



Industrial Manslaughter now law in SA.

What does it mean for dairy farmers?

Industrial Manslaughter – New Laws Effective as at 1 July 2024

Industrial manslaughter is now a criminal offence in South Australia.

Individuals can face a maximum penalty of 20 years in prison, and companies \$18 million in fines, if they are reckless or grossly negligent in conduct which breaches a work health and safety duty and results in the death of another person.

These new laws will ensure the most serious health and safety breaches carry a penalty which sends a clear message that people who place workers' lives at risk will be held to account.

The new laws commenced on 1 July 2024.

New Industrial Manslaughter Provisions Explained

This law brings South Australia into line with other jurisdictions that have made industrial manslaughter a crime, including Queensland, Victoria, Western Australia, the ACT and the Commonwealth. New South Wales have introduced a Bill to create the offence of industrial manslaughter.

The new Industrial Manslaughter provision has been inserted as a new section into the *Work Health and Safety Act 2012* : [Work Health and Safety Act 2012 | South Australian Legislation](#)

When will Industrial Manslaughter apply?

Industrial manslaughter only applies when all components of the offence are proven.

A person commits the offence of industrial manslaughter if:

- the person has a health and safety duty; and
- the person engages in conduct that breaches that duty; and
- the conduct causes the death of an individual to whom that duty is owed; and

- the person engages in the conduct with gross negligence or is reckless as to the risk to an individual of death or serious injury or illness.

Conduct, for the purpose of this section, causes the death of an individual if it substantially contributes to the death.

What is the maximum penalty?

Individuals face a maximum penalty of 20 years imprisonment, whilst an offence committed by a body corporate is a maximum of \$18 million.

Who do the laws apply to?

The offence of industrial manslaughter applies to a Person Conducting a Business or Undertaking (PCBU), or an officer of a PCBU, who holds a duty under the WHS Act.

Workers, who are not officers, cannot be charged with the offence.

Are there any additional duties for a PCBU?

The new laws do not impose any new duties that are not already owed under current workplace laws. Instead, it ensures that when those duties are breached and this results in the death of a person, the penalty reflects the severity of the crime.

If duty holders under the WHS Act are already complying with their WHS duties, then their obligations remain unaffected.

What is a PCBU?

A person conducting a business or undertaking (PCBU) covers a broad range of modern work relationships and business structures. These include someone operating a business or undertaking for-profit or not-for-profit, whether alone or with others. The definition of a PCBU focuses on work arrangements and the relationships involved in carrying out that work.

A PCBU can be an:

- employer
- sole trader / self-employed person
- company or corporation
- association
- each partner within a partnership
- local government (council)
- state, territory or commonwealth government
- certain volunteer organisations
- the trustee of a trust.

Who is an Officer of a PCBU?

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.

Time limitations for bringing proceedings

Industrial manslaughter offences will not be subject to a 2 year statute of limitation for bringing legal proceedings as is the case for other offences within the WHS Act.

Alternate Verdicts

An alternative verdict of guilt for a Category 1, Category 2, or Category 3 offence under the WHS Act will be available if the trier of fact Court is not satisfied that a person is guilty of industrial manslaughter but is satisfied the person is guilty of a lower tier offence under the WHS Act.

Alternative verdicts are only available if an industrial manslaughter prosecution is brought within the same limitation period that applies to a lower category offence (2 years).

If an industrial manslaughter prosecution is brought after the expiry of that limitation period, no alternative verdict will be available.

If any farmer requires more information please contact John Elferink at the SADA Office on 8293 2399.

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