

Legislation update for prosecuting agencies

Further changes to Queensland's work health and safety laws have come into effect

9 July 2018

The *Work Health and Safety and Other Legislation Amendment Act 2017* was passed last year, with its various provisions commencing at different times. The most notable amendment introduced by the Act - the creation of the new offence of industrial manslaughter (discussed further below) - commenced upon assent on 23 October 2017. Other important amendments have only commenced last week (on 1 July 2018) however.

New Provisions

The *Work Health and Safety Act 2011* (WHS Act) has been amended to restore the previous position (from the 1995 Act) regarding the treatment of Codes of Practice. Now, where an approved Code of Practice exists, a 'person carrying on a business or undertaking' (PCBU) must either comply with the Code or otherwise provide a standard of health and safety equivalent to or higher than that required by the Code.¹

Also commencing this week are other provisions concerning the obligations on PCBUs to ensure that the business or undertaking's health and safety representative (HSR) completes prescribed training². The new provisions also set out the general functions of work health and safety officers (WHSO's) for a business or undertaking, both where they are the PCBU and where they are not.³

Industrial Manslaughter

As noted above, the most significant amendment brought in by the amending Act is the creation of the new offence of industrial manslaughter. The offence is now found in each of the WHS Act 2011, the *Electrical Safety Act 2002*, and the *Safety in Recreational Water Activities Act 2011*.⁴

¹ Section 26A WHS Act

² Section 72 WHS Act

³ Section 103B - 103C WHS Act

⁴ The offence does not apply in the mining field.

The offence applies to PCBU's and senior officers⁵ who have been found to have negligently caused the death of a worker, including during work breaks. Volunteers are specifically excluded from criminal liability. The maximum penalties for breaching the offence provision are 20 years' jail for individuals and \$10 million fine for companies. Importantly, the defence of accident under the Criminal Code⁶ is specifically excluded.

The standard of proof to be applied is that of criminal negligence, namely whether the conduct so far departed from the standard of care required to use reasonable care to avoid a danger to life, health and safety, as to amount to conduct deserving of punishment. Furthermore, the conduct must have *substantially contributed* to the fatality.

Other Changes – Still Coming

The amending Act also provides for other changes (such as the introduction of a dedicated statutory 'Office of the WHS Prosecutor'), which will commence upon proclamation, and which are not yet in force.

For further inquiries or assistance, please contact Glen Cranny, Managing Director, Gilshenan & Luton Legal Practice on 3361 0240 or gcranny@gnl.com.au

⁵ Senior officers are defined to mean executive officers of companies, and those holding executive positions or taking part in making decisions affecting all or a substantial part of the PCBU's functions.

⁶ Section 23 Criminal Code (Qld)