

2021

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations and Workplace Safety)

Work Health and Safety Amendment Bill 2021

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(Minister for Industrial Relations and Workplace Safety)

Work Health and Safety Amendment Bill 2021

A Bill for

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 **1 Name of Act**

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

3 **2 Commencement**

4 This Act commences 3 months after its notification day.

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

7 **3 Legislation amended**

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

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

- 10 • [Bail Act 1992](#)
- 11 • [Crimes Act 1900](#)
- 12 • [Crimes \(Sentence Administration\) Act 2005](#)
- 13 • [Supreme Court Act 1933](#).

14 **4 Duty of officers**
15 **Section 27 (2)**

16 *after*

17 division 2.5 (Offences and penalties)

18 *insert*

19 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.

- 1 (2) Strict liability only applies to subsection (1) (a) and (b).
- 2 *Note* Subsection (2) displaces s 12A which states that strict liability applies to
3 each physical element of each offence under this Act unless otherwise
4 stated in the section containing the offence.
- 5 (3) An offence against this section is declared to be an indictable offence.
- 6 *Note* An indictable offence is an offence punishable by imprisonment for
7 longer than 2 years or an offence declared by an ACT law to be an
8 indictable offence (see [Legislation Act](#), s 190 (1)).
- 9 (4) In this section:
- 10 *causes* death—a person’s conduct *causes* death if the conduct
11 substantially contributes to the death.
- 12 *health and safety duty* means a duty imposed under—
- 13 (a) division 2.2 (Primary duty of care); or
- 14 (b) division 2.3 (Further duties of persons conducting businesses or
15 undertakings); or
- 16 (c) section 27 (Duty of officers).
- 17 **34B Alternative verdict for industrial manslaughter**
- 18 (1) This section applies if, in a prosecution for an industrial manslaughter
19 offence, the trier of fact—
- 20 (a) is not satisfied beyond reasonable doubt that the defendant
21 committed an industrial manslaughter offence; and
- 22 (b) is satisfied beyond reasonable doubt that the defendant
23 committed an alternative offence.
- 24 (2) The trier of fact may find the defendant guilty of the alternative
25 offence, but only if the defendant has been given procedural fairness
26 in relation to that finding of guilt.

- 1 (3) In this section:
2 *alternative offence*, for an industrial manslaughter offence, means a
3 category 1 offence or a category 2 offence.

4 **6 Regulator may accept WHS undertakings**
5 **Section 216 (2)**

- 6 *substitute*
7 (2) However, a WHS undertaking cannot be accepted for a contravention
8 or alleged contravention of—
9 (a) a category 1 offence; or
10 (b) an industrial manslaughter offence.

11 **7 Procedure if prosecution is not brought**
12 **Section 231 (1) (a)**

- 13 *omit*
14 or a category 2 offence;
15 *substitute*
16 , a category 2 offence or an industrial manslaughter offence;

17 **8 Section 231 (3)**

- 18 *omit*
19 a category 1 or category 2 offence
20 *substitute*
21 a category 1 offence, a category 2 offence or an industrial
22 manslaughter offence

1 **9** **Limitation period for prosecutions**
2 **New section 232 (3)**

3 *insert*

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

6 **10** **Dictionary, new definition of *industrial manslaughter***
7 ***offence***

8 *insert*

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

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Bail Act 1992**

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

5 *omit*

6 **[1.2]** **Schedule 1, new part 1.7**

7 *insert*

8 **Part 1.7** **Offence against Work Health and**
9 **Safety Act 2011**

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

10 **Part 1.2** **Crimes Act 1900**

11 **[1.3]** **Section 7A, note 1**

12 *omit*

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

15 **[1.4]** **Part 2A**

16 *omit*

1 **[1.5] Dictionary, definitions of *agent* and *causes***

2 *omit*

3 **[1.6] Dictionary, definition of *conduct***

4 *substitute*

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

7 **[1.7] Dictionary, definitions**

8 *omit the definitions of*

9 *death*

10 *employee*

11 *employer*

12 *government*

13 *government entity*

14 *independent contractor*

15 **[1.8] Dictionary, definition of *officer***

16 *substitute*

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

1 **[1.9] Dictionary, definitions**

2 *omit the definitions of*
3 *outworker*
4 *provide services*
5 *senior officer*
6 *serious harm*
7 *volunteer*
8 *worker*

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

11 **[1.10] Section 161B, definition of *serious violent offence*, par (a)**

12 *substitute*

13 (a) either of the following provisions punishable by a maximum
14 term of imprisonment of 10 years or more:

15 (i) the *Crimes Act 1900*, part 2 (Offences against the person);

16 (ii) the *Work Health and Safety Act 2011*,
17 section 34A (Industrial manslaughter); or

1 **Part 1.4 Supreme Court Act 1933**

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

3 *before the note, insert*

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

5 **[1.12] Schedule 2, part 2.2, items 6 and 7**

6 *omit*

7 **[1.13] Schedule 2, part 2.2, new item 35**

8 *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 2021.

3 Republications of amended laws

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

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