Workplace Safety Legislation Amendment
(Workplace Manslaughter and Other Matters)
Bill 2019

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Clause Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part 1—Preliminary</strong></td>
<td>1</td>
</tr>
<tr>
<td>1 Purposes</td>
<td>1</td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2</td>
</tr>
<tr>
<td><strong>Part 2—Workplace manslaughter</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Division 1—Amendments to Occupational Health and Safety Act 2004</strong></td>
<td>3</td>
</tr>
<tr>
<td>3 New Part 5A inserted</td>
<td>3</td>
</tr>
<tr>
<td>4 New Part 9A inserted</td>
<td>8</td>
</tr>
<tr>
<td>5 Limitation period for prosecutions</td>
<td>10</td>
</tr>
<tr>
<td>6 Liability of officers of bodies corporate</td>
<td>10</td>
</tr>
<tr>
<td>7 Liability of officers of partnerships and unincorporated bodies and associations</td>
<td>11</td>
</tr>
<tr>
<td>8 New Division 2 of Part 15 inserted</td>
<td>11</td>
</tr>
<tr>
<td><strong>Division 2—Consequential amendments to other Acts</strong></td>
<td>12</td>
</tr>
<tr>
<td>9 Crimes Act 1958</td>
<td>12</td>
</tr>
<tr>
<td>10 Criminal Procedure Act 2009</td>
<td>13</td>
</tr>
<tr>
<td><strong>Part 3—Board of Management of Victorian WorkCover Authority</strong></td>
<td>14</td>
</tr>
<tr>
<td>11 Chief Executive Officer</td>
<td>14</td>
</tr>
<tr>
<td>12 Constitution of Board</td>
<td>14</td>
</tr>
<tr>
<td>13 Chairperson</td>
<td>14</td>
</tr>
<tr>
<td>14 New section 623M inserted</td>
<td>14</td>
</tr>
<tr>
<td><strong>Part 4—Repeal of this Act</strong></td>
<td>15</td>
</tr>
<tr>
<td>15 Repeal of this Act</td>
<td>15</td>
</tr>
<tr>
<td><strong>Endnotes</strong></td>
<td>16</td>
</tr>
<tr>
<td>1 General information</td>
<td>16</td>
</tr>
</tbody>
</table>
A Bill for an Act to amend the Occupational Health and Safety Act 2004 to provide for offences of workplace manslaughter and to provide for the establishment of the Workplace Incidents Consultative Committee, to amend the Workplace Injury Rehabilitation and Compensation Act 2013 in relation to the Board of Management of the Victorian WorkCover Authority and to make consequential amendments to certain other Acts and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

(a) to amend the Occupational Health and Safety Act 2004—

(i) to provide for offences of workplace manslaughter; and
Part 1—Preliminary

(ii) to provide for the establishment of the Workplace Incidents Consultative Committee; and

(b) to make consequential amendments to other Acts in relation to workplace manslaughter; and

(c) to amend the Workplace Injury Rehabilitation and Compensation Act 2013 in relation to the Board of Management of the Victorian WorkCover Authority.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2020, it comes into operation on that day.
Part 2—Workplace manslaughter

Division 1—Amendments to Occupational Health and Safety Act 2004

3 New Part 5A inserted

After Part 5 of the Occupational Health and Safety Act 2004 insert—

"Part 5A—Workplace manslaughter

Division 1—Preliminary

39A Objects of Part 5A

The objects of this Part are—

(a) to prevent workplace deaths; and

(b) to deter persons who owe certain duties under Part 3 from breaching those duties; and

(c) to reflect the severity of conduct that places life at risk in the workplace.

39B Definitions

In this Part—

applicable duty means a duty imposed by a provision of Part 3 other than—

(a) the duty imposed by section 25; or

(b) a duty imposed by section 32 on a person who is an employee, but not an officer, at the workplace in relation to which the duty is imposed;

conduct has the meaning given in section 39C;
Part 2—Workplace manslaughter

*constitute a breach of an applicable duty* has the meaning given in section 39D;

*negligent* has the meaning given in section 39E;

*owes an applicable duty to another person* has the meaning given in section 39F.

### 39C What does conduct mean?

(1) For the purposes of this Part, *conduct* means—

(a) an act; or

(b) an omission to perform an act.

(2) An omission to perform an act on or after the commencement of this Part is *conduct* for the purposes of this Part regardless of whether an occasion for performing that act arose before that commencement.

### 39D When may conduct constitute a breach of an applicable duty?

Conduct may *constitute a breach of an applicable duty* for the purposes of this Part—

(a) whether or not any other conduct also contributed to the breach; and

(b) whether or not any proceeding has been commenced in respect of that breach.

### 39E When is conduct negligent?

(1) Conduct is *negligent* for the purposes of this Part if it involves—

(a) a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in; and
Part 2—Workplace manslaughter

(b) a high risk of—
   (i) death; or
   (ii) serious injury; or
   (iii) serious illness.

(2) In determining whether conduct engaged in by a body corporate is negligent for the purposes of this Part—
   (a) what matters is the conduct engaged in by the body corporate itself; and
   (b) it does not matter whether the conduct is, or is not, conduct imputed to the body corporate under section 143; and
   (c) it does not matter whether any of the body corporate's officers were involved in all or any part of the conduct; and
   (d) the standard to be applied under subsection (1)(a) is the standard of care that would have been taken by a reasonable body corporate in the circumstances in which the conduct was engaged in.

39F When does a person owe an applicable duty to another person?

(1) A person (A) owes an applicable duty to another person (B) for the purposes of this Part if—
   (a) Part 3 imposes an applicable duty on A; and
   (b) it is either explicit or implicit that B is a person to whom the duty is owed.
Part 2—Workplace manslaughter

(2) It is explicit that B is a person to whom the duty is owed if—

(a) the provision that imposes the duty expressly specifies the class of person—

(i) to whom the duty is owed; or

(ii) for whose benefit A must perform the duty; and

(b) B belongs to that class.

(3) It is implicit that B is a person to whom the duty is owed if—

(a) the provision that imposes the duty does not expressly specify the class of person—

(i) to whom the duty is owed; or

(ii) for whose benefit A must perform the duty; and

(b) the purpose of that provision is to ensure the health and safety of persons of a particular class; and

(c) B belongs to that class.

Division 2—Offences

39G Workplace manslaughter

(1) A person who is not a volunteer must not engage in conduct that—

(a) is negligent; and

(b) constitutes a breach of an applicable duty that the person owes to another person; and
Part 2—Workplace manslaughter

(c) causes the death of that other person.

Penalty: Imprisonment for 20 years for a natural person;

100 000 penalty units for a body corporate.

(2) A person who is an officer of an applicable entity, and who is not a volunteer, must not engage in conduct that—

(a) is negligent; and

(b) constitutes a breach of an applicable duty that the entity owes to another person; and

(c) causes the death of that other person.

Penalty: Imprisonment for 20 years.

(3) An entity is an applicable entity for the purposes of subsection (2)—

(a) if it is—

(i) a body corporate; or

(ii) an unincorporated body or association; or

(iii) a partnership; and

(b) whether or not it represents the Crown.

(4) An offence against subsection (1) or (2) is an indictable offence.

Note

Unlike other indictable offences in this Act, these offences cannot be heard and determined summarily, as section 28 of the Criminal Procedure Act 2009 does not apply to them."
4 New Part 9A inserted

After Part 9 of the Occupational Health and Safety Act 2004 insert—

"Part 9A—Workplace Incidents Consultative Committee

126A Establishment of Workplace Incidents Consultative Committee

(1) The Minister must, in accordance with the regulations, establish a Workplace Incidents Consultative Committee.

(2) The function of the Committee is to provide advice and make recommendations to the Minister about—

(a) the needs of persons who are affected, directly or indirectly, by incidents that—

(i) occur at a workplace; and
(ii) involve death, serious injury or serious illness; and

(b) the development, review and improvement of policies, practices, strategies and systems relating to—

(i) the incidents referred to in paragraph (a); or
(ii) occupational health and safety more generally.

(3) The Committee is to perform its function in accordance with the regulations.
Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019

Part 2—Workplace manslaughter

(4) Without limiting the generality of section 158, the regulations may make provision for or with respect to—

(a) the appointment of members of the Committee, including—

(i) the number of members; and

(ii) subject to subsection (5), the experience or qualifications of members; and

(iii) the terms and conditions on which members are appointed; and

(iv) the remuneration, allowances and expenses of members; and

(b) the procedure of the Committee.

(5) Regulations providing for the experience or qualifications of the members of the Committee must require that a majority of members be persons who have been affected, directly or indirectly, by incidents that—

(a) occur at a workplace; and

(b) involve death, serious injury or serious illness.

126B Annual report

(1) The Workplace Incidents Consultative Committee established under section 126A may give the Minister a written report about the Committee's operations during a particular financial year.

(2) On receiving a report under subsection (1), the Minister must cause the report to be laid before each House of the Parliament within 14 sitting days of that House."
5 Limitation period for prosecutions

(1) In section 132(1) of the Occupational Health and Safety Act 2004, after "an indictable offence against this Act" insert "(other than a workplace manslaughter offence)".

(2) In section 132(2) of the Occupational Health and Safety Act 2004, after "an indictable offence" insert "against this Act (other than a workplace manslaughter offence)".

(3) After section 132(2) of the Occupational Health and Safety Act 2004 insert—

"(3) A proceeding for a workplace manslaughter offence may be brought at any time."

(4) In this section—

workplace manslaughter offence means—

(a) an offence against section 39G(1) or (2);

(b) an offence against section 144(1) arising in respect of a contravention against section 39G(1)."

6 Liability of officers of bodies corporate

In section 144(1) of the Occupational Health and Safety Act 2004, for "liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate." substitute "liable to—

(a) if the provision contravened was section 39G(1), a fine not exceeding 10 000 penalty units; or

(b) otherwise, a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the
provision contravened by the body corporate.”.

7 Liability of officers of partnerships and unincorporated bodies and associations

For section 145(3) of the Occupational Health and Safety Act 2004 substitute—

"(3) The penalty to which an officer of a partnership or an unincorporated body or association is liable for an offence committed by the officer because of the effect of subsection (1) is—

(a) if the offence is against section 39G(1), a fine not exceeding 10 000 penalty units; or

(b) otherwise, a fine not exceeding the maximum fine that could be imposed by a court on a natural person found guilty of the same offence committed at the same time (otherwise than because of the effect of subsection (1)).".

8 New Division 2 of Part 15 inserted

After Division 1 of Part 15 of the Occupational Health and Safety Act 2004 insert—

"Division 2—Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019

187 Workplace manslaughter

(1) Part 5A as inserted by Part 2 of the amending Act applies to offences alleged to have been committed on or after that insertion.
Part 2—Workplace manslaughter

(2) If an offence against section 39G(1) or (2) is alleged to have been committed between 2 dates, one before and one after the insertion of Part 5A, it is alleged to have been committed before that insertion.

(3) If an offence against section 144(1) arising in respect of a contravention of section 39G(1) is alleged to have been committed between 2 dates, one before and one after the insertion of Part 5A, it is alleged to have been committed before that insertion.

(4) In this section—

amending Act means the Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019.”.

Division 2—Consequential amendments to other Acts

9 Crimes Act 1958

In Schedule 9 to the Crimes Act 1958, after item 35 insert—

"35A An offence against section 39G(1) or (2) of the Occupational Health and Safety Act 2004 (workplace manslaughter).

35B An offence against section 144(1) of the Occupational Health and Safety Act 2004 arising in respect of a contravention of section 39G(1) of that Act (workplace manslaughter—liability of officers of bodies corporate)."."
Part 2—Workplace manslaughter

10 Criminal Procedure Act 2009

After section 327M(2)(f) of the Criminal Procedure Act 2009 insert—

"(fa) workplace manslaughter (section 39G(1) or (2) of the Occupational Health and Safety Act 2004);

(fb) an offence against section 144(1) of the Occupational Health and Safety Act 2004 arising in respect of a contravention of section 39G(1) of that Act;".
Part 3—Board of Management of Victorian WorkCover Authority

11 Chief Executive Officer

For section 498(2) of the Workplace Injury Rehabilitation and Compensation Act 2013 substitute—

"(2) A Director is ineligible to be appointed as the Chief Executive Officer.".

12 Constitution of Board

At the end of section 503 of the Workplace Injury Rehabilitation and Compensation Act 2013 insert—

"(2) The Chief Executive Officer is ineligible to be appointed as a Director.".

13 Chairperson

In section 509(1) of the Workplace Injury Rehabilitation and Compensation Act 2013, for "Directors, other than the Chief Executive," substitute "Directors".

14 New section 623M inserted

After section 623L of the Workplace Injury Rehabilitation and Compensation Act 2013 insert—

"623M Transitional provision—Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019

On the day on which Part 3 of the Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019 comes into operation, the Chief Executive Officer ceases to be a Director of the Board.".
Part 4—Repeal of this Act

15 Repeal of this Act

This Act is repealed on 1 July 2021.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).
Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Bill 2019

Endnotes

Endnotes

1 General information