
[worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/penalties/industrial-manslaughter-offence](https://www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/penalties/industrial-manslaughter-offence)

On 23 October 2017, industrial manslaughter provisions in the *Work Health and Safety Act 2011* (WHS Act), *Electrical Safety Act 2002* (ES Act), and *Safety in Recreational Water Activities Act 2011* (SRWA Act) commenced.

These provisions make it an offence for a person conducting a business or undertaking (PCBU), or a senior officer, to negligently cause the death of a worker. In particular, the offence applies if:

- a worker dies, or is injured and later dies, in the course of carrying out work for the business or undertaking (including during a work break); and
- the PCBU's, or senior officer's, conduct cause the death of the worker (i.e. the action or inaction of the PCBU, or senior officer, substantially contributes to the death); and
- the PCBU, or senior officer, is negligent about causing the death of the worker (i.e. the person's action or inaction departs so far from the standard of care required).

Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10M for a body corporate, applies.

Who is a PCBU?

For the purposes of the industrial manslaughter offence, a PCBU has the same meaning as applies under section 5 of the WHS Act or section 21 of the ES Act. For example, a PCBU can be a sole trader, a partnership, company, unincorporated association or government department.

Who is a senior officer?

A senior officer is:

- an executive officer of a corporation (i.e. a person who is concerned with, or takes part in, the corporation's management); or
- for a non-corporation, the holder of an executive position who makes, or takes part in making, decisions affecting all, or a substantial part, of a PCBU's functions.

The use of the term 'senior officer' for the industrial manslaughter offence is intended to capture individuals of the highest levels in an organisation (those who can create and influence safety management and culture at their workplace). The rationale for capturing these higher level officers is to ensure health and safety is managed as a cultural priority within organisations and to guarantee that safety standards are managed and supported from the top down.

Examples of senior officers may include:

- a director or secretary of a corporation
- Chief Executive Officers
- Chief Financial Officers or Chief Operations Officers
- General Counsel
- General Managers
- officeholders in a unincorporated association (i.e. a club president).

In determining whether you are a senior officer for the purposes of the industrial manslaughter offence, you should have regard to:

- your position in the company (i.e. are you in senior management?)
- your ability to take part in decisions which affect the company (i.e. can you decide how money will be spent or the strategic direction the company will take?)
- your ability to influence how resources are used and what procedures are necessary (i.e. do you have the ability to make decisions about how work health and safety will be managed?)
- your ability to make decisions (i.e. is your decision making subject to a further approval process or are you the final decision-maker?)
- your reporting structure (i.e. do you report directly to a board?)
- what is the extent of your domain? (i.e. do you head the largest division and is that division a core part of the business?)
- who are your direct reports (i.e. do you have oversight of high level general managers?).

These and other similar factors would be part of the consideration for determining whether you are a senior officer.

Scenario 1

A Chief Executive Officer (CEO) of a manufacturing company is considering tenders for the supply of new plant for his workplace. An international company has provided a tender for the plant at a significantly cheaper price than the other tenders. It is brought to the attention of the CEO that the plant proposed to be supplied by the international company does not meet Australian Standards.

Despite this, the CEO decides to purchase the plant from international supplier as it meets international standards which he assumes are equivalent to the Australian Standards. The CEO does not request confirmation of this assumption. The plant is supplied and installed at the workplace. A week later, a worker is fatally injured following a catastrophic failure of the plant's guarding. It comes to light during the investigation of this incident that the plant's guarding was constructed to a lower standard than that required in the Australian Standard.

In this scenario, the CEO may be prosecuted as a senior officer for industrial manslaughter given the level of influence he has in deciding how money is spent and how safety is managed. The final decision to purchase the plant sat with the CEO and it was the CEO's decision to not actively pursue advice to confirm the plant was safe to use. This negligent inaction and failure to undertake proper due diligence could see the CEO prosecuted for industrial manslaughter.

Who is not a senior officer?

A person is **not** a senior officer if they simply provide advice for the consideration of decision-makers or are only involved in the administration of a business process. For example, a manager or supervisor in an operational area of the business (i.e. a line manager) will not be a senior officer as the manager or supervisor administers the decisions of more senior management and do not make key decisions on how the business is managed.

Scenario 2

A site foreman for a major construction project is instructed by the Chief Operations Manager to not install edge protection during the erection of formwork as the project is multiple days behind schedule and over budget. The foreman advises the manager that the Formwork Code of Practice 2016 indicates such action is essential. Despite this, the manager instructs the foreman to "just put his most experienced guys on it" and "to make sure they are careful when they are near the edges". During the erection of the formwork, an installer slips on the edge of the platform and is fatally injured during the fall.

In this scenario, the manager may be prosecuted for industrial manslaughter as it is the manager's role to make decisions regarding how work can be undertaken and influence what safety procedures are used. By contrast, the foreman's role was to provide advice and administer the procedures directed by his superior. The negligent conduct of the manager in actively ignoring the advice of the foreman and failing to ensure appropriate resources and processes are used to eliminate or minimise risks to health and safety could see the manager prosecuted for industrial manslaughter.

What is the standard of care required by PCBUs and senior officers?

The existing standard for criminal negligence in Queensland applies to the industrial manslaughter offences. This means that a PCBU or senior officer will be found negligent where their conduct departs from the standard of care expected to avoid danger to life, health and safety, and the conduct substantially contributed to the fatality.

In applying this standard, it is intended that corporate and senior officer criminal responsibility will be extended to cases where a corporation's unwritten rules, policies, work practices or conduct tacitly authorises non-compliance, or fails to create a culture of compliance within the workplace consistent with its responsibilities and duties of care.

Can volunteers be charged with industrial manslaughter?

No. A volunteer senior officer cannot be prosecuted for industrial manslaughter. This immunity from prosecution is consistent with the current immunity for volunteer officers under the WHS Act, ES Act and SRWA Act as they apply to the performance of 'officer' duties. This exemption is designed to ensure that voluntary participation at the senior officer level is not discouraged.

How does this offence apply to unincorporated associations such as sports clubs?

The current exclusions for unincorporated associations under section 34(2) of the WHS Act, section 40F(2) of the ES Act, and section 25(2) of the SRWA Act also apply to the industrial manslaughter offences. This means that an unincorporated association does not commit an offence for failure to comply with a duty or obligation, including industrial manslaughter. Instead, the liability sits with senior officers of unincorporated associations, who continue to be held liable. This applies in all circumstances except those where senior officers of unincorporated associations are volunteers.

Why are the industrial manslaughter offences in safety legislation as opposed to the criminal code?

Individuals and PCBUs have always been able to be prosecuted for manslaughter under the Queensland Criminal Code. However, there are limitations with establishing corporate criminal responsibility for manslaughter under the Criminal Code. In particular, successful prosecution of large corporations is difficult under the Criminal Code on account of the need to identify an individual director or employee as the directing mind and will of the corporation. Proof of fault by a top-level manager or director needs to be established, which can be challenging in the case of large corporations with elaborate corporate structures (e.g. a corporation with a Board of Managers). This ultimately means that manslaughter prosecutions under the Criminal Code are only successful against small businesses and that prosecutions against large corporations are unlikely to succeed.

Establishing industrial manslaughter as a separate offence under safety legislation ensures that prosecutions can extend to the highest levels of a corporation. It is also an important reminder to senior management to instill a positive health and safety culture in their workplace.

Inserting the offence in the WHS Act, ES Act and SRWA Act enables the conduct of employees, agents and officers to be attributed to the corporation. For example, directions from senior leadership in a PCBU to cut corners can lead to an acceptance and culture of poor safety standards.

Scenario 3

A worker suffers a dizzy spell and temporarily blacks out while operating a crane. He goes to the doctor and tests show he suffered a minor stroke. The doctor advises the worker to request lighter duties and not operate machinery. The worker provides a medical certificate to his project manager, which specifies his diagnosis and recommends that he be restricted to ground duties.

The Chief Operating Officer in the PCBU has instructed project managers across the company to cut costs by reducing the number of inspections and tests for equipment. The project manager (also a worker of the PCBU) is made aware of this policy and is expected to reduce costs in areas under her control.

As a result, the project manager insists the worker continue to operate the crane until a replacement operator can be engaged later in the day. While operating the crane, the worker suddenly collapses and loses complete control of the crane. The load being carried on the crane swings into the building killing another worker on impact. It is later established that the crane operator suffered a serious stroke.

The project manager knew that the worker, in having health issues and continuing to operate the crane against medical advice, constituted serious risks to the safe operation of the crane. The project manager made this decision because of the expectations of the Chief Operating Officer.

As the project manager made decisions to meet the Chief Operating Officer's cost cutting policy, it is feasible her conduct could be attributed to the conduct of the PCBU. In this scenario,

the actions and omissions of the project manager may be able to be used as evidence to prosecute the PCBU for industrial manslaughter.

In contrast, were the same scenario prosecuted under the Criminal Code, a top level manager would need to be identified as the directing mind and will of the PCBU before potentially offending conduct could be attributed to a PCBU. This would be more difficult to prove and would limit the opportunities for a successful prosecution of the PCBU.

Can a PCBU or senior officer be charged with both industrial manslaughter and manslaughter under the criminal code?

A PCBU or senior officer could potentially be charged with either manslaughter under section 303 of the Criminal Code or industrial manslaughter under the WHS Act, ES Act, or SRWA Act.

The Queensland Police progress manslaughter charges under the Criminal Code to the Director of Public Prosecutions for a decision on whether to prosecute those cases.

Who makes the decision to prosecute an industrial manslaughter case?

As the industrial manslaughter offence is an indictable offence, the Director of Public Prosecutions is responsible for deciding whether to prosecute these cases. This is consistent with the

approach taken for manslaughter prosecutions under the Criminal Code and the prosecution of Category 1 offences under the WHS Act, ES Act and SRWA Act.

What defences apply to industrial manslaughter?

All of the defences in Chapter 5 of the Queensland Criminal Code can be used to defend a charge of industrial manslaughter, except for the defence in section 23, which relates to the defence of an individual's act or omission being an 'accident'.

Examples of defences that can be used include ignorance of the law (section 22), mistake of fact (section 24), extraordinary emergencies (section 25) or insanity (section 27).