

# BULLETIN

## Commercial Vehicle Industry Association (Vic)



Reference No: Workplace manslaughter/ir-8-21

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### Reminder: Workplace manslaughter – risks and consequences

Dear CVIA members

Please find information below on the workplace manslaughter amendments to the Victorian OHS Act that came into effect in Victoria on 1 July 2020.

It is important that businesses are aware of their obligations under the amended legislation and maintain a culture of compliance (as discussed below).

Please read this bulletin carefully. Should you have any further questions or would like assistance, members can contact the **VACC OHSE Unit (OHSE Unit on 03 9829 1265 or [ohs@vacc.com.au](mailto:ohs@vacc.com.au)) directly. They can provide advice on any health, safety, environmental or workers compensation related matters, including onsite audits and critical incident response plans.**

#### Who do the workplace manslaughter laws specifically apply to?

The laws apply to a person, a body corporate, an unincorporated body or association or a partnership, including government entities and officers of these entities (but not employees or volunteers), who owe applicable duties to ensure the health and safety of another person in the workplace.

#### What is negligent conduct?

The terms “reasonably practicable” and “due diligence” have always been used to determine whether a corporation or officer has committed a breach of their OHS obligations. Under the new workplace manslaughter laws, the test is different and focuses on “negligence or gross negligence.”

Negligent conduct is defined as:

- a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in; and
- causes a high risk of death, serious injury or serious illness (including mental illness).

The courts also look at whether there was a culture of compliance within the organisation. The term “culture” refers to unwritten rules, policies, work practices or conduct that implicitly authorises non-compliance and results in the death of person.

#### Offence and Penalties

The offence applies to **negligent** conduct by an employer or other duty holder, or an officer of an organisation, which breaches certain duties under the Occupational Health and Safety Act 2004 (OHS Act) and causes the death of another person, who was owed the duty.

If convicted of workplace manslaughter, the following penalties apply (from 1 July 2020):

- a maximum of 25 years imprisonment for individuals; and
- a maximum fine of \$16.5 million for body corporates.

#### Recommendations for Action

To help encourage a “culture of safety” and ensure your business is compliant with its obligations, the following is recommended:

- review your organisation’s work health and safety policies and procedures to ensure relevance, currency and compliance with legislation

- undertake a safety audit of your workplace practices, controls and systems to identify any potential hazards or risks to safety
- conduct a formal review of all controls currently in place and ensure they are effective at mitigating the risk, so far as is reasonably practicable
- provide adequate information, instruction, training and supervision to enable workers to complete their tasks safely
- consult with workers regularly on health and safety matters that are relevant to them and ensure you keep up to date with health and safety information and legislative changes through VACC or other professional subscriptions
- ensure all new workers undergo a thorough induction which covers all relevant safety matters
- ensure accurate record keeping of all OHS related training, consultation meetings and inductions.

Whilst the above steps are recommended to assist an employer mitigate risk and reduce the likelihood of an incident occurring, being prepared and effectively responding to emergencies and critical incidents through the appropriate management of emergency situations is also critically important. This will help to minimise the negative impact of an unexpected event and the consequences thereof.

For this reason, VACC strongly advise members to ensure they have an effective Critical Incident Response Plan in place. At a minimum, this Plan should clearly set out who within management, has responsibility for the following should an unfortunate incident take place:

- Ensuring the scene of the incident is preserved
- Calling Emergency Services (000)
- Notifying Worksafe Victoria
- Calling a workplace safety lawyer to ensure that your legal privilege is protected and to avoid self-incrimination
- Calling the VACC OHSE Unit for assistance (03) 9829 1265.

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