

Crimes (Document Destruction) Act 2006

Act No. 6/2006

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No. 6 of 2006

Crimes (Document Destruction) Act 2006[†]

[Assented to 4 April 2006]

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to amend the **Crimes Act 1958** to create a new offence in relation to the destruction of a document or other thing that is, or is reasonably likely to be, required as evidence in a legal proceeding.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 September 2006, it comes into operation on that day.

3. New Division 5 inserted in Part I of Crimes Act 1958

After Division 4 of Part I of the **Crimes Act 1958** insert—

'Division 5—Destruction of Evidence

253. Definitions

In this Division—

"associate", in relation to a body corporate, means—

- (a) an employee or agent of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority; or
- (b) an officer of the body corporate;

"board of directors" means the body (by whatever name called) exercising the executive authority of the body corporate;

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant conduct is carried out or the relevant intention formed;

See:
Act No.
6231.
Reprint No. 18
as at
1 July 2005
and
amending
Act Nos
16/2004,
18/2005,
56/2005 and
66/2005.
LawToday:
www.dms.
dpc.vic.
gov.au

"legal proceeding" has the same meaning as in the **Evidence Act 1958**;

"officer", in relation to a body corporate, means an officer (as defined by section 9 of the Corporations Act) of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority;

"relevant conduct" means the destruction, concealment, or rendering illegible, undecipherable or incapable of identification, of a document or other thing of any kind;

"relevant intention" means the intention of preventing a document or other thing of any kind from being used in evidence in a legal proceeding.

254. Destruction of evidence

- (1) A person who—
 - (a) knows that a document or other thing of any kind is, or is reasonably likely to be, required in evidence in a legal proceeding; and
 - (b) either—
 - (i) destroys or conceals it or renders it illegible, undecipherable or incapable of identification; or
 - (ii) expressly, tacitly or impliedly authorises or permits another person to destroy or conceal it or render it illegible, undecipherable or incapable of identification and that other person does so; and

- (c) acts as described in paragraph (b) with the intention of preventing it from being used in evidence in a legal proceeding—

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum) or a level 6 fine or both.

Note 1: "Document" is defined in section 38 of the **Interpretation of Legislation Act 1984**.

Note 2: The maximum fine that may be imposed on a body corporate found guilty of an offence against this section is 3000 penalty units: see **Sentencing Act 1991** s. 113D.

- (2) This section applies with respect to a legal proceeding, whether the proceeding is one that is in progress or is to be, or may be, commenced in the future.

255. Corporate criminal responsibility for offence against section 254

- (1) For the purposes of a proceeding against a body corporate for an offence against section 254—
 - (a) relevant conduct engaged in by an associate of the body corporate must also be attributed to the body corporate; and
 - (b) knowledge of an associate of the body corporate must also be attributed to the body corporate; and
 - (c) intention—
 - (i) of the body corporate's board of directors; or
 - (ii) of an officer of the body corporate; or

(iii) of any other associate of the body corporate if a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the formation of that intention—

must also be attributed to the body corporate.

- (2) If an officer of a body corporate contravenes section 254, the body corporate must be taken to have also contravened that section and may be proceeded against and found guilty of an offence against that section whether or not the officer has been proceeded against or found guilty of that offence.
- (3) In a proceeding against a body corporate for an offence against section 254, brought in reliance on sub-section (2), it is a defence to the charge for the body corporate to prove that it exercised due diligence to prevent the contravention of that section by the officer.
- (4) The means by which authorisation or permission as required by section 254(1)(b)(ii) may be established include—
- (a) proving that an officer of the body corporate gave that authorisation or permission; or
 - (b) proving that the body corporate's board of directors gave that authorisation or permission; or
 - (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the relevant conduct being carried out.

- (5) Sub-section (4)(a) does not apply if the body corporate proves that it exercised due diligence to prevent the authorisation or permission being given.
- (6) Factors relevant to the application of sub-section (1)(c)(iii) or (4)(c) include—
- (a) whether authority to commit an offence against section 254 or an offence of a similar character had been given by an officer of the body corporate; and
 - (b) whether the associate of the body corporate who carried out the relevant conduct or formed the relevant intention believed on reasonable grounds, or entertained a reasonable expectation, that an officer of the body corporate would have authorised or permitted the relevant conduct being carried out with the relevant intention.
- (7) Subject to sub-section (8), it is not necessary that each element of an offence against section 254 that is attributed to a body corporate by force of sub-section (1) be supplied by the same associate of the body corporate.
- (8) It is necessary that the elements referred to in section 254(1)(b)(i) and (c) be supplied by the same associate of the body corporate.'. .
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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 16 November 2005

Legislative Council: 2 March 2006

The long title for the Bill for this Act was "to amend the **Crimes Act 1958** with respect to the destruction of documents or other things that are, or are reasonably likely to be, required as evidence in legal proceedings and for other purposes."