

AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE

CHAIR OF SAFE WORK AUSTRALIA

**Model Work Health and Safety Legislation Amendment (Gross Negligence
Offences) 2023**

REPORT OF THE AUSTRALASIAN PARLIAMENTARY COUNSEL'S COMMITTEE

On 29 August 2023, officers of Safe Work Australia provided instructions to the Australasian Parliamentary Counsel's Committee to draft legislation on this matter.

A copy of the draft legislation that has been settled with the officers is attached.



Annette O'Callaghan
NSW Parliamentary Counsel
Secretary, Australasian Parliamentary Counsel's Committee

19 October 2023

Ref: pcc-624, d04

Model Work Health and Safety Legislation Amendment (Gross Negligence Offences) 2023

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Parliamentary Counsel's Committee - Draft d04

Model Work Health and Safety Legislation Amendment (Gross Negligence Offences) 2023

1 Name of Act

These model provisions are the *Model Work Health and Safety Legislation Amendment (Gross Negligence Offences) 2023*.

2 Amendment of Model Law

The *Model Work Health and Safety Bill* is amended as set out in Schedule 1.

Schedule 1 Amendment of Model Work Health and Safety Bill

[1] Section 244B, heading

Omit the heading. Insert instead—

244B Fault elements other than gross negligence

[2] Section 244B(1A)

Insert after section 244B(1)—

- (1A) For subsection (1), having a state of mind in relation to the commission of a physical element of an offence does not include engaging in conduct with gross negligence with respect to the physical element.

Notes

- 1 For how the fault element of gross negligence applies in relation to a body corporate, see section 244BA.
- 2 See the jurisdictional note in the Appendix.

[3] Section 244BA

Insert after section 244B—

244BA Gross negligence

- (1) If gross negligence is a fault element in relation to the commission of the physical element of an offence, the fault element may exist on the part of a body corporate, despite no individual authorised person of the body corporate having the fault element, if the body corporate has engaged in conduct with gross negligence when viewed as a whole, determined by aggregating the conduct of more than 1 authorised person.
- (2) For the purposes of subsection (1), gross negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:
 - (a) inadequate corporate management, control or supervision of the conduct of 1 or more authorised persons; or
 - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Note

See the jurisdictional note in the Appendix.

[4] Appendix

Insert in appropriate order in the table—

244B(1A)	A jurisdiction may replace the term 'gross negligence' with another term consistent with the law of the jurisdiction.
244BA	A jurisdiction may replace the term 'gross negligence' with another term consistent with the law of the jurisdiction.