

## Work Health and Safety Act 2012 (SA) Industrial Manslaughter Amendments – as at 5 February 2024

### Your Culpability

- Currently, Category 1 of the WHS Act sets out the fines and penalties that can be imposed if you are reckless in relation to a health and safety duty. Previously, you just had to be reckless to a risk to death or serious injury.
- The government has amended the law so that if a person dies at work (or from a work incident), (once this law is enacted (mid year 2024 approx.), a person can be charged with the **CRIMINAL offence of industrial manslaughter** when:
  - you have a health and safety duty; **and**
  - you engage in conduct that breaches a health and safety duty; **and**
  - your conduct causes the death of an individual to whom the duty is owed: **and**
  - **you engaged in** 'gross negligence' **or** you were 'reckless' as to the risk of death or serious injury.

### What is 'Gross Negligence'?

- 'Gross negligence' involves a great falling short of the standard of care a reasonable person would exercise in the circumstance; **and**
- such a high risk of the death or serious injury or illness of an individual.

### What does 'Reckless' mean?

- A person is 'reckless' as to the risk if:
  - they are aware of a substantial risk that death or serious injury or illness will happen; **and**
  - Having regard to the circumstances known to the person (you), it is unjustifiable to take the risk.

[Important point: the prosecutor does not have to prove that you were grossly negligent or reckless that death could result – it just has to provide that you were grossly negligent or reckless that serious injury or illness could result.]

### Who can be charged?

- An industrial manslaughter charge can be laid against:
  - person conducting a business or undertaking (PCBU); or
  - an officer of the PCBU.

### Are you an officer?

There is a chance you could be considered by SWSA and a Court to be an officer of the business you work in.

- Generally speaking, an officer is a person who makes or helps make a decision which affects either the whole or a major part of a business or undertaking. If a person has the capacity to significantly affect the financial standing of the organisation, they are recognised as an officer.
- Officers for a PCBU have a specific duty to exercise due diligence to ensure they meet their own WHS obligations. Additionally, they have to be proactive in ensuring the PCBU complies with their duties under the WHS Act. They are responsible for actively fulfilling the duty.

### Fines and penalties for Industrial Manslaughter

- If convicted as an individual PCBU (not a company) **or** as an officer of a PCBU, the maximum penalty is 20 years imprisonment.
- If the company is convicted the maximum penalty is \$18 million.

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