

Industrial Manslaughter - Is this the Future of Safety in WA?

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Harmonised safety legislation is not yet law in Western Australia. There has been talk about it for a decade or so ... but we are now the closest we have ever been to having this become part of our legislative framework. If I were a betting person, I'd say that it will become law ahead of our State election in March next year.

As a non-betting person, I'd say that the WA version of the Work Health and Safety Bill will become law by the end of 2020. Why?

Because of what is happening generally in the community (COVID 19 related) and the flow-on effects in workplaces (even if WFH). The circumstances are ripe for this legislation which imposes ever increasing demands, obligations, responsibilities and consequences on the employer or employing entity.

This extends to the concept of industrial manslaughter. One of the earliest written forebears of this moral imperative is the Fifth Commandment: "Thou shall not kill". Unlawful killing has long been recognized and treated as a crime punishable severely. So is industrial manslaughter which is now part of the proposed harmonised legislation.

Will it improve health and safety outcomes? As a lawyer, I can best answer that by posing another question(s) – Will it

negatively impact health and safety outcomes? Highly unlikely! Will it make employers /Directors change their ways re safety? Possibly.

And that, in my view, is sufficient to justify the introduction of industrial manslaughter, in addition to, but separate from the Criminal Code offences of murder / manslaughter.



The recent Queensland case is illustrative. A worker was run over by a reversing forklift at work, was seriously injured and then died 8 days later from his injuries. His employer was a small but successful car recycling business established and run by 2 Directors in their early twenties. The 2 Directors, both "hands - on" in the business, said that they had always advised staff to "Be safe. Look after yourself!"

No formal safety systems were in place. No written safety policies or procedures. No traffic management plan. No checks were ever made of forklift licenses or staff competencies. No workers compensation insurance was in place - albeit it is compulsory.

Immediately after the accident, one of the Directors misinformed relatives of the deceased and the authorities that the worker had fallen from the back of a truck.

The Judge ruled that, in all the circumstances, the gravity of the offending were high and that the moral culpability of the Company and its Directors was high. He recognised the fact that the Company pleaded guilty to industrial manslaughter - namely that its negligent conduct caused the death of the worker) and each of the 2 Directors pleaded guilty to failing to exercise due diligence in their oversight of the business and by their reckless conduct they exposed the worker to a risk of serious harm or death.

The Company was fined \$3 million (maximum fine was \$10 million) and each of the Directors was given 10 month sentence of imprisonment suspended immediately for a 20 month period (maximum penalty was \$600,000 fine or 5 years jail).

Have this Company and its 2 Directors learned a salutary lesson? Undoubtedly – the sentences will weigh heavily on them. That means that specific deterrence - an

important objective in criminal penalties, will have been satisfied. But at what human cost?

What lesson(s) have been learned by others in business and by Company Directors more generally? General deterrence - another important objective in criminal penalties may also be satisfied. But that depends on you the reader of this article and what you do armed with this information. To whom do you spread the word about the risks of prosecution for industrial manslaughter? Do you review how you and your company are doing business? Do you call for a safety audit? More risk assessments? Presentation of lead-indicator information about safety at the Board level?

Improved health and safety outcomes are a matter which rests in your hands. Be pro-active. Take action and make a difference!

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