

Senate Education, Employment and Workplace Relations Committee – question on notice

Question

From reading the Maxwell report, what is your understanding then of the likelihood of a prosecution for manslaughter under general criminal law arising from a serious breach of duty by an employer?

Answer

The rationale for introducing industrial manslaughter offences in the criminal law has been to ensure that corporate employers are able to be prosecuted if their reckless or negligent behaviour results in the death of a worker. This relates to the perceived use of the corporate structure to shelter corporate officers from the consequences of unacceptable behaviour. There is a view that this makes it difficult to achieve prosecutions for manslaughter – an offence which tends to rely on directly linking the behaviour of an individual with the death and which only has a penalty of imprisonment, which cannot be applied to a corporation.

As noted in Master Builders' submission, the *Work Health and Safety Bill* places the offence of recklessly endangering a worker at the top of the work health and safety enforcement pyramid. In Master Builders' view, this is appropriate because it enables work health and safety regulators to take a graduated enforcement approach to breaches of the legislation. The penalties for a Category 1 offence are high and are sufficient to have a deterrent effect on all corporations, including larger corporations – one of the aims of industrial manslaughter offences and, in Master Builders' view, the primary aim of the offences in the Bill.

In addition, the *Work Health and Safety Bill* places a positive and proactive duty of care on officers of a company. Under clause 27 of the Bill, officers have a duty of care to exercise due diligence to ensure that the person conducting the business or undertaking complies with a duty imposed by the legislation. In other words, there is an obligation on the individual officers of the company to ensure that the company has the systems, processes and resources in place to ensure that the duty of care to workers can be met. This is a significant reform and has the potential to be a more effective approach to OHS regulation. The emphasis is on preventing corporate failure by ensuring that those people in the best position to demonstrate safety leadership do so. Where an officer fails to meet this duty the officer can be charged as an individual with a breach of their duty. It is possible to bring a category 1 or category 2 charge against an officer, both of which provide for imprisonment of an individual.

The *Work Health and Safety Bill* therefore removes the rationale for introduction of industrial manslaughter offences.

In Master Builders' view, the *Work Health and Safety Bill* provides an appropriate framework for dealing with workplace deaths and enables the corporation and key individuals to be held to account for breaches. It is therefore unnecessary, in Master Builders' view, to consider issues such as the ease, or otherwise, of bringing manslaughter charges for workplace deaths. Appropriate charges can be brought under the *Work Health and Safety Bill* and should be brought where the circumstances of the case warrant.