

Occupational Health and Safety (Penalties) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 17 August 1989

(Brought in by Mr Pope and Mr Roper)

A BILL

for

An Act to amend the *Occupational Health and Safety Act* 1985 and the *Magistrates' Courts Act* 1971 and the *Magistrates' Court Act* 1989 with respect to penalties for occupational health and safety offences.

Occupational Health and Safety (Penalties) Act 1989

The Parliament of Victoria enacts as follows:

Purpose

- 5 1. The purpose of this Act is to amend the *Occupational Health and Safety Act* 1985 and the *Magistrates' Courts Act* 1971 and the *Magistrates' Court Act* 1989 with respect to the structure and level of penalties for occupational health and safety offences.

Commencement

2. This Act comes into operation on a day to be proclaimed.

Principal Act

- 10 3. In this Act, the *Occupational Health and Safety Act* 1985 is called the Principal Act.

No. 10190.
Amended by
Nos. 48/1988
and 50/1988.

Offences in relation to inspections

- 15 4. In section 42 (4) of the Principal Act—
 (a) in paragraph (a), for “500 penalty units” substitute “2500 penalty units”; and

- (b) in paragraph (b), for “100 penalty units” substitute “500 penalty units”.

Prohibition notices

5. In section 44 (3) of the Principal Act—
- (a) in paragraph (c), for “500 penalty units” substitute “2500 penalty units”; and
- (b) in paragraph (d), for “100 penalty units” substitute “500 penalty units”.

General penalty

6. In section 47 (2) of the Principal Act—
- (a) in paragraph (a), for “250 penalty units” substitute “400 penalty units”; and
- (b) in paragraph (b), for “50 penalty units” substitute “100 penalty units”.

Insertion of new section 47A

7. After section 47 of the Principal Act insert—

Infringement notices

“47A. (1) Regulations under section 59 may provide for a person to be served with an infringement notice specifying a fixed penalty of not more than 10 penalty units for an offence against this Act as an alternative to a prosecution for the offence.

- (2) The regulations must specify—
- (a) the offences to which this alternative applies; and
- (b) the fixed penalty for each of the offences; and
- (c) the form of infringement notices; and
- (d) the person or class of persons who may issue infringement notices; and
- (e) the person to whom a fixed penalty must be paid; and
- (f) the period within which a fixed penalty must be paid in order to avoid prosecution.
- (3) An infringement notice must state—
- (a) the name of the alleged offender; and
- (b) the nature, in general terms, of the offence alleged to have been committed; and
- (c) the date, time and place of the alleged offence; and
- (d) the amount of the fixed penalty; and
- (e) the period within which and the place where the fixed penalty may be paid; and

(f) that the alleged offender is entitled to disregard the infringement notice and defend the prosecution for the alleged offence in court.

(4) A person who issued an infringement notice may withdraw it within 28 days after service by serving a withdrawal notice in the prescribed form on the person on whom the infringement notice was served.

(5) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.

(6) If the person pays the penalty within the time specified in the infringement notice or, if the person who issued the notice allows, before proceedings are commenced against the person in respect of the alleged offence—

(a) further proceedings are not to be taken against the person; and

(b) a conviction must not be recorded against that person for the offence.

(7) A penalty paid under this section is to be dealt with in the same way as a penalty paid as a result of a conviction.

(8) If—

(a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or

(b) an infringement notice is withdrawn—
proceedings may still be taken or continued for the alleged offence.”.

Substitution of section 53

8. For section 53 of the Principal Act substitute—

Further penalties for subsequent offences

“53. In any case where a person convicted of an offence against this Act has previously been convicted of an offence against this Act (whether the same offence or another), the Court may, if it considers it appropriate to do so, impose in addition to the penalty it imposes for the present offence—

(a) in the case of an indictable offence—

(i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 2500 penalty units; or

(ii) in any other case, a further penalty of not less than 10 penalty units and not more than 500 penalty units or imprisonment for not more than five years or both;

- (b) in the case of a summary offence—
 - (i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 400 penalty units; or
 - (ii) in any other case, a further penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for not more than two years or both.”. 5

Discrimination against employees, etc.

- 9. In section 54 (3) of the Principal Act— 10
 - (a) in paragraph (a), for “500 penalty units” substitute “2500 penalty units”; and
 - (b) in paragraph (b)—
 - (i) for “100 penalty units” substitute “500 penalty units”; and 15
 - (ii) for “imprisonment for five years” substitute “imprisonment for not more than five years”.

Penalties under the regulations

- 10. In Schedule One to the Principal Act, in clause 47, for “in the case of a body corporate 250 penalty units and in any other case 50 penalty units” substitute “the penalties set out in section 47 (2)”. 20

Indictable offences triable summarily

- 11. (1) In section 69 of the *Magistrates’ Courts Act* 1971 for sub-section (6) substitute—

“(6) The sentence which may be imposed by the Court under sub-section (1) in relation to an indictable offence under the *Occupational Health and Safety Act* 1985 is—

- (a) for an offence against section 42, 44 or 54 of that Act—
 - (i) in the case of a body corporate— a penalty of not less than 50 penalty units and not more than 400 penalty units; or 30
 - (ii) in any other case— a penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for not more than two years or both; 35
- (b) for any other offence against that Act—
 - (i) in the case of a body corporate— a penalty of not more than 400 penalty units; or
 - (ii) in any other case— a penalty of not more than 100 penalty units— 40

and in any case where the offender has previously been convicted of an offence against that Act (whether the same offence or another), the Court may, if it considers it appropriate to do so, impose in addition to the penalty it imposes for the present offence—

(c) in the case of a body corporate—a further penalty of not less than 50 penalty units and not more than 400 penalty units; or

(d) in any other case—a further penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for not more than two years or both.”.

(2) Item 53 of Schedule 4 to the *Magistrates' Court Act* 1989 is amended as follows:

(a) Omit “, 53”;

(b) In paragraph (a) (i), for “100 penalty units” substitute “400 penalty units and, if the defendant has previously been convicted of an offence against the *Occupational Health and Safety Act* 1985 (whether the same offence or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units”;

(c) In paragraph (a) (ii)—

(i) for “50” substitute “200”; and

(ii) after “both” insert “and, if the defendant has previously been convicted of an offence against the *Occupational Health and Safety Act* 1985 (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both”;

(d) In paragraph (b) (i), for “100 penalty units” substitute “400 penalty units and, if the defendant has previously been convicted of an offence against the *Occupational Health and Safety Act* 1985 (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units”;

(e) In paragraph (b) (ii), for “25 penalty units” substitute “100 penalty units and, if the defendant has previously been convicted of an offence against the *Occupational Health and Safety Act* 1985 (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both”.

No. 51/1989.
Amended by
Nos. 25/1989,
48/1989,
54/1989, 56/1989
and
57/1989

