

# HOW TO TALK ABOUT INDUSTRIAL MANSLAUGHTER



*It's great that you're taking action to make industrial manslaughter a crime in Victoria. Part of this action will be talking to others about industrial manslaughter – what it is and why we are campaigning for this legislation.*

*No one wants the people they work with to be killed at work. Everyone has the right to come home safe from work. So far this year, nine people have been killed at work in Victoria. When unsafe work practices kill a person, more than just one life is destroyed. Families and communities are ripped apart. This means industrial manslaughter is a serious issue that needs collective action to stop.*

*You can take action by putting up posters at work and in your community and having a conversation with members of your DWG, and with others. Every conversation counts. That's why we have put together some common Q&A's you might come across.*

## **WHAT IS IT?**

- Better termed corporate manslaughter, industrial manslaughter is the crime committed when a company, through negligence, kills an employee or member of the public.

## **WHY DO WE NEED IT?**

- Currently this is not a crime in Victoria but it is a crime in QLD, ACT, the United Kingdom and Canada.
- It will incentivise employers to do all that they can to ensure health and safety in the workplace.
- It sends a clear message to employers about societal expectations around safety in the workplace.

## **THE GAP**

- Manslaughter is a crime in the Crimes Act but it only applies to individuals, not to companies.
- The duty not to recklessly endanger persons at workplace, and assigning this conduct to corporate bodies, has not been used to prosecute employers following the death of an employee. Instead, nearly all WorkSafe prosecutions are under a different section of the Act for general failure to provide a safe/healthy working environment (s21).
- The duty not to recklessly endanger, as well as the s21 duty to provide a safe workplace, can theoretically be brought against an individual before a death or incident occurs. But, a fatality is only a factor in the court's deliberation about a breach.
- Justice is not delivered when a worker is killed at work. Therefore, our current framework is not sufficient – there is a gap.

## WHAT DO WE WANT?

- We want the gap rectified with a law that provides for negligent employers to be charged with industrial manslaughter following the death of an employee or member of the public. This way, the death of the employee would be an element of the crime rather than merely a factor the court takes into consideration.

## WHO WILL BE HELD ACCOUNTABLE?

- We need to be able to make corporations accountable for the actions of senior managers as well as its directors. Those senior managers and directors also need to be personally liable for their decisions.

## WORKER FATALITIES IN VICTORIA

Year	2012	2013	2014	2015	2016	2017
Fatalities	<b>35</b>	<b>33</b>	<b>42</b>	<b>38</b>	<b>31</b>	<b>27</b>

2018: **9** as of 11 April

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## NOT EVERYONE WILL UNDERSTAND THE ISSUE IMMEDIATELY, SO HERE ARE A COUPLE OF COMMON REPLIES YOU MIGHT RECEIVE AND HELPFUL WAYS TO ADDRESS THEM:

### “But employers don’t intentionally kill people!”

That’s right- which is why we are calling for industrial manslaughter laws and not ‘industrial murder laws’. These laws will only prosecute employers who have been negligent with their duty of care under s21 of the OHS Act, and as a result, a foreseeable and preventable fatality has occurred. If an employer has genuinely attempted to control a foreseeable risk so far as reasonably practicable these laws will not apply. They will only apply when an employer has been negligent and that negligence has resulted in the death of a person.

### “What about family-run businesses who lose someone in the family?”

We want to focus on corporate negligence or recklessness which results in the death of workers. We don’t want a dad on a family run farm being prosecuted when his son dies in a preventable quad bike accident on the farm. But, where the fatality is of an employee who is not a family member, the small business would still be liable.

### “Wouldn’t the police normally prosecute?”

No. Police don’t prosecute directors and companies when fatalities occur and instead tend to look to see whether individual behaviour is criminal. Under the proposed laws, WorkSafe on the other hand will target systemic breaches and that means looking at the directors or senior managers who, as a result of their negligence, have killed a worker. Police also aren’t accustomed to dealing with OHS breaches, unlike WorkSafe, and it is likely the Police will need assistance from WorkSafe to determine what is and isn’t negligent in any situation.

### “But isn’t there already a duty in the Act not to recklessly endanger workers and others, which includes corporations?”

Yes, there is (s134 and s144). However, this provision has not been used to charge employers and corporations where there has been a workplace fatality. Even if it is used, the courts will only use the death as a factor in their decision making, rather than the key element. In one instance, those laws were used to target a worker so they don’t actually focus on corporate negligence.

### “I don’t believe there is a gap in the law.”

Current prosecutions result in fines that are too small; few convictions; don’t target directors/CEOs/senior managers; and ultimately send the wrong message: a workplace fatality is just the cost of doing business. In 2017, 27 people were killed at work and yet none of the bosses responsible for these deaths has gone to jail. Currently in Victoria, you can face up to 2 years in jail for killing a cat, but if you kill a worker you face no jail time. There is no justice when gaps in the law like this exist.