

## **Legislative Council—No 31A**

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 23 October 2007

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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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 4—Interpretation
  - 5 Substitution of section 59
    - 59 Offence to endanger persons in workplaces
    - 59A Imputation of conduct or state of mind of officer, employee etc
    - 59B Statement of officer evidence against body corporate
    - 59C Liability of officers of body corporate
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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 body corporate or an administrative unit in the Public Service of the State—a fine not exceeding the amount in column 3; or
  - 20 (b) in any other case—a fine not exceeding the amount in column 2.

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 is guilty of an offence if—
- (a) the person, without lawful excuse, acts in a manner that creates a substantial risk of death or serious harm to another who is in a workplace; and
  - (b) the person—
    - 10 (i) knew that his or her act or acts would create that risk; or
    - (ii) was recklessly indifferent about whether his or her act or acts would create that risk.

Maximum penalty:

- 15 (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 or an administrative unit in the Public Service of the State—double the Division 1 fine.
- (3) An offence against subsection (1) is a minor indictable offence.
- 20 (4) In this section—  
*act* includes omitting to act.

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

- 25 (1) For the purposes of proceedings for an offence against this Act—
- (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;
  - (b) the conduct and state of mind of an employee of an administrative unit of the Public Service of the State acting within the scope of his or her actual, usual or ostensible authority will be imputed to the administrative unit;
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- (c) 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) It will be a defence in any criminal proceedings under the Act against a body corporate, an administrative unit of the Public Service of the State or a natural person where conduct or a state of mind is imputed to the body, administrative unit or person under subsection (1) 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.
- (3) A person who would, but for the defence provided by subsection (2), 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.
- (4) If—
- (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.
- (5) 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 or an administrative unit of the Public Service of the State contravenes a provision of this Act, and the contravention is attributable to an officer of the body corporate or an employee of the administrative unit failing to take reasonable care, then the officer or employee is guilty of an offence and liable to the same penalty as for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate or administrative unit.
- (2) If an officer of a body corporate or an employee of an administrative unit is convicted of an offence under subsection (1), the officer or employee is not liable to be punished by imprisonment for the offence.

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- (3) In determining whether an officer of a body corporate or an employee of an administrative unit is guilty of an offence under this section, the court must have regard to—
- (a) what the officer or employee knew about the matter concerned; and
  - (b) the extent of the officer's or employee's ability to make, or participate in the making of, decisions that affect the body corporate or administrative unit in relation to the matter concerned; and
  - 10 (c) whether the contravention by the body corporate or administrative unit is also attributable to an act or omission of any other person; and
  - (d) any other relevant matter.
- 15 (4) An officer of a body corporate or an employee of an administrative unit may be prosecuted and convicted of an offence pursuant to subsection (1) whether or not there has been a finding by a court that the body corporate or administrative unit committed the contravention.
- 20 (5) If, in proceedings against a body corporate or administrative unit for an offence against this Act—
- (a) information or a document was admitted in evidence against the body corporate or administrative unit; and
  - (b) an officer of the body corporate or an employee of an administrative unit had been required to give the information or produce the document under a provision of this Act; and
  - 25 (c) the information or document was such as to tend to incriminate the body corporate or administrative unit of the offence,
- 30 the officer of the body corporate or the employee of the administrative unit will not be guilty of a contravention of this Act as a result of the body corporate or administrative unit having been found guilty of the offence in those proceedings.