

South Australia

**Occupational Health, Safety and Welfare
(Industrial Manslaughter) Amendment Bill 2010**

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 2010*.

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 59

After section 58 insert:

58A—Industrial manslaughter

- (1) An employer is guilty of an offence if—
 - 15 (a) the employer breaches a duty applicable to the employer under Part 3; and
 - (b) the employer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and
 - 20 (c) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty:

- 25 (a) in the case of an employer who is a natural person—
Imprisonment for 20 years; or

(b) in any other case—\$1 000 000.

(2) An officer of an employer is guilty of an offence if—

(a) the officer engages in conduct that, had the officer been acting within the scope of his or her actual, usual or ostensible authority, would be able to be imputed to the employer pursuant to section 59A; and

(b) the conduct would, if so imputed, constitute a breach by the employer of a duty applicable to the employer under Part 3; and

(c) the officer knew, or ought reasonably to have known, or was recklessly indifferent as to whether, the act or omission constituting the breach would create a substantial risk of serious harm to a person; and

(d) the breach causes the death of a person (whether or not the person was an employee of the employer and whether or not the death occurred in a workplace).

Maximum penalty: Imprisonment for 20 years.

(3) It is a defence to a charge of an offence against this section for the defendant to prove that the act or omission alleged to constitute the breach—

(a) occurred in the course of an emergency; or

(b) was authorised under this or any other Act or law of the State or the Commonwealth.

(4) Nothing in this section prevents an employer and an officer of the employer from both being guilty of an offence against this section in respect of a particular death.

(5) For the purposes of this section—

(a) the way in which the activities of the employer were managed or organised causes a breach of a duty if it substantially contributes to the breach;

(b) a breach of a duty causes the death of a person if it substantially contributes to the death.

(6) An offence against this section is a major indictable offence.

(7) Section 267 of the *Criminal Law Consolidation Act 1935* does not apply in respect of an offence against this section.

(8) In this section—

officer, in relation to an employer, includes—

(a) a person 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; and

- (b) an employee of the employer who is, in the ordinary course of his or her employment, responsible (whether solely or jointly with others) to the employer for the supervision of other employees of the employer.

5 **4—Insertion of section 59AA**

After section 59 insert:

59AA—Alternative verdict

10 If at the trial of a person for an offence against section 58A the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of—

- (a) an offence against section 59; or
- (b) an offence against a provision of Part 3,

the jury may bring in a verdict that the accused is guilty of that offence.