

2021

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Work Health and Safety Amendment Bill 2021

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Mick Gentleman MLA**

WORK HEALTH AND SAFETY AMENDMENT BILL 2021

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The *Work Health and Safety Amendment Bill 2021* establishes industrial manslaughter as an offence under the *Work Health and Safety Act 2011* (WHS Act), repeals industrial manslaughter from the *Crimes Act 1900* and sets out the necessary consequential amendments to the *Bail Act 1992*, the *Crimes (Sentence Administration) Act 2005* and the *Supreme Court Act 1933*.

The effect of the Bill is to broaden the circumstances where industrial manslaughter charges may be laid to include, for example, cases where actions or conduct causes the death of a member of the public, a sub-contractor, visitor, or employee of another employer. The Bill will also align the industrial manslaughter offence with other work safety offences, allowing for a properly phased, proportionate, and integrated set of compliance measures being available to the work safety regulator.

The Bill articulates the Government's agreed position to establish the highest deterrence for continuing work safe failings and unsafe practices, which have the potential to result in harm, injury and death to workers.

The intent of the Bill is to establish an offence provision that is similar to those in effect under the Crimes Act for the purposes of industrial manslaughter. The Crimes Act provision for industrial manslaughter allowed employers to be held accountable for reckless or negligent behaviour that resulted in the death of a worker. However, the provision has fallen out of alignment with community expectations for work health and safety laws and does not accommodate all relevant employment and workplace arrangements. The Crimes Act offence did not enable the conduct of all parties, particularly corporations and senior officers who are covered by the ACT's work health and safety (WHS) laws, to be considered in the event of a workers' death, particularly where there are systematic work safety failings.

The case for the introduction of an industrial manslaughter offence was comprehensively considered at the national level as part of the Safe Work Australia Review of Model WHS Laws.

The final report of the review found: *“Workplace injuries and deaths ruin lives and shatter families. It is critical that the community is confident that the model WHS laws enable justice to be administered fairly and appropriately... I am recommending a new offence of industrial manslaughter be included in the model WHS laws. The growing public debate about including an offence of industrial manslaughter in the model WHS laws was reflected in consultations for this Review. I consider that this new offence is required to address increasing community concerns that there should*

be a separate industrial manslaughter offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death. It is also required to address the limitations of the criminal law when dealing with breaches of WHS duties”

Transferring the offence provisions from the Crimes Act to the WHS Act will improve the ACT’s ability to respond to inadequate safety standards which result in a workplace death and to encourage work safety awareness and compliance more generally. The Bill makes an amendment to the legislative arrangements for managing industrial manslaughter offences. The amendments do not change the policy underpinning the offence as it was established by the Crimes Act in 2004.

Some of the terms relevant to the new offence are defined by the *Criminal Code 2002*, such as ‘conduct’. Conduct, and engaging in conduct is defined by section 13 of the Criminal Code to mean an act, or an omission to do an act. As such, the health and safety duty required of persons conducting a business or undertaking (PCBU) includes an act, or a failure to act in compliance with that duty.

CONSULTATION ON THE PROPOSED APPROACH

ACT Government directorates and agencies, including WorkSafe ACT, the Justice and Community Safety Directorate, Office of the Director of Public Prosecutions and ACT Human Rights Commission have been consulted in the development of the Bill.

The Government has also consulted in the development of the Bill with ACT stakeholders, including the WHS Council, Legal Aid ACT, the ACT Law Society and ACT Bar Association.

The WHS Council is a Ministerially appointed advisory body established under the *Work Health and Safety Act 2011* comprising stakeholders representing employer and employee interests in relation to work health and safety, injury management, bullying and harassment matters.

CONSISTENCY WITH HUMAN RIGHTS

All Bills must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this Bill with the HRA was considered during its development.

Section 28(1) of the HRA provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) of the HRA contains a framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations in this Bill on rights protected in the HRA are considered demonstrably justifiable pursuant to section 28 of the HRA.

An assessment of the Bill against the rights protected by the HRA is provided below.

Rights engaged

The Bill engages and promotes the right to life under section 9 of the HRA, and the right to liberty and security under section 18 of the HRA.

The Bill also engages and may limit the right to life, the right to liberty and security, and rights in criminal proceedings under section 22 of the HRA.

Rights Promoted

Rights to Life, Security and Work

The Bill engages and promotes the rights to life, security and work of workers and members of the public in workplaces in the ACT. The rights to life and liberty and security impose duties on the ACT Government to protect life and to take reasonable measures to protect a person's security and prevent future injury in workplaces and places of work where members of the public may be present, whilst the right to work guarantees just and favourable conditions of work, including safe and healthy working conditions.

Through the Bill, the ACT Government is taking positive steps to satisfy its duty to protect life and prevent future injury, and ensure safe and healthy working conditions by:

- introducing a legal framework under the WHS Act which provides industrial manslaughter offences to protect life of workers and people at a workplace and prevent future injury. The offences act as a deterrent to poor work safety practices and encourage employers and businesses to dedicate sufficient resources and attention to workplace safety;
- introducing an expanded legal framework for industrial manslaughter offences under the WHS Act in contrast to the offences in the Crimes Act. The amendment to introduce new section 34A(4) at clause 5 of the Bill will require a person conducting a business or undertaking (PCBU) to consider a full range of health and safety duties in the event of a workplace death, such as the primary duty of care, further duties of PCBUs, and duty of officers, which are not accommodated under the Crimes Act. The Crimes Act is limited to the conduct of an employer causing the death of a worker, on the basis that a worker dies in the course of employment. It is also silent on the contributory conduct by an employer in the event that the conduct was a result of work health and safety failings; and
- protecting a broader class of potential victims than under the Crimes Act framework. The definition of 'worker' under section 7 of the WHS Act is broader than its definition under section 49A of the Crimes Act and includes, for example, subcontractors and employees of subcontractors. The industrial manslaughter offence as under the Crimes Act is also limited to the conduct of

an employer in a defined worker relationship and defines that relationship in terms of a contract for services. It further excludes the potential harm that can be caused to another person, such as a member of the public, that would ordinarily be entitled to a duty of care under section 19(2) of the WHS Act, in the event that systemic work safe failings by the PCBU put at risk the health and safety that other person.

Rights Limited

The Bill engages and may limit the right to life, the right to liberty and security, and rights in criminal proceedings.

Rights to life and liberty and security – exclusion of Ministers from industrial manslaughter and alternative verdict to industrial manslaughter offences

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 9 of the HRA provides that everyone has the right to life, and that no-one may be arbitrarily deprived of life. Section 18 of the HRA also provides that everyone has the right to liberty. The rights require the ACT Government to take positive steps to protect life and take reasonable measures to protect a person's physical security, including preventing future injury.

Although through the Bill the ACT Government is taking positive steps to protect the health and safety of workers and prevent workplace injuries, the Bill potentially engages and limits these rights by narrowing the class of persons who may be charged for industrial manslaughter and alternative verdict for industrial manslaughter offences under the WHS Act in comparison with the Crimes Act.

The amendment to introduce new sections 34A and 35A into the WHS Act as at clause 5 of the Bill allows a PCBU or an officer of a PCBU to be charged with an offence of industrial manslaughter or an alternative verdict in the place of industrial manslaughter. The definition of 'officer' presently under the WHS Act and not amended by the Bill expressly excludes Ministers acting in their official capacity from the definition of 'officer'. Accordingly, a person cannot be charged with industrial manslaughter or alternative verdict for industrial manslaughter offences where they exercise authorities or powers in an official capacity as a Minister of a State, Territory (including the ACT), or the Commonwealth.

In contrast, under the Crimes Act, Ministers may still be charged for an industrial manslaughter offence. The Crimes Act extends to the employment relationship between a Minister and an employee. For the purposes of Ministers, the offence provisions in the Crimes Act use the term 'senior officer', which includes a Minister in relation to a government or government entity. This enables a Minister as a senior officer of the government, to be held accountable if a worker of the employer died due to the conduct of the senior officer, and the senior officer was reckless or negligent about their conduct which resulted in the death of the worker.

2. Legitimate purpose (s 28(2)(b))

The legitimate purpose of excluding Ministers in their official capacity from the possibility of prosecution of an industrial manslaughter and alternative verdict to industrial manslaughter offence in the ACT is to:

- ensure and maintain the consistency of terms and definitions in the ACT's work health and safety laws with the laws of other Australian jurisdictions. The WHS Act adopted the model Work Health and Safety laws as part of the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, which excludes Ministers in their official capacity as a Minister of a State, Territory (including the ACT) or the Commonwealth as an officer under the model laws; and
- afford legal immunity to Ministers from liability for their conduct whilst undertaking ministerial duties.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

There is a clear rational connection between the limitation and the purpose. By excluding Ministers of a State, Territory or the Commonwealth from prosecution of an industrial manslaughter offence, this will ensure the ACT's consistency with the national model laws and to afford immunity from liability to Ministers.

4. Proportionality (s 28(2)(e))

The exclusion of Ministers as officers of a PCBU is necessary and proportionate as it recognises the difficulties that Ministers would have in their official capacity in complying with the duties of officers as provided by section 27 of the WHS Act. These duties include that an officer of the PCBU must exercise due diligence to ensure that the PCBU is complying with all other relevant obligations and duties, and to acquire and keep up-to-date knowledge of work health and safety matters and understand the nature of the hazards and risks associated with operations across the full coverage of the PCBU.

While the Bill excludes Ministers in their official capacity from inclusion as 'officers' for the purposes of the offences, Ministers are in the collective capacity, regarded a PCBU for the purposes of the WHS Act. As section 10 of the WHS Act binds the Crown in the right of ACT, the references to a 'person' in 'a person who conducts a business or undertaking' under the WHS Act includes the ACT Government. The ACT Government is therefore regarded as a PCBU for the purposes of the new WHS industrial manslaughter or alternative verdict offences and this allows Ministers to be generally included as the relevant PCBU to be held accountable in the event of a workplace death.

There are no less restrictive means to achieve the legitimate purpose as the exclusion is necessarily complete in its application. The exemption would not apply

to Ministers, as persons, when they are not operating in their official capacity in exercising duties, obligations, privileges or powers assigned under ministerial or administrative arrangements. The exclusion extends to all Ministers to which the jurisdiction of the WHS Act applies.

Right to liberty and security of person – Industrial manslaughter and alternative verdict for industrial manslaughter offences generally

1. Nature of the right and the limitation (s 28(2)(a) and (c))

The right to liberty and security of person provides that every person has the right to liberty, and that a person must not be deprived of that liberty arbitrarily, except on grounds, and in accordance with procedures, established by law.

The Bill establishes industrial manslaughter and alternative industrial manslaughter offences in the WHS Act, where a conviction for the offences may result in the deprivation of liberty. In the amendment to introduce new section 34A(1) into the WHS Act at clause 5 of the Bill, an industrial manslaughter offence carries a maximum penalty of 20 years' imprisonment for a PCBU or an officer of a PCBU of an applicable entity. Similarly, under new section 34B also at clause 5 of the Bill, an alternative verdict for industrial manslaughter can be found to be a category 1 offence, as provided under section 31 of the WHS Act. A conviction for a category 1 offence can attract a maximum penalty of 5 years' imprisonment.

2. Legitimate purpose (s 28(2)(b))

The legitimate purpose of the penalty of imprisonment for industrial manslaughter and alternative verdict to manslaughter offences is to ensure the health and safety of workers and members of the public, and prevent any future injuries to these persons who are subject to a duty of care of PCBUs and their officers.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

The risk of imprisonment for industrial manslaughter and an alternative verdict to industrial manslaughter offences enable the conduct of persons connected with a workplace death to be considered and, where applicable, held accountable for the death of a worker or another person to whom a duty of care is owed. It will also act as an additional mechanism which serves to deter PCBUs from allowing poor, unsafe workplace practices that jeopardise the health and safety of workers.

4. Proportionality (s 28(2)(e))

Imprisonment is a necessary penalty for the industrial manslaughter and alternative verdict to manslaughter offence provisions so as to adequately deter potential PCBUs and their officers from creating and maintaining unsafe workplaces and engaging in unsafe workplace practices that may result in the death of workers.

The penalty of imprisonment is also reasonable and proportionate, as it reflects the seriousness of the harm which could result where PCBUs provide unsafe workplaces and practices. Further, as each case for the offences will turn on its own facts and circumstances, and that different offenders may be described as having acted with differing levels of culpability or blameworthiness, to the extent that unique cases arise when a person may commit the offence, the Court's wide sentencing discretion, and the safeguard inclusion of alternative verdicts, such as through category 2 offences, will allow the offender's level of culpability to be reflected through a more lenient sentence.

Less restrictive means to reasonably achieve the legitimate purpose are not available, as civil penalties are not a sufficient deterrent for PCBUs and their officers to ensure a safe workplace.

Rights in criminal proceedings – strict liability in industrial manslaughter and alternative verdict to industrial manslaughter offence provisions

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law. The right to the presumption of innocence is engaged and limited, however, through the strict liability provisions under section 12A of the WHS Act which apply to:

- elements of the industrial manslaughter offence provisions in new sections 34A(1)(a) and (b) of the WHS Act at clause 5 of the Bill. These include that a person who conducts a business or undertaking or is an officer of a person who conducts a business or undertaking, and where the person has a health and safety duty; and
- elements of category 1 and 2 offences under sections 31 and 32 of the WHS Act, where category 1 and 2 offences are used to find an alternative verdict to an industrial manslaughter offence under new section 34B of the WHS Act at clause 5 of the Bill. For category 1 offences, strict liability applies to a person's health and safety duty, whilst for category 2 offences it applies to a person's health and safety duty, their failure to comply with the duty, and where the failure exposes an individual to a risk of death or serious injury or illness.

Strict liability provisions generally engage and limit the right to be presumed innocent as they remove the need for the prosecution to prove an accused person's fault (i.e. the mental element of intent or recklessness) in relation to an offence generally or for particular elements of an offence. As a result, this reverses the onus in criminal proceedings and requires an accused to prove a defence for those elements to which strict liability applies, such as a mistake of fact under the *Criminal Code 2002*.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the strict liability provisions is that they will protect the health and safety of workers, and act as a deterrent against PCBUs providing unsafe workplaces and work cultures. The WHS Act imposes health and safety duties on all PCBUs in the Territory, as well as duties to their officers and workers. All PCBUs are required to be aware of their health and safety duties under the WHS Act and it is reasonable for the law to assume this is the case in the context of a workplace death.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The offence elements applying strict liability have been carefully considered during the Bill's development. The strict liability offences arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties. The rationale for its use in this Bill is that people who owe work safety duties such as PCBUs, persons in control of aspects of work and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public. In particular, where an accused can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental (or fault) element can justifiably be excluded. Accordingly, strict liability offences are applied so that every relevant person complies with their obligations at all times and acts appropriately to secure the health and safety of workers and other at the workplace.

4. *Proportionality (s 28(2)(e))*

The application of strict liability to the duty elements of the industrial manslaughter and alternative verdict to industrial manslaughter offences is proportionate to the limitation on the right to the presumption of innocence encapsulated by this Bill.

Given the seriousness of industrial manslaughter offences, the application of strict liability is necessary and proportionate to ensure a culture of proactive work safe practices. It is far more difficult to accomplish without the use of strict liability offences. Strict liability clearly identifies the essential elements that form part of the regulatory regime that encourage PCBUs to maintain a workplace that is as free from harm or injury.

The application of strict liability is reasonable and proportionate to protect the health and safety of workers. Strict liability is only applied to particular elements of the industrial manslaughter offence under sections 34A(1)(a) and (b) and alternative verdict to industrial manslaughter offences under section 34B of the Bill through sections 31 and 32 of the WHS Act. It ensures that those who hold responsibility for a health or safety duty do uphold that responsibility and cannot escape liability by claiming ignorance of the duty, or ignorance of the effect of their conduct. The

defence of mistake of fact as provided by the *Criminal Code 2002* also remains available to any accused for any strict liability provisions.

The Bill places the least restrictive limitation on the right to presumption of innocence, as it does not apply strict liability to information that is known by an accused, and that may be revealed to prove or disprove the defence.

Right to liberty and security of person – Removal of Presumption of Bail

1. Nature of the right and the limitation (s 28(2)(a) and (c))

The consequential amendments to the *Bail Act 1992* (Bail Act) at clause [1.1] in schedule 1 of the Bill is technical in nature and is required as a consequence of transferring industrial manslaughter as an offence under the WHS Act.

The Bill retains provisions which are attached to the industrial manslaughter offences under the Crimes Act to the industrial manslaughter offences under the WHS Act. The consequential amendments specify that the presumption for bail does not apply to a person accused of an industrial manslaughter offence under the WHS Act. In doing so, the Bill maintains provisions that applied to industrial manslaughter offences under the Crimes Act.

The amendments accordingly engage and may limit the right to liberty and security as the Bill disapplies the general rule is that an accused who is awaiting trial must not be detained in custody. The disapplication of the presumption in favour of bail may result in an accused remaining in custody for the duration of their criminal proceedings. However, this provision does not create a presumption against bail. It allows the Court to appropriately consider the circumstances of the accused and of the circumstances of the charges, given the seriousness of the offence, rather than creating a statutory entitlement to bail.

2. Legitimate purpose (s 28(2)(b))

The legitimate purpose of disapplying the presumption of bail is to protect the administration of justice and the health and safety of workers and other persons involved in criminal proceedings for an industrial manslaughter offence and establish contemporary arrangements for the new industrial manslaughter offence provisions within the structure of the Bail Act. The Bail Act establishes a statutory entitlement to bail for minor offences, generally described as offences that do not attract a penalty of imprisonment greater than 6 months. For serious offences which may attract a term of imprisonment of 10 years or more, such as industrial manslaughter, the Bail Act restricts the statutory entitlement to bail, to consideration of circumstance by the Court. This ensures that the Court is able to consider the circumstances of the offence and the accused, in balance with the risks associated with granting bail, and the effects on the accused in the event bail is not granted, and the potential of the accused to interfere with evidence or otherwise obstruct the course of justice.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The rational connection between the limitation and the purpose is that the disapplication of the presumption of bail to industrial manslaughter offences will allow a Court to determine whether bail should be granted to an accused for the serious offence of industrial manslaughter purely on the circumstances and merits of a case and without a presumption in favour of bail for the accused. For example, a Court will have to consider the circumstances of the offence and the conduct of the accused, in balance with the risks associated with granting bail, and any potential consequences bail may have on the proceedings or to the health and safety of persons involved in the offence, such as where an accused may seek to interfere with evidence or otherwise obstruct the course of justice.

4. *Proportionality (s 28(2)(e))*

The disapplication of the presumption in favour of bail is necessary and proportionate in order to recognise the seriousness of industrial manslaughter offences. It is also necessary as a presumption in favour of bail may allow bail to be more easily granted to an accused who has committed the serious offence of industrial manslaughter. This may, in turn, have other unintended consequences on the administration of justice and the health and safety of workers and other persons involved in an accused's criminal proceedings for an industrial manslaughter offence, as described above.

The disapplication of the presumption is further considered reasonable and proportionate, given the severity of an industrial manslaughter offence and it is consistent with existing provisions in the Bail Act that relate to serious criminal offences. The disapplication also does not remove the right for an accused to apply for bail, or the responsibility of the Court to consider the bail application in accordance with the Bail Act. The Bill reflects the established approach of criminal law offences in the Territory in grading the gravity of offences and bail conditions accordingly.

There are no less restrictive means to achieve the legitimate purpose of establishing contemporary, comparatively proportionate arrangements to disapply the presumption of bail within the structure of the Bail Act for the new industrial manslaughter offence provisions as introduced by this Bill into the WHS Act.

Work Health and Safety Amendment Bill 2021

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Work Health and Safety Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

Clause 1 establishes the name of the Work Health and Safety Amendment Act 2021.

Clause 2 Commencement

Clause 2 is the commencement provision, which provides for the Bill to come into operation 3 months after its notification day.

Clause 3 Legislation amended

Clause 3 sets out the legislation amended by the Bill.

Part 2 Work Health and Safety Act 2011

Clause 4 Part 2 Duty of officers

Clause 4 inserts the new industrial manslaughter offence for the purposes of fixing the maximum penalty applicable to the offence as provided by the new division at 2.6.

Clause 5 New division 2.6 Industrial manslaughter

Clause 5 inserts a new division in the WHS Act, which includes new sections 34A, 34B and 35C. These sections provide relevant definitions, new offences of industrial manslaughter and alternative offence provisions.

New section 34A sets out various definitions for new Division 2.6 in the WHS Act. These definitions are used in the new industrial manslaughter offences.

Health and safety duty is defined for new Division 2.6 to mean a duty imposed under Division 2.2 (Primary duty of care), Division 2.3 (Further duties of persons conducting businesses or undertakings), or section 27 (duty of officers) of the WHS Act.

The purpose of the industrial manslaughter offences is to hold those with the responsibility, power, and resources to uphold workplace safety requirements, to account in the event that those duties are breached.

The offence provision for industrial manslaughter requires six material components to be satisfied to enable prosecution of an alleged offender. Firstly, the offence provision applies to a person who conducts a business or undertaking (PCBU) or an officer of a person who conducts a business or undertaking. Secondly, the person or officer must have a health and safety duty as provided by the WHS Act. Thirdly, the person or officer allegedly engages in conduct, which then must be proven to result in a breach of that health and safety duty, and the conduct causes the death of a worker or of another person.

Importantly, the standard of proof (fault elements) required to be established is assessing the jurisdiction of the new offence, is that the person must be proven to have acted negligently in engaging in the conduct which breached the health and safety duty, or recklessly engaged in such conduct, which causes the death of a worker or of another person.

The existing standard of proof in the ACT for criminal negligence or recklessness will be applied to the new offence, and strict liability will not apply to intent.

Subsection 34A(2) operates to apply strict liability to certain elements of the new industrial manslaughter offence, specifically 34A(1)(a) and (b) relating to whether the person is a PCBU, and whether the person has a health and safety duty, whereby the person will be held legally responsible for the consequences flowing from these elements of the offence provisions.

The Explanatory Statement to the *Criminal Code 2001* (ACT) provides greater detail of the fault elements and burden of proof for the new industrial manslaughter offence.

Some of the terms relevant to the new offence are defined by the *Criminal Code 2002*, this includes 'conduct' and 'engage in conduct'. Section 13 of the Criminal Code defines these terms to mean an act, an omission to do an act or a state of Affairs, with engage in conduct, specifically including:

- a) to do an act; or
- b) omit to do an act.

This ensures that PCBUs who fail to do an act that results in a breach of a health or safety duty are appropriately captured for the purposes of the new offence provisions.

The maximum custodial sentence for individuals is set at 20 years and the maximum penalty for a body corporate will be \$16,500,000.

The new provision also allows, at section 34B, for an alternative offence where the trier of fact is not satisfied beyond reasonable doubt that the person is guilty of the industrial manslaughter offence and is satisfied beyond reasonable doubt that the person committed an alternative offence. The alternative offence provision means a category 1 offence or a category 2 offence under the *Work Health and Safety Act 2011*. The Explanatory Statement to the Work Health and Safety Act provides further information about the alternative offences.

Clause 6 Regulator may accept WHS undertakings

Clause 6 inserts the new industrial manslaughter offence as a category of offences that cannot submit a WHS undertaking.

Clause 7 Procedure if prosecution is not bought

Clause 7 inserts the new industrial manslaughter offence as a category of offences to which a person may make a written request to the regulator that the regulator refer a matter to the DPP, where the applicant reasonably considers that the occurrence of an act, matter or thing constitutes a category 1 offence, or a category 2 offence, or an industrial manslaughter offence.

Clause 8 Procedure if prosecution is not bought

Clause 8 inserts the new industrial manslaughter offence as a category of offences for the purposes of this provision.

Clause 9 Limitation period for prosecution

Clause 9 establishes that a proceeding for an industrial manslaughter offence is not limited; a proceeding for an industrial manslaughter offence may be brought at any time.

Clause 10 Dictionary

Section 10 provides amended terms required for the new industrial manslaughter offence and inserts industrial manslaughter offence as a defined term.

Schedule 1 Consequential amendments

Part 1.1 Bail Act 1992

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

Item 1.1 omits terms and provisions relevant to the industrial manslaughter offence previously established under Crimes Act

[1.2] Schedule 1, new part 1.7

Item 1.2 insets terms and provisions relevant to the new Work Health and Safety industrial manslaughter offence

Part 1.2 Crimes Act 1900

[1.3] Section 7A, note 1

[1.4] Part 2A

[1.5] Dictionary, definitions of agent and causes

[1.6] Dictionary, definition of conduct

[1.7] Dictionary, definitions

[1.8] Dictionary, definition of officer

[1.9] Dictionary, definitions

Part 1.2 repeals industrial manslaughter offences in its entirety and adjusts relevant terms within the Crimes Act.

Part 1.3 Crimes (Sentence Administration) Act 2005

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

Item 1.10 inserts the *Work Health and Safety Act 2011* (Industrial manslaughter) offence for the purposes of the serious violent offence definition.

Part 1.4 Supreme Court Act 1933

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

Item 1.11 amends the definition for Work Safety Act.

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

Item 1.12 removes irrelevant items

[1.13] Schedule 2, part 2.2 new item 35

Item 1.13 inserts *Work Health and Safety Act 2011* industrial manslaughter for the purposes of the Supreme Court Act.