



Corporate manslaughter - are you ready?

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The Corporate Manslaughter and Corporate Homicide Act 2007 (the Act) received royal assent on 26 July 2007 after a long wait. Much of the recent delay was caused by Parliamentary debates on how the new offence will apply to the Government, specifically to people in custody. The new offence will come into force on 6 April 2008.

This bulletin considers what has changed because of the Act and what actions companies should consider.

WHY IS CHANGE REQUIRED?

Currently companies can be prosecuted for health and safety offences committed under the Health and Safety at Work Act 1974 and various related regulations. Serious breaches of this legislation can lead to substantial fines.

The Health and Safety at Work Act also leaves it open to the enforcement authority to consider proceedings against individuals. Directors can be prosecuted where offences are committed with their consent or connivance or where it can be attributed to any neglect on the part of the director, manager, secretary or similar officer within the company.

In addition to the statutory offences, prosecutions can be brought for Common Law Manslaughter where an individual can be prosecuted if he or she causes a death through gross negligence. A company will be guilty of the common law crime of manslaughter if the controlling mind of the company is guilty of manslaughter. The controlling mind of the company is likely to be a senior manager or director. There has always been difficulty in allocating guilt to individuals.

THE NEW OFFENCE

The Act does not create new obligations, but it does allow for liability to attach in a new way where an organisation causes a person's death.

The new offence will result in criminal liability for organisations where:

- The organisation has a duty of care to the victim through being an employer, occupier of land, supplier of goods or services or through being engaged in other commercial activities;
- There is a breach of that duty in the way that senior management manage or organise a particular aspect of an organisation's activities;
- This management failure must have caused the victim's death;
- The failure must have been gross and fall far below what can reasonably be expected in the circumstances.



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Senior management means the persons who play significant roles in either:

- Making decisions about how the whole or a substantial part of the organisation's activities are to be managed or organised, or
- The actual management or organisation of the whole or a substantial part of those activities.

If an organisation is convicted, then the Court could:

- Impose a financial penalty; and/or
- Order it to take specific steps to remedy the breach of the Act and other relevant deficiencies; and/or
- Make a publicity order requiring an organisation to publicise the conviction and the terms of a remedial order (if one was made).

It should be noted that organisations can still be convicted (in the same or subsequent proceedings) of offences under the Health and Safety at Work Act 1974, even after a conviction for Corporate Manslaughter.

The new offence of Corporate Manslaughter will not apply to individuals.

WHAT HAS CHANGED?

The purpose of this legislation is to remove the need to identify the controlling mind within an organisation who is personally guilty of manslaughter before the organisation can itself be found guilty. In the past this has been the stumbling block that has prevented the successful prosecution of large companies. This was mainly due to complex management structures with many layers involved between the people responsible for health and safety failures and the controlling mind of the company. When the new offence becomes law, an organisation will be guilty of Corporate Manslaughter if the way in which it conducts any of its activities collectively rather than individually causes the death of an employee.

The common law offence of manslaughter by gross negligence is abolished in its application to corporations.

DO YOU NEED TO TAKE ANY ACTION?

Where organisations are complying with current health and safety legislation they should not fall foul of the Act. The acid test will however come where there is a fatality and the way in which an organisation is managed is scrutinised. We would recommend that a company consider the following:

- Determine who is part of senior management and assess their competency
- Health and safety training programmes for key employees.
- Review health and safety policies to ensure the standards set are realistic and achievable.
- Increase board scrutiny of health and safety compliance.
- The company's health and safety culture and compliance status.



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- Put in place an accident management protocol for dealing with the authorities, with a lawyer commissioning privileged incident investigation reports and being instructed from the day of the incident to advise on responding to the criminal investigation process and witness' interviews.

CONCLUSION

It is likely that "manslaughter" prosecutions of companies that failed in the past will succeed under the new legislation. There will be a stigma attached to a company following conviction for Corporate Manslaughter. It is anticipated that the new offence will result in significant fines should a company be convicted. The impact will therefore not only be financial, but also directly affect the brand name and reputation of a company.

If you have any queries relating to this article, please contact Lukas Rootman in our Health & Safety group.

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