

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Work Health and Safety Legislation (National Uniform Legislation) Amendment Bill 2019

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

OVERVIEW OF THE BILL

The purpose of this Bill is to amend the *Work Health and Safety (National Uniform Legislation) Act 2011* (the Act) to:

- establish a new criminal offence of industrial manslaughter which applies to both individuals and corporate entities;
- require the regulator to obtain the consent of the Director of Public Prosecutions (DPP) to initiate industrial manslaughter proceedings;
- amend the existing process for requesting a prosecution to include industrial manslaughter and to promote greater transparency;
- enable existing Category 1 and 2 offences under the Act to be the alternative offence verdicts to an industrial manslaughter charge.

HUMAN RIGHTS IMPLICATIONS

Presumption of Innocence

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to a presumption of innocence is also a fundamental principle of jurisprudence.

When 'strict liability' applies to an offence, the prosecution is only required to prove the physical elements of the offence beyond reasonable doubt in order for the defendant to be found guilty. Where strict liability applies the defence of honest and reasonable mistake of fact is available to the defendant (see section 43AX of the Criminal Code).

Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Strict liability can be considered an infringement upon the presumption of innocence, because the defendant can be found guilty, or an element of an offence can be proven against the defendant, without the prosecution being required to prove fault. Whether a strict liability provision impermissibly limits the right presumption of innocence will depend upon the context in which it is used, the seriousness of the offence and the policy rationale justifying its utilisation.

In this case, the new offence at section 34B(2) requires the prosecution to prove all the elements of a charge of manslaughter, similar to the existing manslaughter offence at section 160 of the Criminal Code. In addition, it requires the prosecution to also prove that the accused was subject to a health and safety duty under the Act. This additional element is a strict liability element.

The purpose of this additional element is to separate the kinds of matters that are industrial manslaughter from the existing broad offence of manslaughter in the Criminal Code. If the offence is one of industrial manslaughter, then this clarifies the alternative verdicts that are available, as well as the availability of procedural mechanisms such as requesting information about the matter from NT WorkSafe, and whether body corporates and the Crown can be liable.

Because the additional element is one of strict liability, the prosecution need only show that the accused was subject to a health and safety duty, rather than prove the accused had a particular state of mind in relation to that health and safety duty. However, to obtain a conviction, the prosecution still must show that the accused intentionally engaged in an act or omission, and that the act or omission was a negligent or reckless breach of the accused's health and safety duties that caused a person to die. The jury must be satisfied of all of these matters beyond reasonable doubt.

The Act imposes health and safety duties on all persons conducting businesses or undertakings in the NT as well as their officers and workers (per sections 19-29 inclusive of the Act). All persons conducting businesses or undertakings in the NT as well as their officers and workers are required to be aware of their health and safety duties under the Act and it is reasonable for the law to assume this is the case in the context of a workplace fatality. The application of Part IIAA of the Criminal Code to offences under the Act means that the defence of mistake of fact is available to the accused.

As such, the application of strict liability to the first element of the industrial manslaughter offence is compatible with human rights as it only reverses the onus of proof in relation to a minor element that limits the application of the offence to workplace-related death; it is imposed in pursuit of a legitimate objective; and it is reasonable and proportionate to the achievement of that objective.

CONCLUSION

This bill potentially engages the following human rights:

- Presumption of innocence, contained in Article 14(2) of the ICCPR.

However as outlined in this statement, the introduced bill is compatible with human rights as any limitations imposed are reasonable, necessary and proportionate.