

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION)
AMENDMENT ACT 2019

Act No. 37 of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 37 of 2019

An Act to amend the *Work Health and Safety (National Uniform Legislation) Act 2011* regarding industrial manslaughter

[Assented to 10 December 2019]

[Introduced 19 September 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Work Health and Safety (National Uniform Legislation) Amendment Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Work Health and Safety (National Uniform Legislation) Act 2011*.

4 Section 4 amended (Definitions)

(1) Section 4, definition *health and safety duty*

omit

(2) Section 4

insert

health and safety duty means a duty imposed under Part 2, Division 2, 3 or 4.

industrial manslaughter means the offence of industrial manslaughter under section 34B.

5 Section 30 repealed (Meaning of *health and safety duty*)

Section 30

repeal

6 Part 2, Division 6 inserted

After section 34

insert

Division 6 Industrial manslaughter

34A Meaning of *alternative offence*

In this Division:

alternative offence means an offence against section 31 or 32.

34B Industrial manslaughter

- (1) A person commits the offence of industrial manslaughter if:
- (a) the person has a health and safety duty; and
 - (b) the person is a person conducting a business or undertaking or an officer of a person conducting a business or undertaking; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct breaches the health and safety duty and causes the death of an individual to whom the health and safety duty is owed; and

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- (e) the person is reckless or negligent about the conduct breaching the health and safety duty and causing the death of that individual.

Maximum penalty:

- (a) for an individual – imprisonment for life; or
 - (b) for a body corporate – 65 000 penalty units.
- (2) Strict liability applies to subsection (1)(a) and (b).
 - (3) A volunteer does not commit industrial manslaughter for a failure to comply with a health and safety duty, unless the duty is under section 28 or 29.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters in subsection (3) (see section 43BU of the Criminal Code).

- (4) For this section, a person's conduct causes death if it substantially contributes to the death.

34C Provisions not applicable to industrial manslaughter

The following provisions do not apply in relation to industrial manslaughter:

- (a) section 12B;
- (b) Part 11;
- (c) section 239.

34D Verdict for alternative offence

- (1) In a proceeding against a person charged with industrial manslaughter, the trier of fact may find the person guilty of an alternative offence if the trier of fact:
 - (a) is not satisfied beyond reasonable doubt that the person is guilty of industrial manslaughter; and
 - (b) is satisfied beyond reasonable doubt that the person committed the alternative offence.
- (2) To avoid doubt, section 316 of the Criminal Code does not apply in respect of industrial manslaughter.

34E Limitation period for prosecution

- (1) Despite section 232, the limitation periods in that section do not apply in respect of industrial manslaughter.
- (2) To avoid doubt, the limitation periods in section 232 do prevent a guilty verdict for an alternative offence if the proceeding for industrial manslaughter was not commenced within the applicable limitation period in that section.

7 Section 216 amended (Regulator may accept undertakings)

Section 216(2), at the end

insert

Note for subsection (2)

Section 34C(b) prevents a WHS undertaking from being accepted in respect of industrial manslaughter.

8 Section 231 replaced

Section 231

repeal, insert

231 Request for prosecution

- (1) Subject to this section, a person may request the regulator to bring a prosecution if:
 - (a) the person reasonably believes that the occurrence of an act, matter or thing constitutes:
 - (i) a Category 1, Category 2 or Category 3 offence; or
 - (ii) industrial manslaughter; and
 - (b) no prosecution for the offence has been brought within 6 months of the occurrence.
- (2) No request may be made more than 12 months after the occurrence of the act, matter or thing.
- (3) The request must be in writing and specify:
 - (a) the particulars of the occurrence of the act, matter or thing; and
 - (b) the grounds for the belief that the offence occurred.

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- (4) A request under this section may include the prosecution of more than one offence if the offences all relate to the same occurrence of the act, matter or thing.
 - (5) Within 3 months after receiving the request, the regulator must give written notice of the request to the following:
 - (a) the person who made the request;
 - (b) any person alleged to have been responsible for the occurrence of the act, matter or thing.
 - (6) The notice must include particulars of the following:
 - (a) the status of any investigation into the occurrence of the act, matter or thing;
 - (b) the status of any prosecution in relation to the occurrence;
 - (c) if no investigation is being conducted or if no prosecution is being brought – the reasons why not.
 - (7) The regulator may publish the information referred to in subsection (6) on the regulator's website.
 - (8) The regulator need not give the notice under subsection (5) if the request relates to an occurrence about which information is published on the regulator's website.
 - (9) The regulator must not state, to any person referred to in subsection (5), a view that is contrary to the views of the Director of Public Prosecutions on the merits of a prosecution in relation to the occurrence.
 - (10) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

231A Referral to Director of Public Prosecutions

- (1) The regulator must seek the views of the Director of Public Prosecutions on the merits of a prosecution if:
 - (a) the regulator is considering bringing proceedings in respect of a death for:
 - (i) a Category 1, Category 2 or Category 3 offence; or
 - (ii) industrial manslaughter; or

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- (b) the regulator receives a request under section 231 for the prosecution of an offence in respect of a death.
- (2) In seeking the views of the Director of Public Prosecutions, the regulator must give the Director of Public Prosecutions a copy of any relevant information and evidence the regulator may have, including a copy of any request.
- (3) Within 25 business days after receiving the material under subsection (2), the Director of Public Prosecutions must give the regulator the Director's views on the following:
- (a) the merits of a prosecution for the offence referred or for any other offence in respect of the death;
- (b) whether the Director consents to a prosecution under section 231B.
- (4) Despite subsection (1), the regulator need not seek the views of the Director of Public Prosecutions on the merits of a prosecution in respect a death that was previously referred under this section, unless there are new facts or new evidence to justify the referral.

231B Consent to prosecution

The regulator requires the consent of the Director of Public Prosecutions to bring proceedings for:

- (a) a Category 1, Category 2 or Category 3 offence in respect of a death; or
- (b) industrial manslaughter.

9 Repeal of Act

This Act is repealed on the day after it commences.