

South Australia

**Occupational Health, Safety and Welfare
(Industrial Manslaughter) Amendment Bill 2004**

A BILL FOR

An Act to amend the *Occupational Health, Safety and Welfare Act 1986*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Occupational Health, Safety and Welfare (Industrial Manslaughter) Amendment Act 2004*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Occupational Health, Safety and Welfare Act 1986*

10 3—Insertion of section 59A

After section 59 insert:

59A—Industrial manslaughter

(1) An employer commits an offence if—

(a) an employee of the employer—

- 15 (i) dies in the course of employment by the employer;
or
- (ii) is injured in the course of employment by the
employer and later dies; and

(b) the employer's conduct causes the circumstances leading to
20 the death or injury; and

(c) the employer is—

- 25 (i) recklessly indifferent about seriously endangering
the health or safety of the employee, or any other
person at work, by the conduct; or
- (ii) negligent about causing the death of the employee,
or any other person at work, by the conduct.

- (2) A senior officer of an employer commits an offence if—
- (a) an employee of the employer—
 - (i) dies in the course of employment by the employer;
or
 - 5 (ii) is injured in the course of employment by the employer and later dies; and
 - (b) the senior officer's conduct causes the circumstances leading to the death or injury; and
 - (c) the senior officer is—
 - 10 (i) recklessly indifferent about seriously endangering the health or safety of the employee, or any other person at work, by the conduct; or
 - (ii) negligent about causing the death of the employee, or any other person at work, by the conduct.
- (3) For the purposes of subsection (1), if an employer is a body corporate—
- (a) the conduct of a senior officer of the body corporate arising within the actual or apparent scope of his or her employment, or within the actual or apparent scope of his or her authority, may be attributed to the body corporate; and
 - 20 (b) without limiting the operation of paragraph (a), the body corporate—
 - 25 (i) will be taken to be within the ambit of subsection (1)(c)(i) if the body corporate expressly, tacitly or impliedly authorised or permitted reckless indifference about seriously endangering the health or safety of the relevant employee, or any other person at work; and
 - 30 (ii) will be taken to be within the ambit of subsection (1)(c)(ii) if the body corporate's conduct, after aggregating the conduct of any number of its employees, agents and officers, may be viewed as negligent.
- (4) The means by which an authorisation or permission may be established under subsection (3)(b)(i) include—
- 35 (a) proving that the governing body of the body corporate intentionally, knowingly or recklessly carried out the conduct that caused the circumstances leading to the relevant death or injury, or expressly, tacitly or impliedly authorised or permitted such conduct; or
 - 40 (b) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the conduct that caused the circumstances leading to the relevant death or injury; or

- (c) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant requirements of this Act.
- 5 (5) In addition to subsection (3)(b)(ii), negligence may be evidenced by the fact that the circumstances leading to the death or injury of the employee was substantially attributable to—
- (a) inadequate corporate management, control or supervision of the conduct of 1 or more of the employees, agents or officers of the body corporate; or
- 10 (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.
- (6) A person who commits an offence against this section is liable upon conviction to a monetary penalty not exceeding \$500 000 or imprisonment for a term not exceeding 20 years or both.
- 15 (7) A person's omission to act will constitute conduct for the purposes of this section if it is an omission to perform a duty or to exercise a reasonable degree of authority to avoid or prevent danger to the life, safety or health of another and the danger arises from—
- (a) an act or omission of the person; or
- 20 (b) anything in the person's possession or control; or
- (c) any undertaking of the person.
- (8) For the purposes of subsection (7), if, apart from an agreement between a person and someone else, something would have been in the person's control, the agreement will be disregarded and the thing will be taken to be in the person's control.
- 25 (9) To avoid doubt, both an employer and a senior officer of that employer may be guilty of offences involving the death of a particular employee.
- (10) In this section—
- 30 **cause** death—a person's conduct causes death or injury if it substantially contributes to the death or injury;
- corporate culture**, in relation to a body corporate, means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place;
- 35 **senior officer** of an employer means—
- (a) in relation to a body corporate—an officer of the body corporate; or
- 40 (b) a person occupying an executive position (however described) in the undertaking of the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the activities of the employer in the course of the employer's trade or business.