

ADVISOR DAY 2021

INDUSTRIAL MANSLAUGHTER LAWS

Presented by
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TOPICS

- A. HISTORY AND CHANGING WHS CULTURE
- B. WHS DUTIES AND EXISTING OFFENCES
- C. ELEMENTS OF THE INDUSTRIAL MANSLAUGHTER OFFENCE
- D. STEPS TO ACHIEVE COMPLIANCE UNDER WHS ACT

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HISTORY AND CHANGES TO WHS CULTURE

- COMMUNITY'S EXPECTATIONS AFFECT WORKPLACE LAW
- IN 2011, WHS LAWS HARMONISED
 - *Work Health and Safety Act 2011* (Qld) (the "Act")
 - *Work Health and Safety Regulations 2011* (Qld)
 - Codes of practice

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HISTORY AND CHANGES TO WHS CULTURE

- *'BEST PRACTICE REVIEW OF WORKPLACE HEALTH AND SAFETY QUEENSLAND'*
- REVIEW RECOMMENDS:
 - Increasing visibility of WHSQ investigations within workplaces
 - Re-balance WHSQ's priorities in favour of "hard" compliance work
 - Introduce offence of 'Industrial Manslaughter' into WHS laws.

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WHS DUTIES AND EXISTING OFFENCES

Section 19 Primary duty of care

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
 - (a) workers engaged, or caused to be engaged by the person; and
 - (b) workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.

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WHS DUTIES AND EXISTING OFFENCES

"OFFICER" MEANS A PERSON:

- (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
- (ii) who has the capacity to affect significantly the corporation's financial standing; or
- (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation)

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WHS DUTIES AND EXISTING OFFENCES

Section 27 Duty of officers

- (1) If a PCBU has a duty under the Act, an officer must exercise *due diligence* to ensure that the PCBU complies with that duty.
...
- (4) An officer of a PCBU may be convicted or found guilty of an offence under the Act relating to a duty whether or not the PCBU has been convicted or found guilty of an offence under the Act

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CATEGORY 1 OFFENCE – VIC JUNKYARD CASE

Category 1 (reckless conduct)

Corporation: \$3 million

Officer: \$600,000 / 5 years jail

Individual (eg worker): \$300,000/
5 years jail.



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CATEGORY 2 AND 3 OFFENCES

Category 2

Corporation: \$1.5 million

Officer: \$300,000

Individual (eg worker): \$150,000

Category 3

Corporation: \$500,000

Officer: \$100,000

Individual (eg worker): \$50,000

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ELEMENTS OF INDUSTRIAL MANSLAUGHTER

Section 34C Industrial Manslaughter

(1) A PCBU commits an offence if—

- a. a worker—
 - i. dies in the course of carrying out work for the business or undertaking; or
 - ii. is injured in the course of carrying out work for the business or undertaking and later dies; and
- b. the person's conduct causes the death of the worker; and
- c. the person is negligent about causing the death of the worker by the conduct

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SOUTH AUSTRALIAN TRUCKING CASE



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ELEMENTS OF INDUSTRIAL MANSLAUGHTER

Nydam v R [1977] VR 430:

'the act was done by the accused consciously and voluntarily, without any intention of causing death but in circumstances which involved such a great falling short of the standard of care which a reasonable man would have exercised and which involved such a high risk that death would follow that the doing of the act merited criminal punishment.'

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BRISBANE AUTO RECYCLING CASE



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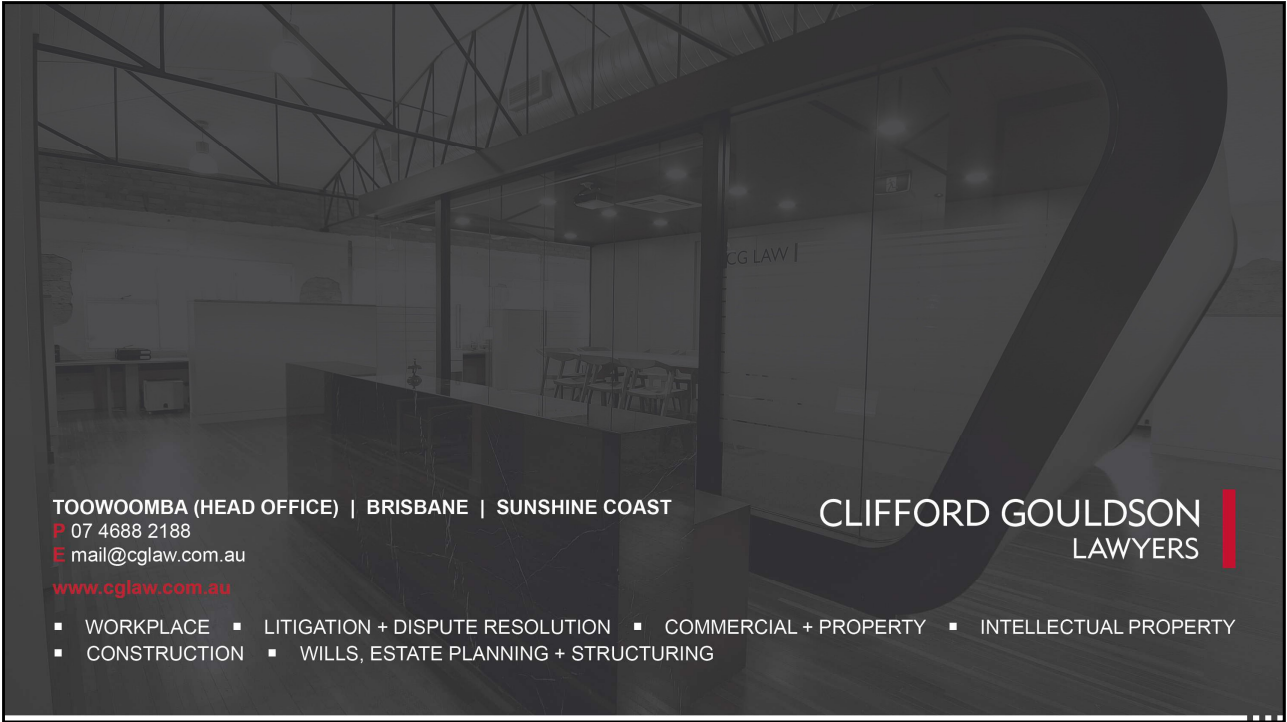
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STEPS TO ACHIEVE COMPLIANCE UNDER ACT

- Review all potential hazards and risks, and ensure they are incorporated in organisation's WHS plan
- Review existing policies relating to WHS
- Review organisation's incident action plans and response procedures
- Review WHS leadership and culture
- Provide education to officers on WHS matters

What have we covered?

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- COMMERCIAL + PROPERTY
- INTELLECTUAL PROPERTY
- CONSTRUCTION
- WILLS, ESTATE PLANNING + STRUCTURING