

# Industrial Manslaughter Laws

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**A law without substantive effect.**

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Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. You can visit our website at [www.masterelectricians.com.au](http://www.masterelectricians.com.au)

MEA is committed to upholding the highest standards of workplace safety and deems every workplace fatality as an unacceptable and avoidable tragedy. This is why we do not support legislating industrial manslaughter. Existing work health and safety (WHS) laws are a risk-based framework, encompassing Categories 1-3, aiming to hold individuals and companies accountable, even in the absence of injury or death. Alternatively, industrial manslaughter is contingent on death and therefore does not align with the WHS framework. We urge the NSW Government to prioritise the implementation of preventative measures to eliminate such tragic incidents rather than focusing on legislation that responds only after a fatality occurs.

Comparable Australian jurisdictions demonstrate the limited effectiveness of industrial manslaughter laws in reducing workplace fatalities, as evidenced by both statistical trends and specific cases. Despite the absence of industrial manslaughter laws, NSW's workplace fatalities have been declining and it therefore seems that the introduction of such laws in NSW is more aligned with a general trend rather than a deliberate effort to implement initiatives with a substantial impact on saving lives at work.

Industrial manslaughter laws are proving to be contrary to the rule of law. Despite intentions to 'pierce the corporate veil', it is notable that only directors of small-to-medium entities (SMEs) have faced prosecution under industrial manslaughter, highlighting its prejudicial nature. Moreover, among the limited instances of director sentencing, there is a disparity in punishments, with only one director serving a prison term. The arbitrary nature of industrial manslaughter is becoming increasingly apparent, potentially stemming from the judiciary's evident reluctance to fully employ the punitive measures available through these laws

MEA are strong advocates for workplace safety and support substantive measures aimed at safeguarding our workers. Industrial manslaughter laws, however, seem to function merely as a finger-pointing mechanism following a tragic event that should have been preventable. Advocating for the adoption of industrial manslaughter laws aligns more with supporting a superficial checkbox exercise that looks good in theory but realistically lacks efficacy.

Nevertheless, should the NSW Government proceed with the enactment of industrial manslaughter laws, MEA has submitted its recommended drafting to be included in the bill.

## Statistics

### NSW Annual Workplace Fatality Trends

Despite the steadily declining trend of workplace fatalities, NSW is seeking to implement industrial manslaughter laws. Presumably the underlying rationale is for NSW to align itself with the majority of other Australian States.

The below statistics derived from research conducted by NSW Parliament demonstrates that workplace fatalities have been at their lowest in the last couple of years.<sup>1</sup>

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<sup>1</sup> Lenny Roth *Industrial manslaughter laws* (Parliament of New South Wales, February 2024) at 6. <[Industrial-manslaughter-laws.pdf \(nsw.gov.au\)](#)>

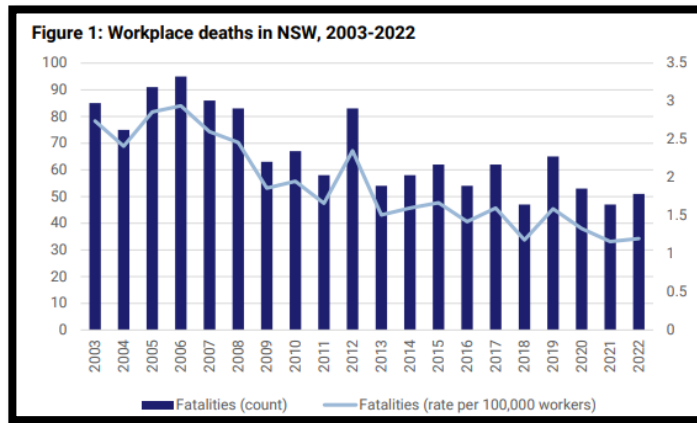


Image Source: Parliament of NSW

Whilst any workplace death is unacceptable, MEA holds the position that punitive measures based on outcomes are not the solution. Our assertion is supported by statistics and case precedent. NSW's decreasing workplace fatalities is a credit to the existing risk-based WHS model.

Notwithstanding the absence of industrial manslaughter laws, NSW achieved the third lowest work-related fatalities per 100,000 workers in 2022<sup>2</sup>. This is noteworthy, especially considering all jurisdictions, except Tasmania, have enacted such legislation. This demonstrates the limited efficacy of industrial manslaughter laws in deterring workplace fatalities.

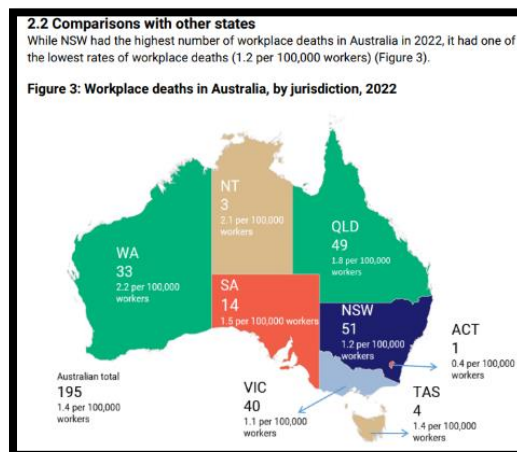


Image Source: Parliament of NSW

### Comparable Jurisdictions Statistics

Across Australia, there have only been three industrial manslaughter cases result in sentencing, with only one director serving time in prison. Despite industrial manslaughter laws being relatively new across Australian jurisdictions, the comparatively high number of workplace fatalities compared to the very limited number of industrial manslaughter prosecutions suggests that industrial manslaughter is redundant in addressing the root problems of workplace fatalities. Instead, PCBUs and officers are being unjustly placed as targets for blame.

The 2019 NSW Minister for Better Regulation, Kevin Anderson, stated NSW had been “watching the approach ... taken in other jurisdictions [and] it's one thing implementing laws that sound tough, but if you can't bring a successful prosecution then it's little more than a

<sup>2</sup> (n1), 8.

catchy title on a page”<sup>3</sup>. Former Minister Anderson argued action needs to be taken to prevent fatalities, not reprimand fatal actions. MEA supports this sentiment and encourages the current NSW Government to also acknowledge and action this.

### Victoria (VIC)

Ironically, VIC experienced its highest number of workplace fatalities in 2020 despite industrial manslaughter laws coming into effect during this year.<sup>4</sup> Additionally, the spike occurred during a year of COVID lockdowns, a trend conflicting with anticipated statistical outcomes. Rates of VIC workplace fatalities have not improved since the enactment of industrial manslaughter, merely returning to their base levels prior to enactment with a slight rise in last couple of years.

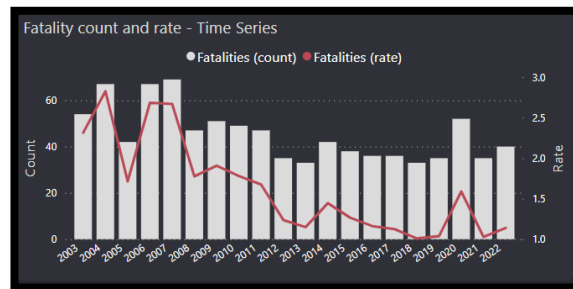


Image Source: SafeWork Australia

Since its enactment, VIC has prosecuted two offenders with industrial manslaughter under s 39G of the *Occupational Health and Safety Act 2004* (VIC). So far one of these cases has led to sentencing, where LH Holding Management Ltd was fined \$1.3 million and the director only sentenced to “complete 200 hours of unpaid community work and [to] complete a forklift licence”<sup>5</sup>.

The purpose of industrial manslaughter is to discourage hazardous workplace practices by imposing server penalties, including imprisonment. However, in the limited case where VIC has applied industrial manslaughter and despite the State’s increasing number of workplace fatalities, imprisonment has not been observed. The same result could likely have been achieved under category 1-2 offences.

### Northern Territory (NT)

Since industrial manslaughter came into effect on 1 February 2020, the number of workplace fatalities have not fallen below the established trend over the previous 19 years.<sup>6</sup> With the purpose of industrial manslaughter to be a deterrent in fatal work practices, we would expect to see significantly lower fatality rates.

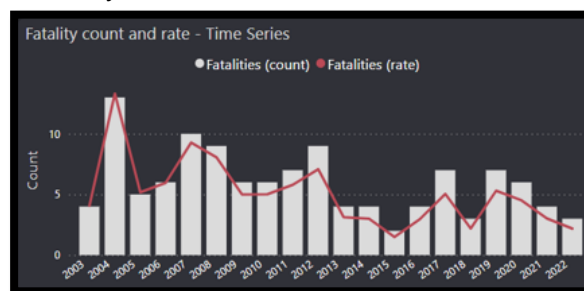


Image Source: SafeWork Australia

<sup>3</sup> Sarah Keoghan ‘NSW rejects industrial manslaughter laws as ‘little more than a catchy title’ *The Sydney Morning Herald* (13 October 2019) < [NSW to reject manslaughter laws despite national recommendations \(smh.com.au\)](https://www.smh.com.au/national/nsw-rejects-manslaughter-laws-despite-national-recommendations-20191013)>.

<sup>4</sup> SafeWork Australia < <https://data.safeworkaustralia.gov.au/interactive-data/topic/work-related-fatalities>>

<sup>5</sup> Catherine Dunlop, Dale McQualter and Amber Davis ‘First employer convicted under Victoria’s new workplace manslaughter laws’ (01 March 2024) Maddocks < [Maddocks | First employer convicted under Victoria’s new workplace...](https://www.maddocks.com.au/news/first-employer-convicted-under-victoria-s-new-workplace-manslaughter-laws)>

<sup>6</sup> (n3).

Kalidonis Construction Ltd was the first company to be charged under industrial manslaughter in the NT, however, the charges were later dropped, instead the director was prosecuted for breach of health and safety duties.<sup>7</sup> This is another case demonstrating the weakness of industrial manslaughter; a tool used to spark fear but absent in enforcing it.

## ACT

The ACT was first to legislate industrial manslaughter, initially through the *Crimes Act 1900* as of 1 March 2004<sup>8</sup>. It was not until 5 November 2021 that industrial manslaughter became effective through the *Work Health and Safety Act 2011*. Despite its existence since 2003, workplace fatalities have periodically spiked throughout the previous 19 years.<sup>9</sup>



Image Source: SafeWork Australia

As of 2021, The ACT has a small population of 453 560 residents<sup>10</sup> compared to NSW's 8.1 million residents.<sup>11</sup> Given NSW's population is 94% larger than the ACT's, it is not unexpected that NSW's workplace fatality statistics are higher. Furthermore, the largest industry in the ACT is Public Administration and Safety<sup>12</sup> with only 15 195 residents working in construction.<sup>13</sup> Comparatively, Construction is one of NSW's largest industries with 1 194 000 people working in the industry.<sup>14</sup> NSW construction industry is 99% larger than that of the ACT. Given the substantial differences in population and industry size between the two jurisdictions, it is important to acknowledge that the inherent risk of workplace fatality is significantly higher in NSW. Consequently, direct comparisons between these jurisdictions may be limited due to these inherent disparities.

Since being enacted through *Work Health and Safety Act 2011* in 2021, ACT's average workplace fatality persisted into 2022, evidencing industrial manslaughter's ineffectiveness in reducing workplace fatalities.

At most, the ACT prosecutions have considered its industrial manslaughter law once in *R v Watts*.<sup>15</sup> Despite ACT having the oldest industrial manslaughter laws, we have not seen it utilised suggesting it serves an inactive and merely theoretical role within work health and safety framework.

<sup>7</sup> Felicity James, 'NT WorkSafe drop industrial manslaughter charge against Darwin construction company Kalidonis NT' *ABC News* (13 March 2023) < [NT WorkSafe drop industrial manslaughter charge against Darwin construction company Kalidonis NT - ABC News](#) >

<sup>8</sup> Austlii 'Industrial Manslaughter' *Australian Construction Law Newsletter* #98 (September/October 2004) at 10 < [63.pdf \(austlii.edu.au\)](#) >.

<sup>9</sup> "Work-related fatalities" *SafeWork Australia* < [Work-related fatalities | dataswa \(safeworkaustralia.gov.au\)](#) >

<sup>10</sup> "Snapshot of Australian Capital Territory" *Australian Bureau of Statistics* (28 June 2022) < [Snapshot of Australian Capital Territory | Australian Bureau of Statistics \(abs.gov.au\)](#) >.

<sup>11</sup> "New South Wales 2021 Census All persons QuickStats" *Australian Bureau of Statistics* < [2021 New South Wales, Census All persons QuickStats | Australian Bureau of Statistics \(abs.gov.au\)](#) >

<sup>12</sup> "Canberra Region" *Canberra Region Joint Organisation* < [Industry sector of employment | Canberra Region Joint Organisation area | Community profile \(id.com.au\)](#) >

<sup>13</sup> (n11).

<sup>14</sup> "Australian Industry" *Australian Bureau of Statistics* < [Australian Industry, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](#) >

<sup>15</sup> "First imprisonment under WA's workplace safety and health laws" *Department of Energy, Mines, Industry Regulation and Safety* (25 May 2021) < [First imprisonment under WA's workplace safety and health laws | Department of Energy, Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](#) >

## Western Australia (WA)

WA's industrial manslaughter laws took effect on 31 March 2022. Despite this offence being enacted in early 2022, it was the year of the highest workplace fatality rates in WA since 2015.<sup>16</sup>



Image Source: SafeWork Australia

Prior to the enactment of industrial manslaughter in WA, “WorkSafe prosecuted a company director (Mr Withers) for an offence of failing to comply with an employer’s duty to, so far as is practical, provide and maintain a working environment in which the employees of the employer are not exposed to hazards in contravention of section 19(1) of the *Occupational Health and Safety Act 1984* in circumstances of gross negligence”<sup>17</sup>. WA managed to sentence Mr Withers to prison without industrial manslaughter laws. Importantly, based on WorkSafe statistics, his imprisonment (regardless of it being under a different charge to industrial manslaughter) does not appear to have successfully reduced and/or prevented fatal workplace practices.

## Queensland (QLD)

The 2016 Dreamworld tragedy served as a pivotal event prompting the introduction of industrial manslaughter laws in QLD. Ironically, the defendant, Ardent Leisure, would still avoid charges under Part 2A of the *Work Health and Safety Act 2011* as PCBUs and senior officers can only be prosecuted where there is the death of a worker.

Prior to industrial manslaughter coming into effect as of 23 October 2017, workplace fatalities had been trending downwards but have shown signs of resistance since 2019. The statistics prior to its enactment did not support the necessity for industrial manslaughter laws and the trends since evidence against its effectiveness.<sup>18</sup>



Image Source: SafeWork Australia

<sup>16</sup> Workplace Australia < [Work-related fatalities | dataswa \(safeworkaustralia.gov.au\)](https://www.safeworkaustralia.gov.au/work-related-fatalities) >

<sup>17</sup> ‘First imprisonment under WA’s workplace safety and health laws’ *Department of Energy, Mines, Industry Regulation and Safety* (25 May 2021) < [First imprisonment under WA’s workplace safety and health laws | Department of Energy, Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](https://www.commerce.wa.gov.au/first-imprisonment-under-wa-s-workplace-safety-and-health-laws) >

Queensland has prosecuted two directors under industrial manslaughter laws. The first case, *Owen's Electric Motor Rewinds*, sentenced Jeffrey Owens, the owner, "to five years imprisonment suspended after 18 months for an operational period of five years"<sup>19</sup>. The second case suspended director of Brisbane Auto Recycling Pty Ltd to "10 months imprisonment, wholly suspended for 20 months"<sup>20</sup>. Notably, both prosecutions were of owners/directors of small companies "who were 'hands on' in the business"<sup>21</sup>.

QLD's cases identify the arbitrary and weak nature in which punishment of industrial manslaughter is imposed on defendants. Industrial manslaughter is intended to deter risky workplace practices through threat of imprisonment in the event of fatality, yet there has only been one instance of a director serving time in prison under this provision. Sentencing of industrial manslaughter does not appear to follow the rule of law which dictates all individuals are to be treated equally under the law. Additionally, the judiciary exhibits hesitancy in applying the full force of industrial manslaughter provisions, suggesting an acknowledgement of its unfairness and ineffectiveness in pursuing its purpose. Prosecutions and sentencing to date, compared to rising workplace fatalities, objectively do not support the success of industrial manslaughter in QLD.

### Driving Statistics

'Vehicle incidents and other' are the highest cause of workplace fatalities both nationally and in NSW.

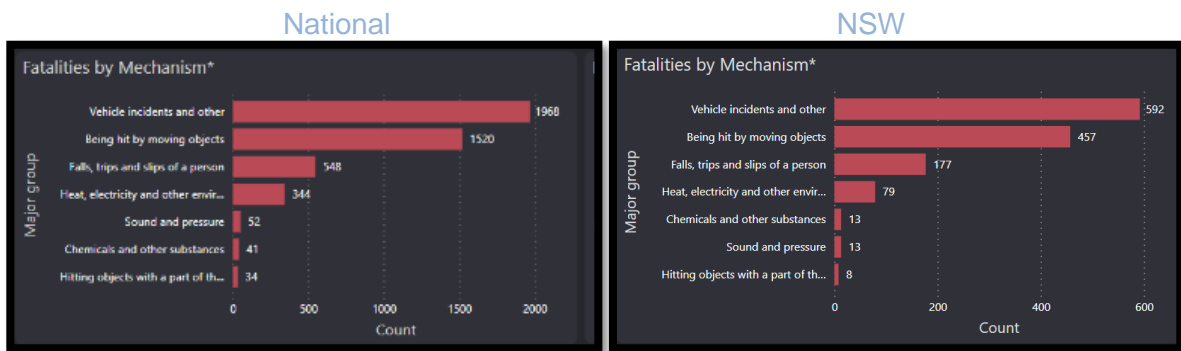


Image Source: SafeWork Australia

MEA developed the below grids using statistics provided by the respective states<sup>22</sup>:

NSW				QLD				VIC			
Year	Overall	Workplace	%	Year	Overall	Workplace	%	Year	Overall	Workplace	%
2022	281	21	7%	2022	297	20	7%	2022	241	19	8%
2021	275	27	10%	2021	275	19	7%	2021	234	11	5%
2020	284	28	10%	2020	278	21	8%	2020	211	21	10%
2019	353	27	8%	2019	220	20	9%	2019	266	14	5%
2018	347	12	3%	2018	245	17	7%	2018	213	12	6%
2017	389	25	6%	2017	247	21	9%	2017	259	12	5%
2016	380	28	7%	2016	251	20	8%	2016	290	9	3%
2015	350	22	6%	2015	243	23	9%	2015	252	14	6%

<sup>19</sup> 'First individual convicted for industrial manslaughter' *WorkSafe* (March 2022) <[First individual convicted for industrial manslaughter | WorkSafe.qld.gov.au](#)>

<sup>20</sup> 'Prison sentences and \$3M fine in Queensland's first reckless conduct and industrial manslaughter convictions' *Office of the Work Health and Safety Prosecutor* <[Prison sentences and \\$3M fine in Queensland's first reckless conduct and industrial manslaughter convictions | owhs](#)>

<sup>21</sup> Cameron Dean & Tom Reaburn 'Individual jailed for WHS Industrial Manslaughter in Queensland' *McCullough Robertson Lawyers* (26 March 2022) <[Individual jailed for WHS Industrial Manslaughter | McCullough Robertson](#)>

<sup>22</sup> 'Fatality trends by gender, road user or region' *Transport for NSW (Government)* <[Fatality trends by gender, road user or region | Transport for NSW](#)>, "Queensland Road Crash Weekly Report" *Queensland Government*, Report No: 1147h (22 June 2021) <[2019 Queensland road crash weekly report \(publications.qld.gov.au\)](#)>, "Queensland Road Crash Weekly Report" *Queensland Government* Report No: 1301f (11 May 2023) <[Queensland Road Crash Weekly Report \(publications.qld.gov.au\)](#)>, "Lives Lost – Annual" *Transport Accident Commission* <[Lives Lost - Annual - TAC - Transport Accident Commission](#)>, "Road user statistics" *Transport Accident Commission* <[Road user statistics - TAC - Transport Accident Commission](#)>, "Search statistics" *Transport Accident Commission* <[Search statistics - TAC - Transport Accident Commission](#)>.

Work-related vehicle fatalities constitute a small portion of the overall road fatalities in different States. Whilst no workplace fatality is acceptable, a significant portion of these statistics can objectively be attributed to inadequate road safety. Not a single ‘vehicle incident’ fatality has resulted in industrial manslaughter charges, suggesting the largest portion of statistics are seemingly beyond the control of PCBUs and officers. Redirecting Government policy intention towards enhancing road safety is likely a more effective approach, likely to significantly reduce workplace fatalities as a consequential benefit.

### Piercing the Corporate Veil

Another objective of industrial manslaughter is to pierce the corporate veil, enabling the accountability of senior management in larger corporations for fatalities even if they are not directly involved, thus addressing the actus reas element of manslaughter. While theoretically appealing, the practical application of industrial manslaughter merely imposes harsher penalties on SMEs where directors are typically directly involved in the fatal incident. There has not been a single instance of a large corporation facing industrial manslaughter charges. The successful cases cited under the ‘Comparable Jurisdiction Statistics’ section of this report have all involved small entities where the director was actively engaged and directly linked to the fatal incident. Industrial manslaughter is placing an unjust burden on small and medium enterprises, particularly those without the capacity to distance themselves directly from the daily business operations.

What has transpired in other jurisdictions is a seemingly arbitrary and severe enforcement of criminal law against SMEs through WHS regulations, with large corporations notably avoiding significant implications.

### Risk Based Framework

In response to QLD’s introduction of industrial manslaughter, the Department of Jobs and Small Businesses highlighted that-

“the introduction of the offence of industrial manslaughter is ‘unwarranted’ and inconsistent with the ‘philosophy’ of work health and safety legislation, where culpability is established by unlawful exposure to risk of death, injury or illness, rather than by the final consequences of the exposure.”<sup>23</sup>

The Australian Institute of Company Directors raised concern that industrial manslaughter-

“[leads] to misdirected focus on punishing wrongdoing (away from the core objective of WHS laws)”.<sup>24</sup>

Additionally, SafeWork Australia’s has previously concluded that-

“The absence of an industrial manslaughter offence in the model WHS laws was intentional ... outcome based offences, such as industrial manslaughter offence, should not be included in the model WHS laws ... preferred approach [have] sanction relate to the culpability of the offender and not solely to the out come of the non-compliance. Hence the Category 1-3 offences in the model WHS laws relate to the exposure of individuals to risk by a duty holder, regardless of the outcome. Under this approach it is not necessary to wait for a serious incident to fatality before a duty holder is prosecuted”<sup>25</sup>.

<sup>23</sup> Department of Jobs and Small Business, *Submission 49*, at [8]-[9] cited in Parliament of Australia “Chapter 5 Prosecutions” (October 2018).

<sup>24</sup> Australian Institute of Company Directors, *Submission 13*, at [2]-[3] cited in Parliament of Australia “Chapter 5 Prosecutions” (October 2018).

<sup>25</sup> Safe Work Australia “Decision Regulation Impact Statement *Recommendations of the 2018 Review of the model Work Health and Safety laws*” (December 2019).



MEA concurs with the core argument that industrial manslaughter diverges from risk-based framework of WHS laws. We argue industrial manslaughter operates as an 'ambulance at the bottom of the hill' selective in who it looks after. We have seen limited but arbitrary approaches to sentencing while simultaneously failing to prosecute large corporation management. The punitive outcome model is not proving to be a successful initiative.

### Rule of Law

The Australian Constitution dictates that all citizens must be treated equally under the law. Throughout this submission, we have highlighted issues which are inconsistent with the rule of law, including -

1. The judiciary is applying punitive measures arbitrarily, punishing some offenders harsher than others (please refer to 'judicial comparisons statistics' above). We have observed a spectrum of punishments ranging from actual prison time served to fully suspended prison sentences and even an instance of mere community service.
2. The limited number of industrial manslaughter cases throughout Australia have involved SMEs. Despite intentions for industrial manslaughter to pierce the corporate veil and hold individuals within large corporations accountable, such occurrences have not materialised. This places an unfair burden on SMEs, heightening risks of their daily operations, while large corporates seemingly remain unaffected by these provisions highlighting the prejudicial nature of industrial manslaughter.

We argue the arbitrary and prejudice nature is unconstitutional as it conflicts with the rule of law.

### Criminal Matter

During QLD's 2017 industrial manslaughter consultations, MEA advocated that industrial manslaughter creates criminal charges outside the Criminal Code. We highlighted that the justification as per the briefing given by departmental officers, states industrial manslaughter will assist with successful prosecution of Senior Officers and PCBUs of large complex organisations; a circumstance that has allegedly proved difficult to prosecute under the Criminal Code. Effectively, industrial manslaughter is enforcing the harshest punishment available on a person without the full protection of the criminal justice system. It removes the right to silence afforded by criminal law requiring defendants to essentially self-incriminate during workplace fatality investigations.

## Preferred Option

MEA strongly advocate against any further advancement of industrial manslaughter in NSW. However, we are providing our preferred drafting option in the instance the Bill is developed. Our primary objective is to minimise the potential for arbitrary and unjustifiably broad applications of the law. We propose the following drafting –

Element	Preferred Option	Justification
Proposed drafting		<p>Industrial Manslaughter</p> <p>(1) A person commits an offence if-</p> <ul style="list-style-type: none"> <li>(a) the <b>person conducts a business or undertaking</b>, or is an <b>officer</b> of a person who conducts a business or undertaking; and</li> <li>(b) the person has a <b>health and safety duty</b>; and</li> <li>(c) the person has <b>knowledge</b> of conduct that causes the death of a <b>worker</b>; and</li> <li>(d) the conduct is in <b>breach of their WHS duty</b>; and</li> <li>(e) the individual is <b>reckless</b> towards the conduct.</li> </ul> <p>Maximum penalty-</p> <ul style="list-style-type: none"> <li>(a) for an individual, imprisonment for 5 years and a fine of \$250,000.</li> <li>(b) For a small and medium entity, a fine of \$2 000 000.</li> <li>(c) For a large entity, a fine of \$10 000 000.</li> </ul>
Element 1 - Who can commit the offence of Industrial Manslaughter	Option 1 - Status Quo	<p>Industrial manslaughter should be limited to those who owe a WHS duty. Extending its scope to encompass 'any duty' is unjustifiably and unfairly broad. It is appropriate to limit the scope to WHS duties as it will be implemented in the <i>Work Health and Safety Act 2011</i>.</p> <p><i>1(a)-(b) &amp; (d) in proposed drafting.</i></p>
Element 2 – Who is covered by Industrial Manslaughter	Option 2 – Limited to Worker	<p>Case history has proven that SMEs bear the brunt of industrial manslaughter. Given the direct involvement SME directors have in the daily business operations, it would be inequitable to extend the scope of who is covered by industrial manslaughter to any individual beyond workers. To do so would create unfair burden on SMEs.</p> <p><i>1(c) in proposed drafting.</i></p>
Element 3 – What test should be used to establish industrial manslaughter?		<p>The consultation paper has defined the following terms:</p> <ul style="list-style-type: none"> <li>• Reckless = actual knowledge of risk but and consciously [continues].</li> <li>• Grossly Negligent = Such a great falling short of the standard of care required of a reasonable person, causing the death of a person, that it merits criminal punishment.</li> </ul> <p>Notably, recklessness entails a conscious awareness of the risk of death, whereas gross negligence does not involve such mental acknowledgement. Given the severe penalties, it is unfair that SME PCBUs and officers can be held liable for gross negligence which is</p>

		<p>clearly void of mens rea. Industrial manslaughter is already avoiding actus reas through the identification doctrine and in our opinion it seems an unreasonable extension to incarcerate someone who lacked acknowledge of the risk warranting imprisonment. The burden of responsibility is too great and is contrary to the rule of law.</p> <p><i>1(c)&amp;(e) in proposed drafting.</i></p>
Element 4 – Penalties and Defences		<p>Given the arbitrary nature in which the judiciary applies penalties, we advocate for a reduction in the maximum imprisonment term for individuals. The longest prison sentence served has been 18 months. It would be arbitrary and unjust to allow individuals to be sentenced to any significantly greater terms. The judiciary’s apparent hesitant utilisation of the available penalties for individuals suggests industrial manslaughter is unfairly punitive on defendants. Furthermore, we are concerned a less lenient judge in the future will impose harsher punishments with the same criteria.</p> <p><i>Maximum penalty (a)-(c) in proposed drafting.</i></p>
Element 5 – Types of Offence		<p>We argue it should be limited to two years statute of limitations to avoid unfair and arbitrary prosecutions.</p>



## Conclusion

MEA places a paramount emphasis on workplace safety, and we hold our members to the highest standards in prioritising this. We expect all MEA members to adhere to the highest levels of WHS requirements, ensuring the well-being and safety of every individual involved. Consequently, we firmly oppose the introduction of industrial manslaughter provisions, deeming them a reactive measure that comes into play only after a tragic incident occurs. Our stance is rooted in the belief that our current framework, encompassing category 1-3 offences, is sufficiently comprehensive and proving to be effective, supported by the decreasing trend in NSW workplace fatalities. Designed on a risk-based approach, it proactively addresses safety concerns without necessitating a catastrophic event. Industrial manslaughter appears to be more of a fear-inducing tactic rather than a solution that genuinely addresses the core issues surrounding safety practices.

It is a fact that statistics and prosecutions observed so far do not support the justification for industrial manslaughter. Contrary to expectations, workplace fatalities have not shown significant improvement and, in many instances, have even risen since the enactment of industrial manslaughter laws in various states. This evidences that industrial manslaughter is proving to be unsuccessful in its endeavours to reduce workplace fatalities and to implement it in NSW at this stage would prove to be a political move of following State trends.

There have been significantly higher workplace fatalities than industrial manslaughter charges. Only three directors have faced court proceedings, indicating a significant gap between incidents and legal actions. Our analysis has identified that 'vehicle and other incidents' is the primary contributing cause of workplace fatalities across all Australian jurisdictions. Notably, the number of these incidents only forms a small percentage of the overall road fatalities in the respective States. This prompts us to advocate for a reevaluation of priorities, suggesting that a more impactful approach may involve directing attention toward road safety laws. By addressing road safety comprehensively, we can expect workplace fatalities to consequently decrease. It is noteworthy that no director has faced industrial manslaughter charges when the fatality resulted from a road related incident, reinforcing the argument that focus on improving road safety measures will likely inherently reduce workplace fatalities.

The declining trend of NSW's workplace fatalities reflects the underscoring effectiveness of the risk-based framework imposed on PCBUS and officers through WHS laws. Introducing industrial manslaughter does not substantively contribute towards improving workplace safety but merely adds to the punitive consequence for failure to prevent fatalities. If government is genuinely committed to reducing workplace fatalities, a more constructive approach would involve implementing mechanisms that align with and bolster the existing WHS risk-based framework. The focus should be on proactive measures aimed at preventing fatalities, rather than relying solely on punitive measures after an incident has occurred. This approach reflects a commitment to fostering a culture of safety and prevention rather than reactive punishment.

The intention for industrial manslaughter laws to pierce the corporate veil and hold PCBUS and officers of large corporations accountable for fatalities in which they are not directly involved in, has so far proven unsuccessful. All prosecutions to date have exclusively involved SME entity directors who were directly linked to the fatal incident. Notably, these incidents would likely have resulted in similar sentencing outcomes under category 1-3 charges. The mechanism is proving to be prejudicial in nature against SMEs which is at odds with the rule of law. The consequence is an increased exposure of SMEs to higher criminal penalties, while large corporations seemingly remain unscathed by the ramifications of industrial manslaughter prosecutions. This discrepancy raises concerns about the fairness and equity of the legal approach, jeopardizing the foundational principles of justice.

The judiciary has been reluctant to apply the full force of industrial manslaughter with only one director serving some time in prison while the majority of his prison sentence was suspended. No other director has been sentenced to prison under industrial manslaughter whether it be due to prison sentences being wholly suspended or merely being sentenced to community services. This highlights the arbitrary nature of industrial manslaughter which is directly at odds with the rule of law.

While we strongly advocate against the advancement of this Bill, we have submitted our proposed drafting for industrial manslaughter in the event it does proceed. We have taken our primary concern of the prejudicial impact it is proving to have on SMEs and the evident reluctance within the judiciary to fully demonstrate the punitive consequences through observed arbitrary sentencing across different States. We therefore assert that the statistics from comparable jurisdictions does not justify a broad drafting of the provisions. It is for these reasons we advocate that any advancement of this bill is to be limited to PCBUS and officers breaching a WHS duty owed to workers. Recognising the disproportionate burden placed on SMEs, we propose a departure from legislative precedent set by other jurisdictions. Specifically, we recommend the introduction of tiered maximum fine system, differentiating between SMEs and large corporations. This approach aligns with the principal of fairness, as it acknowledges the substantial discrepancy in resources, not only in ability to pay the fine, but also in ability to prevent such fatalities in the first place. Moreover, our proposal includes a reduction in the maximum term of imprisonment, mirroring the sentencing patterns observed in the limited prosecutions conducted to date. This adjustment aims to prevent significant variation of individual approaches, ensuring a more consistent and equitable application of law.

We strongly emphasise the paramount importance of employee safety for all our members, but industrial manslaughter, in our view, adds complexity without addressing the core issue of workplace fatalities. To truly reduce workplace fatalities, NSW Government should critically reassess the purpose and realistic impact of introducing such laws, considering comparable jurisdictions. Additionally, it must ensure that the legislation effectively targets individuals in large corporations without disproportionately burdening SMEs. Success in improving workplace safety requires a thoughtful and fair regulatory approach that goes beyond symbolic measures.