

## **NEW INDUSTRIAL MANSLAUGHTER OFFENCES IN QLD**

Queensland Parliament has created criminal offences for employers and senior company officers whose negligence causes a workplace fatality.

Employer Assist provides an overview of the new laws and the steps HVIA members should take to minimise the risks of a workplace fatality.

### **2016: a year of horrific workplace fatalities**

In response to a number of workplace fatalities which occurred in 2016 including the deaths of two workers at a construction site at Eagle Farm Racecourse in Brisbane, the Queensland Government recently passed the *Work Health and Safety and Other Legislation Amendment Bill 2017* which came into force on 23 October 2017.

### **How the new law works**

The laws are designed to make it easier for prosecutors to charge an employer or senior company officer with the criminal offence of manslaughter in a workplace or industrial context.

To achieve this objective, the legislation inserts two new offences into existing legislation for 'employers' and 'senior officers'.

Where an employer or senior company officer's act or omission amounts to gross negligence causing death, the employer may be liable for a fine of up to \$10 million and senior officers may be liable for a term of up to 20 years' imprisonment.

### **Key points**

#### **What is a senior officer?**

Under the new legislation, the definition of 'senior officer' is broadly defined. It includes persons who are concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer. It is clear that the policy intention behind the new laws is to capture senior executives and directors of large organisations.

#### **Accident defence**

The new law operates to expressly exclude the possibility of a defendant employer or senior company officer relying on the so called 'accident' defence.

## **Investigation and enforcement**

A statutory office independent from the regulator, Workplace Health and Safety Queensland, will be established to conduct and defend proceedings under the *Work Health and Safety Act 2011* (WHS Act). The office will be headed by a Work Health and Safety Prosecutor.

The enactment of the new laws provide Work Health and Safety Inspectors with coercive powers to require individuals to answer questions or provide documents about the adequacy of workplace safety and related matters.

## **Ramifications for QLD HVIA Members**

Members of the heavy vehicle industry and heavy vehicle transport now have another reason to ensure WHS Act compliance and take active steps to preserve the safety of all people at work. The purpose of the WHS Act, including these recent amendments, is to set up practices to prevent workplace injuries and deaths especially in industrial environments which necessitate the use of heavy machinery and equipment.

Even if you think your organisation is relatively safe and presents a relatively low risk of injury, all organisations need to carefully consider how they can support and guide their officers and executives in decision-making about safe systems of work.

Policies should be developed and training delivered regularly to stress the importance of considering workplace safety in all decision-making and regular audits undertaken to ensure that this is occurring.

## **Other States and Territories**

Given that the changes are being considered nationally, it is important for HVIA members outside of Queensland to monitor how the new laws are implemented. Industrial manslaughter laws have been proposed in a number of other States, including New South Wales, Victoria and South Australia, but have not been passed.

## **Heavy Vehicle National Law**

HVIA members should also be aware of upcoming changes to the chain of responsibility provisions in the Heavy Vehicle National Law (HVNL). These provisions extend liability in relation to the safe operation of heavy vehicles beyond typical transport operators to any party with influence or control in the supply chain.

The changes are set to commence by the mid-year in all States and Territories excluding Western Australia and the Northern Territory. The amendments effectively place a positive

obligation on any party in the supply chain to ensure, so far as reasonably practicable, the safety of heavy vehicle transport operations.

Penalties will be introduced for breaches, similar to the model WHS laws, set at a maximum fine of \$3 million for a corporation or \$300,000 or five-years imprisonment, or both, for a person (including Officers).

We will be tracking the development of the legislative changes and the types of operators who are likely to be most affected by the legislation and provide a more detailed update on the HVNL changes soon.

### **Contact us**

If you require any further information or advice on your WHS obligations, please contact Employer Assist on **1300 694 842** or **[hvia@employerassist.com.au](mailto:hvia@employerassist.com.au)**.

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