

South Australia



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ELIZABETHAE II REGINAE  
A.D. 2000

**OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PENALTIES)  
AMENDMENT ACT 2000**

No. 86 of 2000

[Assented to 14 December 2000]

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

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## SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Amendment of s. 21—Duties of workers
5. Substitution of s. 22
  22. Duties of employers and self-employed persons
6. Amendment of s. 58—Offences
7. Further amendment of principal Act

### SCHEDULE

#### *Amendment of Penalty Provisions of Principal Act*

**The Parliament of South Australia enacts as follows:**

**Short title**

1. (1) This Act may be cited as the *Occupational Health, Safety and Welfare (Penalties) Amendment Act 2000*.

(2) The *Occupational Health, Safety and Welfare Act 1986* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) For the purposes of this Act—

"Division 1 fine" means a fine not exceeding \$200 000;

"Division 2 fine" means a fine not exceeding \$100 000;

"Division 3 fine" means a fine not exceeding \$40 000;

"Division 4 fine" means a fine not exceeding \$30 000;

"Division 5 fine" means a fine not exceeding \$20 000;

"Division 6 fine" means a fine not exceeding \$10 000;

"Division 7 fine" means a fine not exceeding \$5 000.

**Amendment of s. 21—Duties of workers**

4. Section 21 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) An employee must take reasonable care to protect the employee's own health and safety at work.

Maximum penalty: Division 7 fine.

(1a) An employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work.

Maximum penalty: Division 6 fine.

(1b) An employee must so far as is reasonable (but without derogating from subsection (1) or (1a) or from any common law right)—

(a) use equipment provided for health or safety purposes; and

- (b) obey reasonable instruction that the employer may give in relation to health or safety at work; and
- (c) comply with any policy that applies at the workplace published or approved by the Minister after seeking the advice of the Advisory Committee; and
- (d) ensure that the employee is not, by the consumption of alcohol or a drug, in such a state as to endanger the employee's own safety at work or the safety of any other person at work.

Maximum penalty: Division 6 fine.

#### Substitution of s. 22

5. Section 22 of the principal Act is repealed and the following section is substituted:

##### Duties of employers and self-employed persons

22. (1) An employer or a self-employed person must take reasonable care to protect his or her own health and safety at work.

Maximum penalty: Division 7 fine.

(2) An employer or a self-employed person must take reasonable care to avoid adversely affecting the health or safety of any other person (not being an employee employed or engaged by the employer or the self-employed person) through an act or omission at work.

Maximum penalty: For a first offence—division 2 fine;  
For a subsequent offence—division 1 fine.

#### Amendment of s. 58—Offences

6. Section 58 of the principal Act is amended by striking out subsections (6) and (7) and substituting the following subsections:

(6) Proceedings for a summary offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed.

(7) Proceedings for an offence against this Act may only be brought—

- (a) by the Minister; or
- (b) by an inspector; or
- (c) if an employee has suffered injury as a result of an act or omission which is alleged to constitute an offence against this Act and proceedings have not been commenced by the Minister or an inspector within 1 year of the date on which the offence is alleged to have been committed—by the employee.

(8) However, the approval of the Minister is required to bring proceedings under subsection (7)(c) unless 18 months have elapsed since the date on which the relevant offence is alleged to have been committed.

(9) An apparently genuine document purporting to be signed by the Minister and to give an approval for the purposes of subsection (8) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the approval.

**Further amendment of principal Act**

7. The principal Act is further amended as set out in the schedule.

**SCHEDULE**  
*Amendment of Penalty Provisions of Principal Act*

Provision Amended	How Amended
Section 9(5)	Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
Section 12	Strike out the penalty provision and substitute: Maximum penalty: Division 6 fine.
Section 19(1)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 20	Insert the following penalty provision at the foot of the section: Maximum penalty: Division 6 fine.
Section 23	Insert the following penalty provision at the foot of the section: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 23A(1)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 23A(2)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 24(1)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 24(2)	Insert the following penalty provision at the foot of the subsection: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 24(2a)	Insert the following penalty provision at the foot of the subsection: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 24(3)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 24A(1)	Strike out the penalty provision and substitute: Maximum penalty: For a first offence—division 2 fine. For a subsequent offence—division 1 fine.
Section 32(7)	Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
Section 35(4)	Insert the following penalty provision at the foot of the subsection: Maximum penalty: Division 7 fine.
Section 35(7)	Insert the following penalty provision at the foot of the subsection: Maximum penalty: Division 6 fine.

- Section 35(8) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 35(12) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 35(13) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 37(5) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 38(8) Strike out the penalty provision and substitute:  
Maximum penalty: Division 5 fine.
- Section 38(11) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 39(4) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 40(4) Strike out the penalty provision and substitute:  
Maximum penalty: Division 2 fine plus \$20 000 for each day that the contravention or failure continues.
- Section 41(1) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 41(2) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 41(3) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 43(3) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 45(3) Strike out the penalty provision and substitute:  
Maximum penalty: Division 3 fine.
- Section 48(8) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 55(1) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 55(2) Insert the following penalty provision at the foot of the subsection:  
Maximum penalty: Division 6 fine.
- Section 56(1) Strike out the penalty provision and substitute:  
Maximum penalty: Division 5 fine.
- Section 56(2) Strike out the penalty provision and substitute:  
Maximum penalty: Division 5 fine.
- Section 60(1) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 60(3) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".
- Section 60(4) Strike out "\$20 000" and substitute "\$40 000".
- Section 61(3) Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".

Section 66(2)

Insert the following penalty provision at the foot of the subsection:

Maximum penalty: Division 6 fine.

Section 67A(10)

Strike out from the penalty provision "Penalty" and substitute "Maximum penalty".

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