

New South Wales

Crimes Amendment (Corporate Manslaughter) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to create the offence of corporate manslaughter for which a corporation may be held liable (maximum penalty being a fine of \$5 million) and to create a further offence in respect of a senior officer who participates in a corporation's commission of the offence of corporate manslaughter (maximum penalty being imprisonment for 5 years or a fine of \$180 000 or both).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Crimes Amendment (Corporate Manslaughter) Bill 2005

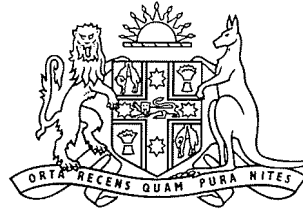
Explanatory note

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Schedule 2 Amendment of other Acts



New South Wales

Crimes Amendment (Corporate Manslaughter) Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes Act 1900 No 40	2
4 Amendment of other Acts	2
Schedules	
1 Amendment of Crimes Act 1900	3
2 Amendment of other Acts	9



New South Wales

Crimes Amendment (Corporate Manslaughter) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Crimes Act 1900* with respect to corporate manslaughter; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Corporate Manslaughter) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes Act 1900 No 40	8
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	9
4 Amendment of other Acts	10
Each Act specified in Schedule 2 is amended as set out in that Schedule.	11 12

Schedule 1	Amendment of Crimes Act 1900	1
	(Section 3)	2
[1]	Section 4	3
	Insert “, 25A, 25B” after “24” in paragraph (a) of the definition of <i>personal violence offence</i> in section 4 (1).	4 5
[2]	Section 18	6
	Insert “, other than homicides punishable under Division 1A,” after “homicide” in section 18 (1) (b).	7 8
[3]	Division 1A	9
	Insert after section 24:	10
	Division 1A Corporate manslaughter	11
	25 Definition	12
	In this Division:	13
	<i>agent</i> includes an independent contractor engaged by a corporation or by another independent contractor and any employees of the independent contractor, in relation to matters over which the corporation:	14 15 16 17
	(a) has control, whether direct or indirect, or	18
	(b) would have had control but for any agreement between the corporation and the independent contractor to the contrary,	19 20 21
	and also includes a person who later ceases to be such an agent.	22
	<i>conduct</i> includes any act or omission.	23
	<i>director</i> has the same meaning it has in section 9 of the <i>Corporations Act 2001</i> of the Commonwealth.	24 25
	<i>employee</i> includes a person who later ceases to be an employee, but does not include an independent contractor.	26 27

officer means, in respect of a corporation: 1

(a) a director, secretary or executive officer (within the 2
meaning of the *Corporations Act 2001* of the 3
Commonwealth) of the corporation, or 4

(b) a person in accordance with whose directions or 5
instructions the directors of the corporation are 6
accustomed to act, or 7

(c) a person concerned in the management of the 8
corporation or the relevant activity of the corporation, 9

and includes a person who later ceases to be such an officer. 10

senior officer has the same meaning **officer** has in section 9 of 11
the *Corporations Act 2001* of the Commonwealth. 12

WorkCover means the WorkCover Authority constituted by the 13
Workplace Injury Management and Workers Compensation Act 14
1998. 15

- 25A Corporate manslaughter where corporation's negligent conduct 16
causes death 17**
- (1) A corporation whose negligent conduct causes a person's death 18
is guilty of an offence and liable to the maximum penalty of a 19
fine of \$5 million. 20
- (2) For the purposes of subsection (1), a corporation's conduct is 21
negligent only if it involves: 22
- (a) such a great falling short of the standard of care that a 23
reasonable person would exercise in the circumstances, 24
and 25
- (b) such a high risk of death or serious injury, 26
that, were it the conduct of an individual and were it to result 27
in a person's death, the conduct would be sufficient to support 28
a conviction for manslaughter against the individual. 29
- (3) In determining whether a corporation's conduct is negligent, 30
the following matters are to be considered: 31
- (a) the conduct of any individual officer, employee or agent 32
of the corporation, and 33

(b)	the corporation's conduct when viewed as a whole (that is, by aggregating the conduct of its officers, employees or agents).	1 2 3
(4)	Without limiting this section, evidence that the corporation has failed:	4 5
(a)	to adequately manage, adequately control or adequately supervise the conduct of one or more of its officers, employees or agents, or	6 7 8
(b)	to provide adequate systems for conveying relevant information to relevant persons in the corporation, or	9 10
(c)	to take reasonable action to remedy a dangerous situation of which an officer, employee or agent has actual knowledge, or	11 12 13
(d)	to take reasonable action to remedy a dangerous situation identified in a written notice served on the corporation by or under an Act,	14 15 16
	is evidence that the corporation's conduct has been negligent.	17
(5)	For the purposes of subsection (1), the conduct of an officer, employee or agent of a corporation acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, may be attributed to the corporation.	18 19 20 21 22
(6)	For the purposes of this section, the actual or apparent scope of employment of an employee includes acts or omissions to act within the scope of the area of work assigned to the employee.	23 24 25
25B	Participating senior officers liable	26
(1)	If a corporation's negligent conduct (within the meaning of section 25A) has caused a person's death, each senior officer of the corporation:	27 28 29
(a)	who, during his or her term of office or his or her employment as a senior officer and in the exercise of his or her functions as a senior officer or as an employee, has participated in the negligent conduct, and	30 31 32 33

- (b) who at all relevant times knew, or ought reasonably to have known, that the negligent conduct involved a high risk of death or serious injury, 1
2
3
is guilty of an offence and liable to imprisonment for 5 years, 4
or a penalty of \$180 000, or both. 5
- (2) Without limiting this section, evidence that a senior officer: 6
- (a) voted in favour of a decision of the board of the 7
directors of the corporation that required, permitted, 8
encouraged or condoned the negligent conduct, 9
- (b) had knowledge that a decision of the board of directors 10
of the corporation would require, permit, encourage or 11
condone conduct of the nature of the negligent conduct 12
that subsequently occurred and, being in a position to 13
vote against the decision, failed to vote against the 14
decision, 15
- (c) required, permitted, encouraged or condoned the 16
negligent conduct in the course of involvement in the 17
management of the corporation, 18
- (d) had knowledge that conduct of the nature of the 19
negligent conduct that subsequently occurred would 20
occur and, being in a position to prevent the conduct, 21
failed to prevent the conduct, 22
- is evidence that the director participated in the negligent 23
conduct. 24
- (3) A senior officer may be proceeded against and convicted under 25
this section whether or not the corporation has been proceeded 26
against or convicted under section 25A. 27
- (4) Nothing in this section prejudices or affects any liability 28
imposed by section 25A on any corporation by which an 29
offence against section 25A is actually committed. 30
- 25C Court may order offenders to take specified actions** 31
- (1) This section applies if a Court finds a corporation guilty of an 32
offence against a provision of this Division. 33
- (2) In addition to or instead of any other penalty the Court may 34
impose on the corporation, the Court may order the corporation 35
to do one or more of the following: 36

- (a) to take any action specified by the Court to publicise (for example, to advertise, on television or in daily newspapers),
 - (i) the offence, and
 - (ii) any deaths or serious injuries or other consequences arising or resulting from the offence,
 - (iii) any penalties imposed, or other orders made, as a result of the commission of the offence,
 - (b) to take any action specified by the Court to notify one or more specified persons or classes of persons of the matters referred to in paragraph (a) (for example, to publish a notice in an annual report or to distribute a notice to shareholders of the corporation),
 - (c) to perform specified acts or establish or carry out a specified project for the public benefit (for example, to develop and operate a community service) even if the project is unrelated to the offence.
- (3) In making the order, the Court may specify a period within which the action must be taken, the act must be performed or the project must be established or carried out and may also impose any other requirement that it considers necessary or expedient for enforcement of the order or to make the order effective.
- (4) The total cost to the corporation of compliance with an order or orders under subsection (2) must not exceed \$5 million.
- (5) If the Court decides to make an order under subsection (2), it must, in determining the type of order, take into account, as far as practicable, the financial circumstances of the corporation and the nature of the burden that compliance with the order will impose.
- (6) The Court is not prevented from making an order under subsection (2) only because it has been unable to find out the financial circumstances of the corporation.
- (7) If a corporation fails, without reasonable excuse, to comply with an order under subsection (2) (a) or (b) within the specified period, if any, the Court may, on application by WorkCover, by order, authorise Workcover:

Crimes Amendment (Corporate Manslaughter) Bill 2005

Schedule 1

Amendment of Crimes Act 1900

- | | | |
|------------|---|--------------------|
| (a) | to do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do, and | 1
2
3 |
| (b) | to publicise the failure of the corporation to comply with the order. | 4
5 |
| (8) | If the Court makes an order under subsection (7), Workcover must comply with the order. | 6
7 |
| (9) | Nothing in subsection (7) prevents contempt of court proceedings from being started or continued against a corporation which has failed to comply with an order under this section. | 8
9
10
11 |
| (10) | Workcover may recover any costs it incurs in complying with an order under subsection (7) as a debt due and payable by the corporation against which the order was made. | 12
13
14 |
| 25D | Liability for other offences | 15 |
| | Nothing in this Division prevents a person being prosecuted for manslaughter or any other offence. | 16
17 |

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Bail Act 1978 No 161	3
	Section 9 Presumption in favour of bail for certain offences—exceptions	4
		5
	Omit section 9 (1) (f). Insert instead:	6
	(f) murder, manslaughter or an offence under section 25B of the <i>Crimes Act 1900</i> .	7
		8
2.2	Bail Regulation 1999	9
[1]	Clause 11 Notice of bail decisions in cases of alleged sexual assault and personal violence offences	10
		11
	Insert “25A, 25B,” after “24,” in paragraph (a) of the definition of <i>personal violence offence</i> in clause 11 (4).	12
		13
[2]	Schedule 1	14
	Omit “or manslaughter” from clause 1 (b) (iii) of Form 2 in Schedule 1.	15
	Insert instead “, manslaughter or an offence under section 25A or 25B of the <i>Crimes Act 1900</i> ”.	16
		17
2.3	Crimes (Sentencing Procedure) Act 1999 No 92	18
[1]	Section 76 Home detention not available for certain offences	19
	Omit section 76 (a). Insert instead:	20
	(a) murder, attempted murder, manslaughter or an offence under section 25B of the <i>Crimes Act 1900</i> ,	21
		22

Crimes Amendment (Corporate Manslaughter) Bill 2005

Schedule 2 Amendment of other Acts

[2] Section 77 Home detention not available for offenders with certain history	1 2
Omit section 77 (1) (a) (i). Insert instead:	3
(i) murder, attempted murder, manslaughter or an offence under section 25B of the <i>Crimes Act 1900</i> .	4 5 6
2.4 Criminal Procedure Act 1986 No 209	7
Section 111 Depositions by persons dangerously ill	8
Insert “or an offence under section 25A or 25B of the <i>Crimes Act 1900</i> ” after “manslaughter” in section 111 (5) (a).	9 10
2.5 Criminal Procedure Regulation 2000	11
Section 4 Offences not within jurisdiction of District Court	12
Omit “and 19A” from section 4.	13
Insert instead “, 19A, 25A and 25B”.	14
2.6 Criminal Records Act 1991 No 8	15
Section 11 How are traffic offences to be dealt with?	16
Omit section 11 (4) (c). Insert instead:	17
(c) manslaughter, corporate manslaughter or participation as a senior officer in corporate manslaughter (sections 24, 25A or 25B of the <i>Crimes Act 1900</i>), or causing grievous bodily harm (section 54 of the <i>Crimes Act 1900</i>) where the offence arises out of the use of a motor vehicle or trailer (within the meaning of the road transport legislation referred to in section 5 of the <i>Road Transport (General) Act 1999</i>).	18 19 20 21 22 23 24 25

2.7	Marine (Boating Safety—Alcohol and Drugs) Act 1991 No 80	1
	Section 3 Definitions	2
	Insert “or an offence under section 25A or 25B of the <i>Crimes Act 1900</i> ”	3
	after “manslaughter” in the definition of <i>major offence</i> in section 3 (1).	4
2.8	Marine Safety Act 1998 No 121	5
	Section 20 Definitions	6
	Insert “or an offence under section 25A or 25B of the <i>Crimes Act 1900</i> ”	7
	after “manslaughter” in the definition of <i>major offence</i> in section 20 (1).	8
2.9	Road Transport (General) Act 1999 No 18	9
	Section 25 Disqualification for certain major offences (cf Traffic Act, s10A)	10 11
	Omit section 25 (1) (a) (i). Insert instead:	12
	(i) the crime of murder, manslaughter or an offence	13
	under section 25B of the <i>Crimes Act 1900</i> .	14