

Victoria's new workplace manslaughter offences

The Workplace Safety Legislation Amendment (Workplace Manslaughter and other matters) Bill 2019 passed Parliament on 26 November 2019 and is expected to come into effect on a day to be proclaimed or, at the latest, 1 July 2020.

- When will workplace manslaughter apply?
- Who can be charged with workplace manslaughter?
- Negligent conduct
- Causation
- Penalties

When will workplace manslaughter apply?

Workplace manslaughter applies when all of the elements of the offence are proven:

- the accused is a body corporate or a person who is not an employee or volunteer
- the accused owed the victim a duty of care pursuant to sections 21 to 24 or sections 26 to 31 of the OHS Act (this includes duties owed to employees, contractors and members of the public) (applicable duties)
- the accused breached that duty by criminal negligence in circumstances where there was a high risk of death, serious injury or serious illness
- the act that breached the duty of care was committed consciously and voluntarily
- the accused's breach of the duty causes the victim's death.

Workplace manslaughter may apply even when the death of the person occurs sometime after the relevant incident. For example, depending on the circumstances, if an employee develops an asbestos-related disease after an employer exposed them to asbestos without the use of adequate personal protective equipment.

Who can be charged with workplace manslaughter?

A person, a body corporate, an unincorporated body or association or a partnership, including government entities and officers of these entities (but not employees or volunteers), who owes applicable duties to ensure the health and safety of another person in the workplace, can be charged with Workplace Manslaughter.

However, in certain circumstances, officers of organisations may be charged if their organisation owes applicable duties:

- directors and secretaries of companies
- partners of a partnership or joint venture
- the trustee of a trust
- persons who participate in the making of decisions that affect a substantial part of the organisations business
- persons who have the capacity to affect significantly the organisations financial standing.

Negligent conduct

Voluntary and deliberate conduct is 'negligent' if it involves a great falling short of the standard of care that a reasonable person would have exercised in the circumstances and involves a high risk of death, serious injury or serious illness. It is a test that looks at what a reasonable person in the situation of the accused would have done in the circumstances. The test is based on existing common law principles in Victoria.

Negligent conduct can include a failure to act.

Examples of negligent conduct may include when a person:

- does not adequately manage, control or supervise its employees
- does not take reasonable action to fix a dangerous situation, in circumstances where failing to do so causes a high risk of death, serious injury or serious illness.

Causation: the conduct caused death

It must be established that it was the accused's negligently criminal breach of the duty of care that caused the death. That is, his or her acts or omissions must have contributed significantly to the death, or been a substantial and operative cause of it. The acts or omissions must be such that an ordinary person would hold them, as a matter of common sense, to be a cause of the death. This is the existing common law test of causation.

Penalties

If convicted of workplace manslaughter, the following maximum penalties apply:

- A maximum of 20 years imprisonment for individuals
- A maximum fine of \$16.5 million for body corporates

<https://www.worksafe.vic.gov.au/victorias-new-workplace-manslaughter-offences>