and crane operator.

Need help from a WHS lawyer?

If you have duties and obligations under the WHS Act and the workplace is being investigated or prosecuted for a breach of WHS laws, especially industrial manslaughter, it's important that you urgently seek legal advice from a lawyer experienced in work health and safety law.

We have strong technical knowledge of health and safety duties and an intimate understanding of criminal procedure, enabling us to provide clear and practical advice and robust representation.

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