

Why industrial manslaughter laws are unlikely to save lives in the workplace

Written by Rick Sarre, Adjunct Professor of Law and Criminal Justice, University of South Australia

In May, Victorian Premier [Daniel Andrews announced](#) that a re-elected Labor government would legislate for a new criminal offence of workplace manslaughter.

Designed to severely punish companies that cause industrial deaths, penalties would not only include far greater fines than currently exist but, significantly, could result in 20 years' imprisonment for employers whose negligence has caused the deaths of their workers, visitors to a workplace, or passersby. Andrews said:

It's my sincerest hope that these laws will never need to be used ... that instead, they'll change our workplaces and change our culture.

The announcement was met with a standing ovation by delegates at the Labor conference. John Setka, the state secretary for the Construction, Forestry, Mining and Energy Union, was gleeful:

The current arrangements, there's so many loopholes there. [S]ome employers ... can kill people and never see the inside of a court. Or pay some fine somewhere ... it's almost become like a bit of a joke.

Similar laws across Australia

Andrews' idea is hardly new. Workplace (or "industrial") manslaughter bills have been debated in Australian parliaments over many years. They have also found their way into the law, but only in two jurisdictions: Queensland and the ACT.

Elsewhere, prosecutions proceed under occupational health, safety and welfare laws, which can include substantial fines and terms of imprisonment for grossly culpable behaviour. Notably, South Australia has seen separate industrial manslaughter bills introduced by Nick Xenophon and later the Greens [consistently defeated](#) over the last 14 years.

Why industrial manslaughter laws are unlikely to save lives in the workplace

Written by Rick Sarre, Adjunct Professor of Law and Criminal Justice, University of South Australia

[Queensland passed industrial manslaughter laws](#) late last year. These were apparently in response to the deaths of four people at the Dreamworld theme park on the Gold Coast in October 2016, and the deaths of two workers at the Eagle Farm racecourse earlier that year.

But the Queensland laws don't apply to the mining sector (where one might assume a high risk of injury exists), nor do they apply to any person other than an employee, which is a little odd, given the Dreamworld victims were visitors.

Read more: [Construction workers safer when they ditch the manual: study](#)

The ACT became the first jurisdiction in Australia to introduce the [offence of industrial manslaughter](#) in 2004. Its legislation, taking a lead from the blueprint provided by amendments to the Commonwealth Criminal Code Act in 1995, is couched in very broad terms. It is found in Part 2A of the ACT Crimes Act, read with Part 2.5 of the Criminal Code.

Significantly, the ACT law says prosecutors do not have to prove negligence by an act or an omission. They could [simply show that](#) a corporate culture existed within the employer corporation that directed, encouraged, tolerated or led to noncompliance with the law, whereupon the fatal event occurred.

That is, a company can be convicted of industrial manslaughter in the ACT for neglect that's attributable to a group of people. Further, any manager who has presided over that [culture](#) can be sentenced to a prison term.

These provisions have "teeth". The Queensland legislation, in contrast, says nothing about penalising a deficient culture, nor anything about aggregating responsibility. If the Victorian legislation follows suit, it will be silent on these issues as well.

Why industrial manslaughter laws are unlikely to save lives in the workplace

Written by Rick Sarre, Adjunct Professor of Law and Criminal Justice, University of South Australia

It should be noted that, in 14 years, not one prosecution has proceeded under the ACT legislation. One reason might be because Prime Minister John Howard's government moved quickly after the legislation was passed to exempt all Commonwealth public servants from the provisions of the act.

Lack of deterrence

There is another issue that needs to be dealt with here: the reliance industrial manslaughter legislation places on the threat of imprisonment as a deterrent. True, the threat of this sanction sends a message about how strongly society condemns behaviour that trifles with the lives of workers. The standing ovation at the Victorian Labor conference highlights the strong preference that exists for retributive punishment for grossly negligent work practices.

But unless jail time is made mandatory, the [likelihood of a court giving a prison sentence](#) to a senior officer is very low.

Very few corporate managers have a criminal record. Many can boast a distinguished history of public and community service. Character witnesses will be lining up at the courtroom door. Defence counsel will tell the judge that their client's conduct will dramatically reduce his or her ability to ever be able to work in their chosen profession again, and that is punishment enough.

Moreover, the ACT Criminal Code has a defence in section 51(3) – namely, if a defendant has exercised “appropriate diligence” to prevent negligence.

Read more: [Why random identification checks at airports are a bad idea](#)

This is a key problem for those promoting industrial manslaughter legislation: there is little evidence that threatening managers with greater prison sentences than those found under existing health and safety legislation is going to change behaviours and eliminate dangerous practices. Moreover, it is impossible to say whether the threat provided by the ACT's much

Why industrial manslaughter laws are unlikely to save lives in the workplace

Written by Rick Sarre, Adjunct Professor of Law and Criminal Justice, University of South Australia

broader-ranging criminal liability has had any deterrent effect.

One also might argue that putting in place better mechanisms to prevent injuries before they occur (such as site inspections, enhanced safety training requirements, and industry awards) is a far better use of resources than paying prosecutors, judges and correctional staff to punish people after a tragedy.

It is often said that the mere mention of industrial manslaughter laws (with imprisonment as a possible result) raises the likelihood that collaboration between employers and employees will stall. And this would be to the detriment of health and safety in the workplace generally.

The debate over the value of workplace manslaughter laws will continue to feature strongly in employment law and criminal law circles, especially as the Victorian legislation comes before the parliament.

Certainly one can argue that the foreshadowed Andrews legislation will have an important symbolic effect. But it is a long bow to draw to say that simply having an industrial manslaughter offence on the statute books in Victoria, in whatever form it finally takes, will by itself lower workplace death rates.

Rick Sarre receives funding from The Australian Research Council. He is affiliated with the ALP.

Authors: Rick Sarre, Adjunct Professor of Law and Criminal Justice, University of South Australia

Read more <http://theconversation.com/why-industrial-manslaughter-laws-are-unlikely-to-save-lives-in-the-workplace-97459>