

South Australia

**Occupational Health, Safety and Welfare
(Penalties) Amendment Bill 2006**

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 (Penalties) Amendment Act 2006*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

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

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

4—Amendment of section 4—Interpretation

Section 4(5)—delete subsection (5) and substitute:

- 15 (5) For the purposes of this Act, a reference to a divisional fine in column 1 of the following table means—
 - (a) in the case of an offence where the defendant is a natural person or an entity other than a body corporate—a fine not exceeding the amount in column 2; or
 - 20 (b) in the case of an offence where the defendant is a body corporate—a fine not exceeding the amount in column 3.

Division 1 fine	\$200 000	\$600 000
Division 2 fine	\$100 000	\$300 000
Division 3 fine	\$40 000	\$120 000
Division 4 fine	\$30 000	\$90 000
Division 5 fine	\$20 000	\$60 000
Division 6 fine	\$10 000	\$30 000
Division 7 fine	\$5 000	\$15 000

5—Substitution of section 59

Section 59—delete the section and substitute:

59—Offence to endanger persons in workplaces

5 (1) A person must not knowingly or recklessly act in a manner in, or in relation to, a workplace that may seriously endanger the health or safety of another person.

Maximum penalty:

10 (a) in the case of a natural person—imprisonment for 5 years or double the Division 1 fine;

(b) in the case of a body corporate—double the Division 1 fine.

(2) It is a defence to a charge under subsection (1) that the person was acting with a lawful excuse.

(3) An offence against subsection (1) is a minor indictable offence.

15 (4) In this section—

act includes omitting to act.

59A—Imputation of conduct or state of mind of officer, employee etc

(1) For the purposes of proceedings for an offence against this Act—

20 (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;

25 (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person,

(but not so as to affect any personal liability of the officer, employee or agent).

(2) If—

30 (a) a natural person is convicted of an offence against this Act; and

- (b) the person would not have been convicted of the offence but for the operation of subsection (1),

the person is not liable to be punished by imprisonment for the offence.

- (3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

59B—Statement of officer evidence against body corporate

In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

59C—Liability of officers of body corporate

- (1) If a body corporate contravenes a provision of this Act, a person who is an officer of the body corporate is—

(a) subject to the general defence under section 59D, guilty of a contravention of this Act; and

(b) subject to subsection (2), liable to the same penalty as may be imposed for the principal contravention when committed by a natural person.

- (2) If an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.

- (3) If a body corporate contravenes a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of contravening that provision.

- (4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not there has been a finding by a court that the body corporate committed the contravention.

- (5) If, in proceedings against a body corporate for an offence against this Act—

(a) information or a document was admitted in evidence against the body corporate; and

(b) an officer of the body corporate had been required to give the information or produce the document under a provision of this Act; and

(c) the information or document was such as to tend to incriminate the body corporate of the offence,

the officer of the body corporate will not be guilty of a contravention of this Act as a result of the body corporate having been found guilty of the offence in those proceedings.

59D—General defence

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- (1) It will be a defence in any criminal proceedings under the Act—
- (a) against a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under section 59A; or
 - (b) against an officer of a body corporate under section 59C, if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.
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- (2) A person who would, but for the defence provided by this section, have contravened a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of the issuing of improvement notices or prohibition notices.