

Criminal Code Amendment (Industrial Manslaughter) Bill 2017

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Ms Alison Xamon, MLC)

**Criminal Code Amendment (Industrial
Manslaughter) Bill 2017**

A Bill for

An Act to amend *The Criminal Code*.

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Criminal Code Amendment (Industrial*
3 *Manslaughter) Act 2017*.

4 Note: Under the *Interpretation Act 1984* section 20(2), this Act comes into
5 operation on the 28th day after the day on which it receives the Royal
6 Assent.

7 **2. Code amended**

8 This Act amends *The Criminal Code*.

9 **3. Chapter XXVIII A inserted**

10 After Chapter XXVIII insert:
11

12 **Chapter XXVIII A — Industrial manslaughter**

13 **291A. Terms used**

14 (1) A term has the same meaning in this Chapter as it has
15 in the *Occupational Safety and Health Act 1984*, unless
16 the contrary intention appears in this Chapter.

17 (2) In this Chapter —

18 *cause*, in relation to a death, means to cause or
19 substantially contribute to the death;

20 *conduct* means an act or an omission to do an act;

21 *officer*, of a body corporate, has the meaning given by
22 the *Corporations Act 2001* (Commonwealth) section 9;

23 *public authority* means —

24 (a) a Minister of the Crown acting in the Minister's
25 official capacity; or

26 (b) a State Government department, State trading
27 concern, State instrumentality or State agency;
28 or

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(c) any other body or person, whether corporate or not and including a local government, that under a written law administers or carries on a social service or public utility for the benefit of the State or a part of the State;

senior officer, of an employer, means —

- (a) if the employer is a public authority — any of the following —
 - (i) the Minister of the Crown concerned or to whom the administration of the public authority has been committed by the Governor;
 - (ii) a person occupying a position of chief executive officer (however described) in the public authority in relation to the functions exercised by the authority;
 - (iii) a person occupying an executive position (however described) in the public authority who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions exercised by the authority;
- (b) if the employer is a body corporate but not a public authority — an officer of the body corporate; or
- (c) if the employer is another entity — any of the following —
 - (i) a person occupying an executive position (however described) in relation to the entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions exercised by the entity;

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- 1 (ii) a person who would be an officer of the
2 entity if the entity were a body
3 corporate.

4 **291B. Industrial manslaughter by employer**

5 An employer is guilty of a crime and is liable to
6 imprisonment for life if —

- 7 (a) an employee of the employer —
- 8 (i) dies in the course of employment by, or
9 providing services to, or in relation to,
10 the employer; or
- 11 (ii) is injured in the course of employment
12 by, or providing services to, or in
13 relation to, the employer and later dies;
- 14 and
- 15 (b) the employer's conduct causes the death of the
16 employee; and
- 17 (c) the employer —
- 18 (i) knew the conduct would be likely to
19 cause the death of, or serious harm to,
20 the employee; but
- 21 (ii) acted, or failed to act, in disregard of
22 that likelihood.

23 **291C. Industrial manslaughter by senior officer**

24 A senior officer of an employer is guilty of a crime and
25 is liable to imprisonment for life if —

- 26 (a) an employee of the employer —
- 27 (i) dies in the course of employment by, or
28 providing services to, or in relation to,
29 the employer; or

- 1 (ii) is injured in the course of employment
2 by, or providing services to, or in
3 relation to, the employer and later dies;
4 and
5 (b) the senior officer's conduct causes the death of
6 the employee; and
7 (c) the senior officer —
8 (i) knew the conduct would be likely to
9 cause the death of, or serious harm to,
10 the employee; but
11 (ii) acted, or failed to act, in disregard of
12 that likelihood.

13 **291D. Orders that may be made against convicted body**
14 **corporate**

- 15 (1) In this section —
16 *Commissioner* means the person holding the office of
17 WorkSafe Western Australia Commissioner under the
18 *Occupational Safety and Health Act 1984* section 9.
19 (2) This section applies if a court convicts a body
20 corporate of an offence against section 291B.
21 (3) In addition to any other penalty the court may impose
22 on the body corporate, the court may order the body
23 corporate to do one or more of the following —
24 (a) to take any action specified by the court to
25 publicise —
26 (i) the offence; and
27 (ii) the deaths or serious injuries or other
28 consequences resulting from or related
29 to the conduct from which the offence
30 arose; and
31 (iii) any penalties imposed, or other orders
32 made, because of the offence;

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- 1 (b) to take any action specified by the court to
2 notify one or more specified persons of the
3 matters specified under paragraph (a);
- 4 (c) to undertake a project specified by the court for
5 the general improvement of occupational safety
6 and health within the period specified in the
7 order.
- 8 (4) In making an order under subsection (3), the court —
- 9 (a) may specify a period within which the body
10 corporate must comply with the order; and
- 11 (b) may impose any other requirement that it
12 considers necessary or desirable for
13 enforcement of the order or to make the order
14 effective.
- 15 (5) The total cost to the body corporate, in relation to a
16 single offence, of —
- 17 (a) any fine imposed for the offence; and
18 (b) complying with any order or orders made under
19 this section in relation to the offence,
- 20 must not exceed \$5 000 000.
- 21 (6) If the court decides to make an order under
22 subsection (3), it must, in determining the kind of
23 order, take into account, so far as practicable, the
24 financial circumstances of the body corporate and the
25 nature of the burden that compliance with the order
26 would impose.
- 27 (7) The court is not prevented from making an order under
28 subsection (3) only because it has been unable to find
29 out the financial circumstances of the body corporate.
- 30 (8) If a body corporate fails, without reasonable excuse, to
31 comply with an order made under subsection (3)(a)
32 or (b) within the specified period (if any), the court, on

- 1 an application made by the Commissioner, may order
2 the Commissioner —
- 3 (a) to do anything that is necessary or convenient
4 to carry out any action that remains to be done
5 under the order made against the body
6 corporate and that it is still practicable to carry
7 out; and
- 8 (b) to publicise the failure of the body corporate to
9 comply with the order.
- 10 (9) Subsection (8) does not prevent contempt of court
11 proceedings from being commenced or continued
12 against a body corporate that has failed to comply with
13 an order made under this section.
- 14 (10) The Commissioner's reasonable costs of complying
15 with an order made under subsection (8) are a debt
16 owed to the State by the body corporate concerned.
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