



Australian Capital Territory

Work Health and Safety Amendment Act 2021

A2021-19

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

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Australian Capital Territory

Work Health and Safety Amendment Act 2021

A2021-19

An Act to amend the *Work Health and Safety Act 2011*, and for other purposes

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

1 Name of Act

This Act is the *Work Health and Safety Amendment Act 2021*.

2 Commencement

This Act commences 3 months after its notification day.

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

3 Legislation amended

This Act amends the *Work Health and Safety Act 2011*.

Note This Act also amends the following legislation (see sch 1):

- [Bail Act 1992](#)
- [Crimes Act 1900](#)
- [Crimes \(Sentence Administration\) Act 2005](#)
- [Supreme Court Act 1933](#).

**4 Duty of officers
Section 27 (2)**

after

division 2.5 (Offences and penalties)

insert

or division 2.6 (Industrial manslaughter)

5 New division 2.6

insert

Division 2.6 Industrial manslaughter

34A Industrial manslaughter

- (1) A person commits an offence if—
- (a) the person conducts a business or undertaking, or is an officer of a person who conducts a business or undertaking; and
 - (b) the person has a health and safety duty; and
 - (c) the person engages in conduct; and
 - (d) the conduct results in a breach of the health and safety duty; and
 - (e) the conduct causes—
 - (i) the death of a worker; or
 - (ii) an injury to a worker and the injury later causes the death of the worker; or
 - (iii) the death of another person; and
 - (f) the person is reckless or negligent about causing the death of the worker or other person by the conduct.

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—imprisonment for 20 years; or
- (b) in the case of an offence committed by a body corporate—\$16 500 000.

Note See s 244 and s 245 for imputing conduct to a body corporate or the Territory.

- (2) Strict liability only applies to subsection (1) (a) and (b).

Note Subsection (2) displaces s 12A which states that strict liability applies to each physical element of each offence under this Act unless otherwise stated in the section containing the offence.

- (3) An offence against this section is declared to be an indictable offence.

Note An indictable offence is an offence punishable by imprisonment for longer than 2 years or an offence declared by an ACT law to be an indictable offence (see [Legislation Act](#), s 190 (1)).

- (4) In this section:

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

health and safety duty means a duty imposed under—

- (a) division 2.2 (Primary duty of care); or
- (b) division 2.3 (Further duties of persons conducting businesses or undertakings); or
- (c) section 27 (Duty of officers).

34B Alternative verdict for industrial manslaughter

- (1) This section applies if, in a prosecution for an industrial manslaughter offence, the trier of fact—
- (a) is not satisfied beyond reasonable doubt that the defendant committed an industrial manslaughter offence; and
 - (b) is satisfied beyond reasonable doubt that the defendant committed an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

alternative offence, for an industrial manslaughter offence, means a category 1 offence or a category 2 offence.

**6 Regulator may accept WHS undertakings
Section 216 (2)**

substitute

- (2) However, a WHS undertaking cannot be accepted for a contravention or alleged contravention of—
- (a) a category 1 offence; or
 - (b) an industrial manslaughter offence.

**7 Procedure if prosecution is not brought
Section 231 (1) (a)**

omit

or a category 2 offence;

substitute

, a category 2 offence or an industrial manslaughter offence;

8 Section 231 (3)

omit

a category 1 or category 2 offence

substitute

a category 1 offence, a category 2 offence or an industrial manslaughter offence

9 **Limitation period for prosecutions**
New section 232 (3)

insert

- (3) This section does not apply to a proceeding for an industrial manslaughter offence.

10 **Dictionary, new definition of *industrial manslaughter offence***

insert

industrial manslaughter offence means an offence against section 34A (Industrial manslaughter).

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Bail Act 1992

[1.1] Schedule 1, part 1.1, items 3 and 4

omit

[1.2] Schedule 1, new part 1.7

insert

Part 1.7 Offence against Work Health and Safety Act 2011

column 1 item	column 2 provision	column 3 description of offence
1	34A	industrial manslaughter

Part 1.2 Crimes Act 1900

[1.3] Section 7A, note 1

omit

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

[1.4] Part 2A

omit

[1.5] Dictionary, definitions of *agent* and *causes*

omit

[1.6] Dictionary, definition of *conduct*

substitute

conduct, for part 13 (Unfitness to plead and mental impairment)—
see the [Criminal Code](#), section 13.

[1.7] Dictionary, definitions

omit the definitions of

death

employee

employer

government

government entity

independent contractor

[1.8] Dictionary, definition of *officer*

substitute

officer, in relation to a body corporate or public company, includes a
person who has been appointed or who acts as an auditor of the body
corporate or public company.

[1.9] Dictionary, definitions

omit the definitions of

outworker

provide services

senior officer

serious harm

volunteer

worker

**Part 1.3 Crimes (Sentence
Administration) Act 2005**

[1.10] Section 161B, definition of *serious violent offence*, par (a)

substitute

- (a) either of the following provisions punishable by a maximum term of imprisonment of 10 years or more:
- (i) the *Crimes Act 1900*, part 2 (Offences against the person);
 - (ii) the *Work Health and Safety Act 2011*, section 34A (Industrial manslaughter); or

Part 1.4 Supreme Court Act 1933

[1.11] Schedule 2, section 2.1, new definition of *Work Safety Act*

before the note, insert

Work Safety Act means the [Work Health and Safety Act 2011](#).

[1.12] Schedule 2, part 2.2, items 6 and 7

omit

[1.13] Schedule 2, part 2.2, new item 35

insert

35	Work Safety Act	34A	industrial manslaughter
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 June 2021.

2 Notification

Notified under the [Legislation Act](#) on 11 August 2021.

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 Work Health and Safety Amendment Bill 2021, which was passed by the Legislative Assembly on 5 August 2021.

Clerk of the Legislative Assembly

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