# School leader liability under new WHS laws

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In early November 2020 the Parliament of Western Australia passed significant changes to Western Australia's work and health safety laws with the introduction of the Work Health and Safety Act 2020 (WA) (WHS Act).

The focus of this article is whether any of the new laws will affect the personal obligations and liability of school leaders under the new laws.

The new laws do not necessarily impose significantly greater responsibility on school leaders than is the case under the existing legislation.

The new criminal offence of industrial manslaughter would only apply where it was proved beyond reasonable doubt that a person was so knowingly negligent in their duty so as to cause the death or serious injury of an employee. It is difficult to imagine this occurring in a school context.

**Overview of the new law and expected time frames**

The majority of the new WHS Act is expected to come into operation in the latter part of 2021 and some parts in 2022. The new WHS Act will replace the existing Occupational Safety and Health Act 1984 (WA).

The new laws make a raft of changes to WA's existing health and safety laws, but the most notable and publicised of those is the introduction of the crime of industrial manslaughter, which includes hefty penalties of up to $5 million for an individual, and a maximum prison sentence of 20 years.

In other words, a person could be criminally charged and sent to jail in cases of a death or serious injury at work.

The introduction of a criminal charge for causing a death at work is one that almost all workers will furiously agree with, and it is hoped that this drastic change is a step in the right direction toward having no deaths at work, period.

Other changes include the work health and safety laws now extending to contractors and casual workers, something which was lacking in the old laws, and a new term "person conducting a business or undertaking" (PCBU) will be introduced.

It is the introduction of this new term "PCBU" that may have an effect on school leaders' obligations to staff.

**So, what is the effect of the new term "persons conducting a business or undertaking" on school leaders?**

Essentially the new PCBU term places a primary duty of care on persons conducting a business or undertaking to take steps and ensure as is reasonable as possible the health and safety of workers.

Although school leaders are not the employer of teachers and other staff at schools, under the new WHS Act they are potentially "officers" or PCBUs and have a duty of care in relation to safety at the workplace.

This is not dissimilar to existing obligations.

**Industrial manslaughter**

There has been a large amount of media attention on the new criminal offence of industrial manslaughter in the WHS Act.

It is important to note that the offence is targeted at the most serious breaches, where it is appropriate to assign criminal culpability for the offence.

A person will only be convicted of the criminal offence of industrial manslaughter where it is proved, beyond reasonable doubt, that:

1. The person had a health and safety duty as a person conducting a business or undertaking; and
2. The person engaged in conduct that causes the death of a person; and
3. The conduct was a failure to comply with the person's health and safety duties; and
4. The person engaged in the conduct:
    a. knowing that the conduct is likely to cause the death of or serious injury to a person; and
    b. disregarding the likelihood of death or serious injury.

    (WHS Act s 30A)

It will be apparent that to be liable for a contravention of this offence, a person will have to have knowingly engaged in conduct that they knew would likely result in death or serious injury, and to have done so with a disregard for that likelihood. It seems most unlikely that this would occur in a school setting.

**Summary**

In brief, the new laws are largely aimed at broadening the range of persons with safety responsibilities and introducing criminal punishment for the most egregious breaches.

School leaders have always had a duty to take an active role in ensuring health and safety at the school level. The new WHS Act will not necessarily place a greater burden on school leaders than the former legislation, and they can be reassured that the offence of industrial manslaughter only applies in circumstances where a person causes another's death through conduct that is so egregious as to warrant a criminal sanction.

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