

Workplace Relations Alert

February 2007

New Amendments to the Occupational Health, Safety and Welfare Act 1986 (SA)

“Occupational health and safety policies, procedures and processes should be reviewed and enforced to ensure compliance with the proposed amendments.”

The Occupational Health, Safety and Welfare (Penalties) Amendment Bill 2006 (“the Bill”) was recently introduced into parliament by the South Australian government. It seeks to amend the Occupational Health, Safety and Welfare Act 1986 (“the Act”). The Bill:

- > increases the current penalties threefold for corporations;
- > clarifies liability of body corporates;
- > creates liability for officers of bodies corporate; and
- > replaces “aggravated offences” with a new offence of endangering persons in workplaces.

The amendments in the Bill bring South Australia into line with other states.

Penalties

The Bill will amend the Act so that a distinction is made between penalties for natural persons and penalties for bodies corporate. Whilst the maximum fines for natural persons will remain the same, the Bill trebles the maximum fines for bodies corporate.

For example, the maximum fine for a body corporate employer for a first offence relating to breach of an employer’s duties will increase from \$100,000 to \$300,000.

Offence of Endangering Persons in the Workplace

The Bill will amend the Act to make it an offence to knowingly or recklessly act, or omit to act, in a manner that may seriously endanger the health or safety of another person in, or in relation to, a workplace. An injury does not need to occur for a person to be charged with this offence.

It is a defence to a charge of this offence if the person was acting with a lawful excuse. The Bill does not define what a lawful excuse may be. However, the second reading explanation by the Minister for Industrial Relations says that it is to cover “situations where the work undertaken by the person is inherently dangerous to others.”

The maximum penalty for this offence for individuals is \$400,000 or imprisonment for 5 years. The maximum penalty for a corporation is \$1.2 million.

Liability of Body Corporates

The Bill will amend the Act to include a provision which says that the conduct and state of mind of an officer, employee or agent of a body corporate will be taken to be the conduct and state of mind of the body corporate. This effectively means that a body corporate may be found guilty because of the acts of its officers, employees and agents.



The same will apply for employees or agents of a natural person. It is a defence for a body corporate or natural person to prove that the alleged breach did not result from any failure on the part of the body corporate or natural person to take all reasonable and practicable measures to prevent the breach or similar breaches.

This will not affect the personal liability of the officer, employee or agent. They will still be subject to the general provisions of the Act.

Liability of Officers of a Body Corporate

The Bill will amend the Act to make an officer of a body corporate guilty of a breach of the Act if the body corporate breaches the Act. The officer will be liable to the same penalty as a natural person as if the natural person had committed the offence. However, the officer is not subject to imprisonment.

It is a defence for the officer to prove that the alleged breach did not result from any failure on their part to take all reasonable and practicable measures to prevent the breach or similar breaches.

If a body corporate commits an offence under the Act and an officer knowingly promoted or acquiesced in the commission of the offence by the body corporate, then the officer will also be guilty of the breach.

It is not necessary for a court to find a body corporate guilty of an offence under the Act for a successful prosecution and conviction against an officer of the body corporate to take place.

The Bill also says that in certain circumstances, an officer of a body corporate will not be guilty of a breach of the Act as a result of a body corporate being found guilty of a breach.

When is the Bill Likely to Become Law?

Parliament sits at various times in the coming weeks and months. It is reasonable to expect the Bill to become law by the middle of 2007.

Implications for Employers

Employers should ensure that their officers (including members of the governing body, executive officers and receivers and managers of any property of the body corporate) are familiar with the proposed amendments to the Act.

Occupational health and safety policies, procedures and processes should be reviewed and enforced to ensure compliance with the proposed amendments.

John Murray
Partner

E: jmurray@thomsonplayford.com.au

Contact Details

For further information in relation to this subject please contact:



John Murray - Partner

T: (08) 8236 1139

E: jmurray@thomsonplayford.com.au



Kim Owers - Associate

T: (08) 8236 1199

E: kowers@thomsonplayford.com.au



Asher Lindsay - Associate

T: (08) 8236 1345

E: alindsay@thomsonplayford.com.au



Adelaide

101 Pirie Street . Adelaide . SA 5000
T: (08) 8236 1300 . F: (08) 8232 1961

Melbourne

Level 40 . 140 William Street
Melbourne . VIC 3000
T: (03) 8608 7000 . F: (03) 8608 7199

Sydney

Australia Square Tower
264 George Street . Sydney . NSW 2000
T: (02) 8248 5800 . F: (02) 8248 5899

info@thomsonplayford.com.au
www.thomsonplayford.com.au



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