



GOVERNANCE RISK & OPERATIONS

Industrial Manslaughter: The Liability Your D&O Policy Is Legally Barred From Covering

Several states prohibit insuring against this penalty entirely. This gap exists by legal design, not policy limitation

Since Tasmania's offence commenced on 2 October 2024, every Australian work health and safety jurisdiction has had an industrial manslaughter offence in force, with different elements, penalties and commencement dates. It is a serious extension of the WHS due diligence discipline discussed earlier in this series. A board's understanding of this specific offence needs to connect directly to the D&O insurance discussion also covered earlier, because one of this offence's most important features is a limitation D&O insurance can never overcome.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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The Severe Penalties In Force Nationally

Industrial manslaughter is a criminal offence, applying where a person conducting a business or undertaking, or an officer of that PCBU, causes the death of a worker or, in some jurisdictions, another person owed a duty, through conduct meeting that jurisdiction's fault standard (such as negligence, gross negligence or recklessness) in breaching a work health and safety duty. Penalties are severe, with maximum fines of up to around \$20 million for a body corporate in several jurisdictions, and up to 20 or 25 years or life imprisonment for individuals, depending on the jurisdiction. Convictions have been recorded, for example in Queensland and Victoria.

The Critical Limit On D&O Insurance This Series Has Not Yet Covered

WHS laws in several jurisdictions, including New South Wales, Victoria and Western Australia, prohibit insuring against, or indemnifying a person for, WHS fines, which include industrial manslaughter fines, and the model WHS laws were amended in 2022 to include this prohibition. Policies may still cover legal defence costs, so check your D&O and statutory liability wording with your broker and confirm the position in each jurisdiction where you operate. This connects directly and critically to the D&O insurance discussion earlier in this series: no matter how comprehensive your association's policy is, and regardless of what its insured-versus-insured or other exclusions do or do not cover, the fine itself sits entirely outside what insurance can lawfully protect against in these jurisdictions. This is not a gap in a particular policy. It is a gap the law itself has deliberately built to ensure personal accountability cannot be transferred away through insurance at all. A board reviewing its D&O coverage and concluding the organisation is well protected has not, and cannot, extend that protection to industrial manslaughter

penalties in the jurisdictions that prohibit insuring against them. This liability is designed to remain personal, whatever coverage otherwise exists.

An Important, Sophisticated Legal Point Worth Understanding

In some jurisdictions, the organisation's negligence under this offence can be established through the collective failure of multiple people and systems working together, even where no single individual's conduct alone would be considered negligent. An association cannot defend itself by pointing to the fact that no one person did anything obviously wrong, if the combined effect of several smaller failures, in training, supervision, equipment maintenance, or risk assessment, together produced the fatal outcome. This reinforces why the systemic, organisation-wide WHS due diligence discipline this series has already established matters more than any single individual's compliance.

- Understand precisely that industrial manslaughter fines cannot be covered by D&O or any other insurance in several Australian jurisdictions, even where legal defence costs may be, connecting directly to the insurance discussion earlier in this series.
- Apply systemic WHS due diligence across the entire organisation, recognising that in some jurisdictions collective, multi-person failures can establish criminal negligence even without any single individual's clearly negligent act.
- Confirm which specific officers within your association carry personal exposure under this offence, given that officers, not just the organisation itself, can be individually charged and convicted.
- Treat this offence as a reason to revisit the WHS due diligence framework discussed earlier in this series with real seriousness, rather than a distant, unlikely risk relevant only to high-hazard industries.
- Seek legal advice specifically addressing your association's exposure if it operates in, or sends staff or volunteers into, any environment carrying physical safety risk.

Industrial manslaughter law exists specifically to ensure that a worker's death arising from organisational failure carries personal, criminal consequence that cannot simply be insured away. Understanding this precisely, and building the systemic safety discipline this series has already recommended, is the only protection available where insurance is deliberately prevented from reaching. This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Industrial Manslaughter: The Liability Your D&O Policy Is Legally Barred From Covering

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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