



Australian Capital Territory

Crimes (Industrial Manslaughter) Amendment Act 2003

A2003-55

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Australian Capital Territory

Crimes (Industrial Manslaughter) Amendment Act 2003

A2003-55

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2002 179B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Crimes (Industrial Manslaughter) Amendment Act 2003*.

2 Commencement

This Act commences on 1 March 2004.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Act amended

This Act amends the *Crimes Act 1900*.

4 Section 7A, note 1

insert

- section 49C (Industrial manslaughter—employer offence)
- section 49D (Industrial manslaughter—senior officer offence)

5 New part 2A

insert

Part 2A Industrial manslaughter

49A Definitions for pt 2A

In this part:

agent, of a person (the *first person*), means—

- (a) a person (the *second person*) engaged by the first person (whether as independent contractor or otherwise) to provide services to the first person in relation to matters over which the first person—

- (i) has control; or
 - (ii) would have had control apart from an agreement between the first person and second person; or
- (b) a person engaged by another agent of the first person, or by an agent of an agent, (whether as independent contractor or otherwise) to provide services, in relation to the first person, to the other agent in relation to matters over which the other agent—
- (i) has control; or
 - (ii) would have had control apart from an agreement between the agents.

causes death—a person's conduct **causes** death if it substantially contributes to the death.

commissioner for OH&S means the Occupational Health and Safety Commissioner under the *Occupational Health and Safety Act 1989*.

conduct—see the Criminal Code, section 13.

death—see the Criminal Code, dictionary.

employee means a person engaged under a contract of service.

employer, of a worker—a person is an **employer** of a worker if—

- (a) the person engages the worker as a worker of the person; or
- (b) an agent of the person engages the worker as a worker of the agent.

government—see the Legislation Act, section 121 (6).

government entity—an entity is a **government entity** for a function of the entity if—

- (a) the entity's exercise of the function is subject to the control of a government (including a senior officer of the government); or
- (b) the entity is otherwise an agent of a government in exercising the function.

independent contractor means a person engaged under a contract for services.

officer, of a corporation—see the Corporations Act, section 9.

Note At the commencement of this section, the definition of ***officer*** in the Corporations Act, section 9 is as follows:

officer of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

outworker means an individual engaged by a person (the ***principal***) under a contract for services to treat or manufacture articles or materials, or to perform other services—

- (a) in the outworker's own home; or
- (b) on other premises not under the control or management of the principal.

provide services to, or in relation to, a person includes perform work for, or in relation to, the person.

senior officer, of an employer, means—

- (a) for an employer that is a government, or an entity so far as it is a government entity—any of the following:
 - (i) a Minister in relation to the government or government entity;
 - (ii) a person occupying a chief executive officer position (however described) in relation to the government or government entity;
 - (iii) a person occupying an executive position (however described) in relation to the government or government entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the government or government entity; or
- (b) for an employer that is another corporation (including a corporation so far as it is not a government entity)—an officer of the corporation; or
- (c) for an employer that is another entity—any of the following:
 - (i) a person occupying an executive position (however described) in relation to the entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the entity;
 - (ii) a person who would be an officer of the entity if the entity were a corporation.

Example for par (a) (ii)

a person employed under the *Public Sector Management Act 1994*, section 28 (Engagement) or section 30 (Temporary performance of duties) to perform an office of chief executive

Example of executive position for par (a) (iii)

an office created under the *Public Sector Management Act 1994*, section 54A

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

serious harm—see the Criminal Code, dictionary.

volunteer means a person who—

- (a) provides services—
 - (i) for, or in relation to, the trade or business of someone else; or
 - (ii) for an entity for, or in relation to, a religious, educational, charitable or benevolent purpose or otherwise in the public interest; and
- (b) receives no payment for the provision of the services (other than reasonable out-of-pocket expenses).

worker means—

- (a) an employee; or
- (b) an independent contractor; or
- (c) an outworker; or
- (d) an apprentice or trainee; or
- (e) a volunteer.

49B Omissions of employers and senior officers

- (1) An employer's omission to act can be conduct for this part if it is an omission to perform the duty to avoid or prevent danger to the life, safety or health of a worker of the employer if the danger arises from—
 - (a) an act of the employer; or

- (b) anything in the employer's possession or control; or
 - (c) any undertaking of the employer.
- (2) An omission of a senior officer of an employer to act can be conduct for this part if it is an omission to perform the duty to avoid or prevent danger to the life, safety or health of a worker of the employer if the danger arises from—
- (a) an act of the senior officer; or
 - (b) anything in the senior officer's possession or control; or
 - (c) any undertaking of the senior officer.
- (3) For this section, if, apart from an agreement between a person and someone else, something would have been in the person's control, the agreement must be disregarded and the thing must be taken to be in the person's control.

49C Industrial manslaughter—employer offence

An employer commits an offence if—

- (a) a worker of the employer—
 - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
 - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
- (b) the employer's conduct causes the death of the worker; and
- (c) the employer is—
 - (i) reckless about causing serious harm to the worker, or any other worker of the employer, by the conduct; or

- (ii) negligent about causing the death of the worker, or any other worker of the employer, by the conduct.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

49D Industrial manslaughter—senior officer offence

A senior officer of an employer commits an offence if—

- (a) a worker of the employer—
 - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
 - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
- (b) the senior officer's conduct causes the death of the worker; and
- (c) the senior officer is—
 - (i) reckless about causing serious harm to the worker, or any other worker of the employer, by the conduct; or
 - (ii) negligent about causing the death of the worker, or any other worker of the employer, by the conduct.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

Note The general offence of manslaughter in s 15 applies to everyone, including workers.

49E Court may order corporation to take certain actions

- (1) This section applies if a court finds a corporation guilty of an offence against section 49C.

- (2) In addition to or instead of any other penalty the court may impose on the corporation, the court may order the corporation to do 1 or more of the following:
- (a) take any action stated by the court to publicise—
 - (i) the offence; and
 - (ii) the deaths or serious injuries or other consequences resulting from or related to the conduct from which the offence arose; and
 - (iii) any penalties imposed, or other orders made, because of the offence;
 - (b) take any action stated by the court to notify 1 or more stated people of the matters mentioned in paragraph (a);
 - (c) do stated things or establish or carry out a stated project for the public benefit even if the project is unrelated to the offence.

Example for par (a)

advertise on television or in a daily newspaper

Example for par (b)

publish a notice in an annual report or distribute a notice to shareholders of the corporation

Example for par (c)

develop and operate a community service

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In making the order, the court may state a period within which the action must be taken, the thing must be done or the project must be established or carried out, and may also impose any other requirement that it considers necessary or desirable for enforcement of the order or to make the order effective.

- (4) The total cost to the corporation of compliance with an order or orders under subsection (2) in relation to a single offence must not be more than \$5 000 000 (including any fine imposed for the offence).
- (5) If the court decides to make an order under subsection (2), it must, in deciding the kind of order, take into account, as far as practicable, the financial circumstances of the corporation and the nature of the burden that compliance with the order will impose.
- (6) The court is not prevented from making an order under subsection (2) only because it has been unable to find out the financial circumstances of the corporation.
- (7) If a corporation fails, without reasonable excuse, to comply with an order under subsection (2) (a) or (b) within the stated period (if any) the court may, on application by the commissioner for OH&S, by order authorise the commissioner—
 - (a) to do anything that is necessary or convenient to carry out any action that remains to be done under the order and that it is still practicable to do; and
 - (b) to publicise the failure of the corporation to comply with the order.
- (8) If the court makes an order under subsection (7), the commissioner must comply with the order.
- (9) Subsection (7) does not prevent contempt of court proceedings from being started or continued against a corporation that has failed to comply with an order under this section.
- (10) The reasonable cost of complying with an order under subsection (7) is a debt owing to the Territory by the corporation against which the order was made.

6 Dictionary

insert

agent, for part 2A (Industrial manslaughter)—see section 49A.

causes death, for part 2A (Industrial manslaughter)—see section 49A.

commissioner for OH&S, for part 2A (Industrial manslaughter)—see section 49A.

conduct, for part 2A (Industrial manslaughter)—see the Criminal Code, section 13.

death, for part 2A (Industrial manslaughter)—see the Criminal Code, section 13.

employee, for part 2A (Industrial manslaughter)—see section 49A.

employer, for part 2A (Industrial manslaughter)—see section 49A.

government, for part 2A (Industrial manslaughter)—see the Legislation Act, section 121 (6).

government entity, for part 2A (Industrial manslaughter)—see section 49A.

independent contractor, for part 2A (Industrial manslaughter)—see section 49A.

officer, of a corporation, for part 2A (Industrial manslaughter)—see the Corporations Act, section 9.

outworker, for part 2A (Industrial manslaughter)—see section 49A.

provide services, for part 2A (Industrial manslaughter)—see section 49A.

senior officer, for part 2A (Industrial manslaughter)—see section 49A.

serious harm, for part 2A (Industrial manslaughter)—see the Criminal Code, dictionary.

volunteer, for part 2A (Industrial manslaughter)—see section 49A.

worker, for part 2A (Industrial manslaughter)—see section 49A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 12 December 2002.

2 Notification

Notified under the Legislation Act on 4 December 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Industrial Manslaughter) Amendment Bill 2003, which originated in the Assembly as the Crimes (Industrial Manslaughter) Amendment Bill 2002 and was passed by the Legislative Assembly on 27 November 2003.

Clerk of the Legislative Assembly

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