

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

Crimes (Industrial Manslaughter) Amendment Bill 2002

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Crimes (Industrial Manslaughter) Amendment Bill 2002

A Bill for

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Crimes (Industrial Manslaughter) Amendment Act*
3 *2002*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Act amended**

9 This Act amends the *Crimes Act 1900*.

10 **4 Section 7A, note 1**

11 *insert*

- 12 • section 49C (Industrial manslaughter—employer offence)
- 13 • section 49D (Industrial manslaughter—senior officer offence)

14 **5 New part 2A**

15 *insert*

16 **Part 2A Industrial manslaughter**

17 **49A Definitions for pt 2A**

18 In this part:

19 *agent*, of a person (the *first person*), means—

20 (a) a person (the *second person*) engaged by the first person
21 (whether as independent contractor or otherwise) to provide
22 services to the first person in relation to matters over which the
23 first person—

24 (i) has control; or

1 (ii) would have had control apart from an agreement between
2 the first person and second person; or

3 (b) a person engaged by another agent of the first person, or by an
4 agent of an agent, (whether as independent contractor or
5 otherwise) to provide services, in relation to the first person, to
6 the other agent in relation to matters over which the other
7 agent—

8 (i) has control; or

9 (ii) would have had control apart from an agreement between
10 the agents.

11 **causes** death—a person’s conduct **causes** death if it substantially
12 contributes to the death.

13 **commissioner for OH&S** means the Occupational Health and
14 Safety Commissioner under the *Occupational Health and Safety Act*
15 *1989*.

16 **conduct**—see the Criminal Code, section 13.

17 **death**—see the Criminal Code, dictionary.

18 **employee** means a person engaged under a contract of service.

19 **employer**, of a worker—a person is an **employer** of a worker if—

20 (a) the person engages the worker as a worker of the person; or

21 (b) an agent of the person engages the worker as a worker of the
22 agent.

23 **government**—see the Legislation Act, section 121 (6).

1 **government entity**—an entity is a **government entity** for a function
2 of the entity if—

- 3 (a) the entity’s exercise of the function is subject to the control of
4 a government (including a senior officer of the government); or
5 (b) the entity is otherwise an agent of a government in exercising
6 the function.

7 **independent contractor** means a person engaged under a contract
8 for services.

9 **officer**, of a corporation—see the Corporations Act, section 9.

10 *Note* At the commencement of this section, the definition of **officer** in the
11 Corporations Act, section 9 is as follows:

12 **officer** of a corporation means:

- 13 (a) a director or secretary of the corporation; or
14 (b) a person:
15 (i) who makes, or participates in making, decisions that affect the
16 whole, or a substantial part, of the business of the corporation; or
17 (ii) who has the capacity to affect significantly the corporation’s
18 financial standing; or
19 (iii) in accordance with whose instructions or wishes the directors of the
20 corporation are accustomed to act (excluding advice given by the
21 person in the proper performance of functions attaching to the
22 person’s professional capacity or their business relationship with the
23 directors or the corporation); or
24 (c) a receiver, or receiver and manager, of the property of the corporation; or
25 (d) an administrator of the corporation; or
26 (e) an administrator of a deed of company arrangement executed by the
27 corporation; or
28 (f) a liquidator of the corporation; or
29 (g) a trustee or other person administering a compromise or arrangement
30 made between the corporation and someone else.

31 **outworker** means an individual engaged by a person (the **principal**)
32 under a contract for services to treat or manufacture articles or
33 materials, or to perform other services—

- 34 (a) in the outworker’s own home; or
35 (b) on other premises not under the control or management of the
36 principal.

1 ***provide services*** to, or in relation to, a person includes perform work
2 for, or in relation to, the person.

3 ***senior officer***, of an employer, means—

4 (a) for an employer that is a government, or an entity so far as it is
5 a government entity—any of the following:

6 (i) a Minister in relation to the government or government
7 entity;

8 (ii) a person occupying a chief executive officer position
9 (however described) in relation to the government or
10 government entity;

11 (iii) a person occupying an executive position (however
12 described) in relation to the government or government
13 entity who makes, or takes part in making, decisions
14 affecting all, or a substantial part, of the functions of the
15 government or government entity; or

16 (b) for an employer that is another corporation (including a
17 corporation so far as it is not a government entity)—an officer
18 of the corporation; or

19 (c) for an employer that is another entity—any of the following:

20 (i) a person occupying an executive position (however
21 described) in relation to the entity who makes, or takes
22 part in making, decisions affecting all, or a substantial
23 part, of the functions of the entity;

24 (ii) a person who would be an officer of the entity if the
25 entity were a corporation.

26 **Example for par (a) (ii)**

27 a person employed under the *Public Sector Management Act 1994*, section 28
28 (Engagement) or section 30 (Temporary performance of duties) to perform an
29 office of chief executive

1 **Example of executive position for par (a) (iii)**

2 an office created under the *Public Sector Management Act 1994*, section 54A

3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).

6 ***serious harm***—see the Criminal Code, dictionary.

7 ***volunteer*** means a person who—

8 (a) provides services—

9 (i) for, or in relation to, the trade or business of someone
10 else; or

11 (ii) for an entity for, or in relation to, a religious, educational,
12 charitable or benevolent purpose or otherwise in the
13 public interest; and

14 (b) receives no payment for the provision of the services (other
15 than reasonable out-of-pocket expenses).

16 ***worker*** means—

17 (a) an employee; or

18 (b) an independent contractor; or

19 (c) an outworker; or

20 (d) an apprentice or trainee; or

21 (e) a volunteer.

22 **49B Omissions of employers and senior officers**

23 (1) An employer's omission to act can be conduct for this part if it is an
24 omission to perform the duty to avoid or prevent danger to the life,
25 safety or health of a worker of the employer if the danger arises
26 from—

27 (a) an act of the employer; or

- 1 (b) anything in the employer's possession or control; or
2 (c) any undertaking of the employer.
- 3 (2) An omission of a senior officer of an employer to act can be conduct
4 for this part if it is an omission to perform the duty to avoid or
5 prevent danger to the life, safety or health of a worker of the
6 employer if the danger arises from—
- 7 (a) an act of the senior officer; or
8 (b) anything in the senior officer's possession or control; or
9 (c) any undertaking of the senior officer.
- 10 (3) For this section, if, apart from an agreement between a person and
11 someone else, something would have been in the person's control,
12 the agreement must be disregarded and the thing must be taken to be
13 in the person's control.

14 **49C Industrial manslaughter—employer offence**

15 An employer commits an offence if—

- 16 (a) a worker of the employer—
- 17 (i) dies in the course of employment by, or providing
18 services to, or in relation to, the employer; or
- 19 (ii) is injured in the course of employment by, or providing
20 services to, or in relation to, the employer and later dies;
21 and
- 22 (b) the employer's conduct causes the death of the worker; and
- 23 (c) the employer is—
- 24 (i) reckless about causing serious harm to the worker, or any
25 other worker of the employer, by the conduct; or

- 1 (ii) negligent about causing the death of the worker, or any
2 other worker of the employer, by the conduct.

3 Maximum penalty: 2 500 penalty units, imprisonment for 25 years
4 or both.

5 **49D Industrial manslaughter—senior officer offence**

6 A senior officer of an employer commits an offence if—

7 (a) a worker of the employer—

8 (i) dies in the course of employment by, or providing
9 services to, or in relation to, the employer; or

10 (ii) is injured in the course of employment by, or providing
11 services to, or in relation to, the employer and later dies;
12 and

13 (b) the senior officer's conduct causes the death of the worker; and

14 (c) the senior officer is—

15 (i) reckless about causing serious harm to the worker, or any
16 other worker of the employer, by the conduct; or

17 (ii) negligent about causing the death of the worker, or any
18 other worker of the employer, by the conduct.

19 Maximum penalty: 2 500 penalty units, imprisonment for 25 years
20 or both.

21 **49E Court may order corporation to take certain actions**

22 (1) This section applies if a court finds a corporation guilty of an
23 offence against section 49C.

24 (2) In addition to or instead of any other penalty the court may impose
25 on the corporation, the court may order the corporation to do 1 or
26 more of the following:

27 (a) take any action stated by the court to publicise—

- 1 (i) the offence; and
2 (ii) the deaths or serious injuries or other consequences
3 resulting from or related to the conduct from which the
4 offence arose; and
5 (iii) any penalties imposed, or other orders made, because of
6 the offence;
- 7 (b) take any action stated by the court to notify 1 or more stated
8 people of the matters mentioned in paragraph (a);
- 9 (c) do stated things or establish or carry out a stated project for the
10 public benefit even if the project is unrelated to the offence.

11 **Example for par (a)**

12 advertise on television or in a daily newspaper

13 **Example for par (b)**

14 publish a notice in an annual report or distribute a notice to shareholders of the
15 corporation

16 **Example for par (c)**

17 develop and operate a community service

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

- 21 (3) In making the order, the court may state a period within which the
22 action must be taken, the thing must be done or the project must be
23 established or carried out, and may also impose any other
24 requirement that it considers necessary or desirable for enforcement
25 of the order or to make the order effective.
- 26 (4) The total cost to the corporation of compliance with an order or
27 orders under subsection (2) in relation to a single offence must not
28 be more than \$5 000 000 (including any fine imposed for the
29 offence).

- 1 (5) If the court decides to make an order under subsection (2), it must,
2 in deciding the kind of order, take into account, as far as practicable,
3 the financial circumstances of the corporation and the nature of the
4 burden that compliance with the order will impose.
- 5 (6) The court is not prevented from making an order under
6 subsection (2) only because it has been unable to find out the
7 financial circumstances of the corporation.
- 8 (7) If a corporation fails, without reasonable excuse, to comply with an
9 order under subsection (2) (a) or (b) within the stated period (if any)
10 the court may, on application by the commissioner for OH&S, by
11 order authorise the commissioner—
- 12 (a) to do anything that is necessary or convenient to carry out any
13 action that remains to be done under the order and that it is still
14 practicable to do; and
- 15 (b) to publicise the failure of the corporation to comply with the
16 order.
- 17 (8) If the court makes an order under subsection (7), the commissioner
18 must comply with the order.
- 19 (9) Subsection (7) does not prevent contempt of court proceedings from
20 being started or continued against a corporation that has failed to
21 comply with an order under this section.
- 22 (10) The reasonable cost of complying with an order under
23 subsection (7) is a debt owing to the Territory by the corporation
24 against which the order was made.

6 Dictionary

1
2 *insert*

3 *agent*, for part 2A (Industrial manslaughter)—see section 49A.

4 *causes* death, for part 2A (Industrial manslaughter)—see
5 section 49A.

6 *commissioner for OH&S*, for part 2A (Industrial manslaughter)—
7 see section 49A.

8 *conduct*, for part 2A (Industrial manslaughter)—see the Criminal
9 Code, section 13.

10 *death*, for part 2A (Industrial manslaughter)—see the Criminal
11 Code, section 13.

12 *employee*, for part 2A (Industrial manslaughter)—see section 49A.

13 *employer*, for part 2A (Industrial manslaughter)—see section 49A.

14 *government*, for part 2A (Industrial manslaughter)—see the
15 Legislation Act, section 121 (6).

16 *government entity*, for part 2A (Industrial manslaughter)—see
17 section 49A.

18 *independent contractor*, for part 2A (Industrial manslaughter)—see
19 section 49A.

20 *officer*, of a corporation, for part 2A (Industrial manslaughter)—see
21 the Corporations Act, section 9.

22 *outworker*, for part 2A (Industrial manslaughter)—see section 49A.

23 *provide services*, for part 2A (Industrial manslaughter)—see
24 section 49A.

25 *senior officer*, for part 2A (Industrial manslaughter)—see
26 section 49A.

- 1 *serious harm*, for part 2A (Industrial manslaughter)—see the
2 Criminal Code, dictionary.
- 3 *volunteer*, for part 2A (Industrial manslaughter)—see section 49A.
- 4 *worker*, for part 2A (Industrial manslaughter)—see section 49A.
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Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.