

# Industrial manslaughter legalisation in WA commences in March 2022

Under the new legislation personal responsibility for officers increases and penalties for contraventions. Is your business ready?



**Following a lengthy reform process the Work Health and Safety Act 2020 will soon become operational in Western Australia. This legislation absorbs the existing Occupational Safety and Health Act 1984 and Mines Safety and Inspection Act 1994. Corresponding regulations will be implemented across Work, Health and Safety, mining and petroleum. The legislation largely adopts the harmonised legislation in place in most states and territories in Australia.**

## Individual liability:

While personal liability for Officers currently exists, this is only applicable if the Officer was found guilty of gross negligence. Under the new laws, an Officer must exercise positive due diligence to ensure the organisation meets their safety duties irrespective of whether there is a safety incident. Under due diligence requirements an Officer is required to:

- acquire and update their knowledge of health and safety matters
- understand the work being carried and the hazards and

risks associated with the operations

- ensure there are appropriate resources and processes to eliminate or minimise health and safety risks
- ensure there are appropriate processes in place to receive and respond promptly to information regarding
- incidents, hazards and risks
- ensure that there are processes in place for complying with duties and legal obligations

Due diligence obligations cannot be delegated. While the reliance on information from and activities of others can be appropriate, an officer must be able to demonstrate they have processes in place to verify the credibility of the information relied upon. This can most effectively be performed through an independent third party.

## New enforcement measures:

Under the Act, there are several new enforcement measures available to regulators including industrial manslaughter, enforceable undertakings, restoration orders and adverse publicity orders, in addition to fines and imprisonment.

## Industrial manslaughter:

*A criminal offence, carries a maximum penalty of 20 years imprisonment, a fine of \$5M for an individual and \$10M for a body corporate*

The new legislation contains criminal offences under industrial manslaughter. To be prosecuted, there must be proof that a person (including a body corporate) engaged in conduct and was in breach of their health and safety duty. There must be knowledge that such conduct was likely to cause the death of an individual, and that the individual engaged in such conduct despite death or serious injury being a likely consequence.

*A simple offence, carries a maximum penalty of 10 years' imprisonment, a fine of \$2.5M for an individual, and \$5M for a body corporate*

This offence relates to a failure to comply with a health and safety duty where such a failure caused the death of an individual. The key difference between the industrial manslaughter criminal offence and the industrial manslaughter simple offence, is that with a simple offence there is no requirement to establish that the person engaged in conduct knowing it was likely cause the death of an individual.

## Insurability:

The Act prohibits insurance from covering monetary penalties imposed under the new Work Health and Safety laws. In addition, significant penalties will apply to those insuring or indemnifying against fines under the Act, those who are insured or indemnified against fines under the Act and those paying or accepting indemnity for an offence under the Act. However, insurance for defence costs will remain, this is an important benefit available to insured entities for prosecutions, inquiries and investigations, via a Statutory Liability policy.

## Definitions:

The broad concept of "person conducting business or undertaking" will replace the definition of employer and the definition worker will be extended beyond the traditional employee/employer relationship. This will now extend to contractors, subcontractors and the employees of contractors and subcontractors. The definition of Health and safety under the new legislation expressly includes both physical and psychological health.

## Penalties:

Offence	Maximum penalty individual	Maximum penalty body corporate
Category 1	5 years' imprisonment and a fine of \$680,000	\$3.5 million fine
Category 2	\$350,000 fine	\$1.8 million fine
Category 3	\$120,000 fine	\$570,000 fine

## Solution:

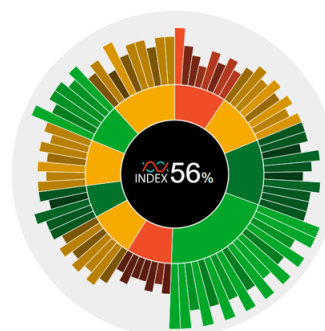
Our safety maturity assessment is easy to use, rapid to implement and affordable. We spend time with you to understand how health and safety is managed within your organisation.

From there, we perform a health and safety maturity assessment. You will be provided a report which includes an interactive starburst. This will help you easily identify which areas you really need to focus on. At the centre of the starburst an overall score provided. We call this a maturity index score. The maturity index score can be used to track continuous improvement over time or to benchmark your maturity against other entities inside or our outside your organisation.

### Organisation Dashboard

Understand your Safe365 assessment progress & results!

About the starburst



### Improve Capability

#### Modules

Director Knowledge	1
Management Knowledge	1
Worker/Contractor Knowledge	2
Health & Safety Management System	2
Verification & Audit Activities	1
Emergency Preparedness	1
Health & Safety Data Collection	2
Management Reporting	1
Worker/Contractor Engagement	2
Culture & Behaviours	1

Our tool helps Directors and Officers quickly identify what is needed to achieve compliance and gives them peace of mind, knowing they are receiving the insights they require to check and challenge health and safety in the business.

Our maturity assessments start at \$3,000. Call to get a quote for your business today.

### **Require assistance?**

If you require our assistance with the new model legislation or any other Work Health & Safety issues, please contact:

#### **Anna Klease**

Prevention Director

M 0414 057 372

E [anna.kleasant@willistowerswatson.com](mailto:anna.kleasant@willistowerswatson.com)

#### **Jimmy Garrick**

Manager – Workplace Risk WA

D +61 8 9214 7420

M +61 401 135 221

