

# BOARDS AND DIRECTORS MUST GET 'HANDS ON' WITH WORKPLACE SAFETY

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*As we start back for the new year, it is important we review our safety policies and training - re-induct all staff on all safety procedures and ensure that any changes to policies are communicated effectively.*

*Changes to the Voluntary Manslaughter laws in many states of Australia further highlight the importance of an effective WHS Management System for an employer. These changes do not create additional duties or responsibilities, they simply introduce tougher penalties for breaches of existing duties under the WHS Act. In particular, those around identification and mitigation of risks involved in the conduct of your business.*

*Whether you are a two-employee company or a two hundred employee company, you need to be aware of these changes. A good safety culture starts from the top – take the lead and ensure everyone goes home safely each night.*

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Company directors must be directly involved in the establishment, review and training of workplace safety systems to reduce their risk of personal liability and prosecution in case of a workplace fatality.

Delegating accountability for workplace safety will not be sufficient defence for board members and C-suite executives under new industrial manslaughter laws across Australia.

## UNDERSTAND THE HEALTH AND SAFETY STANDARD

Kiran Bhagat, Global Workplace Safety, SAI Global, says, "Industrial manslaughter laws legislated in Victoria,

Queensland, Western Australia, the Northern Territory, and the ACT place legal liability squarely at the feet of the C-suite and company directors for industrial manslaughter."

"Organisations must ensure their compliance to WHS laws is over and above current standards and, besides, aim to meet and exceed international standards as a safeguard. The highest-ranking leaders in an organisation must be proactively involved in these processes," says Kiran.

The most effective method of ensuring compliance with the new laws is to check your state regulator information.

## PENALTIES

The penalties under the new laws are unprecedented. In Victoria, it is a maximum of 25 years' imprisonment for individuals and a staggering maximum fine of \$16.5 million for companies, while in the Northern Territory penalties could be life imprisonment and fines up to \$10.075 million. In Western Australia, the maximum penalty is up to 20 years' imprisonment for individuals and fines of up to \$10 million for companies.

The ACT was the first state to enact an industrial manslaughter law, with penalties currently sitting at \$1.62 million for a body corporate or \$320,000 for an individual, or 20 years' imprisonment (or both). In Queensland, directors could face up to 20 years' imprisonment, and organisations could receive fines exceeding \$10 million.

## MORE THAN A POLICY APPROACH

"It is no longer acceptable for company directors to delegate workplace safety, or pass the blame, to management representatives. As the most senior figureheads of an organisation, they are accountable for the actions of their employees, and the penalties stand to have a profound personal impact on their lives," says Kiran. Getting up to speed with the appropriate certification is the most effective approach to complying with the requirements of the new industrial manslaughter laws.

"Under both the law and the standard, business leaders must be directly involved, take a preventative approach,

and ensure involvement from workers and contractors. Everyone must have a voice. WHS must become a part of an organisation's management commitments. Agenda items in management and board meetings should include a review of WHS procedures, accidents and near-misses, directive actions such as training to mitigate risks, creating opportunities for a safer workplace and documentation requirements. Directors and board members must also be involved in training.

"Previously, WHS performance was driven by policy. Now there are additional required commitments – particularly the elimination of all hazards. Overall, rather than a procedures-based approach, now best practice is to take a systems-based approach," says Kiran.

In 2020, there were 173 workplace fatalities. Already the first cases of negligence under state-based industrial manslaughter legislation are being prosecuted, with a Western Australia company director facing charges of gross negligence and possible jail time after the third serious breach of the *Workplace Health and Safety (WHS) Act* since 2013. The company has been fined more than half a million dollars in the largest fine ever imposed in that state for a WHS breach.

In Queensland, two directors of a Brisbane auto recycling business are facing the possibility of jail time, and a fine of \$3 million, following the death of a forklift driver. In both cases, the companies appear to have ignored WHS directives and guidelines and failed to install adequate safety equipment and systems.

"If the appropriate stakeholders in a business understand, promote and implement robust workplace safety systems and ensure they undertake specialised training, they could make a real impact to reducing the risk of workplace accidents, injuries or fatalities," concludes Kiran.

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