



New South Wales

# Miscellaneous Acts Amendment (Directors' Liability) Act 2011 No 2

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New South Wales

# **Miscellaneous Acts Amendment (Directors' Liability) Act 2011 No 2**

Act No 2, 2011

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An Act to amend certain Acts and Regulations with respect to the imposition of personal liability on directors and other individuals for offences committed by corporations. [Assented to 10 May 2011]

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Miscellaneous Acts Amendment (Directors' Liability) Act 2011*.

**2    Commencement**

This Act commences on the date of assent to this Act.

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## **Schedule 1      Amendment of Acts and Regulations**

### **1.1    Agricultural Industry Services Act 1998 No 45**

#### **Section 50 Directors and managers liable for offences committed by corporations**

Omit section 50 (2). Insert instead:

- (1A) Subsection (1) does not apply in respect of a contravention of section 33 (1) or 48.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under the provision.

### **1.2    Animal Diseases (Emergency Outbreaks) Act 1991 No 73**

#### **Section 73 Offences by officers of corporations**

Insert after section 73 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 24 (4).

### **1.3    Apiaries Act 1985 No 16**

#### **Section 43 Offences by officers of corporations**

Omit section 43 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, section 21, 22 (3), 23 (6) or (10), 24 (7), 24A (3), 26 (5) or (6) or 27 (5), each person who is an officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

### **1.4    Building and Construction Industry Long Service Payments Act 1986 No 19**

#### **[1]    Section 63 Offences by corporations**

Insert "(other than section 31A)" after "any provision of this Act" in section 63 (1).

**[2] Section 63 (1A)**

Insert after section 63 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 31A, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

**1.5 Children and Young Persons (Care and Protection) Act 1998 No 157**

**[1] Section 258 Offences by corporations**

Insert "(other than section 219J or 219ZB)" after "any provision of this Act" in section 258 (1).

**[2] Section 258 (1A)**

Insert after section 258 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 219J or 219ZB, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

**[3] Section 258 (2)**

Insert "or (1A)" after "subsection (1)".

**1.6 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63**

**[1] Section 62 Offences by corporations**

Insert "(other than section 9 (2) or (4), 12 (1), 13 (1) or 30 (2))" after "any provision of this Act" in section 62 (1).

**[2] Section 62 (1A)**

Insert after section 62 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 9 (2) or (4), 12 (1), 13 (1) or 30 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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## **1.7 Conveyancers Licensing Act 2003 No 3**

### **Section 160 Offences by corporations**

Insert after section 160 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 58, 59, 60, 77 or 83 (1).

## **1.8 Electricity (Consumer Safety) Act 2004 No 4**

### **Section 45 Corporations**

Omit section 45 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
- (a) the corporation contravened the provision without the knowledge of the person, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

## **1.9 Fertilisers Act 1985 No 5**

### **Section 36 Offences by corporations**

Omit the section.

## **1.10 Food Act 2003 No 43**

### **Section 122 Offences by corporations**

Insert after section 122 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

## **1.11 Food Regulation 2010**

### **Clause 171**

Insert after clause 170:

#### **171 Offences by corporations**

The provisions of clause 32 (1) and (2) are declared to be excluded provisions for the purposes of section 122 of the Act.

## **1.12 Funeral Funds Act 1979 No 106**

### **Section 90 Offences by corporation**

Insert after section 90 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of:
- (a) section 16B (2) or 109, or
  - (b) a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

## **1.13 Funeral Funds Regulation 2006**

### **Clause 20A**

Insert after clause 20:

#### **20A Offences by corporation**

Clauses 13, 14, 15 and 19 are declared to be excluded provisions for the purposes of section 90 of the Act.

## **1.14 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88**

### **Section 44 Offences by corporations**

Omit section 44 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (1A) Subsection (1) does not apply in respect of a contravention of section 9 or 10.

### **1.15 Home Building Act 1989 No 147**

#### **Section 137 Offence by body corporate—liability of directors etc**

Insert after section 137 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of a provision of Division 3 of Part 6A.

### **1.16 Industrial Relations Act 1996 No 17**

#### **Section 400 Offences by corporation**

Insert after section 400 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 361.

### **1.17 Land Sales Act 1964 No 12**

#### **Section 25 Liability of directors of corporations**

Omit the section.

### **1.18 Mining Act 1992 No 29**

#### **Section 378F Offences by corporations**

Insert after section 378F (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 258 (2).

### **1.19 Motor Vehicle Repairs Act 1980 No 71**

#### **Section 88 Offences by corporation**

Insert after section 88 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 21 (6) or 22 (4).

### **1.20 Noxious Weeds Act 1993 No 11**

#### **Section 62 Offences by corporations**

Insert after section 62 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 54 (1) or (2).



## **1.21 Parramatta Park Trust Act 2001 No 17**

### **Section 33 Offences by corporations**

Insert after section 33 (1):

- (1A) Subsection (1) does not apply in respect of an offence against section 28 (1).

## **1.22 Poultry Meat Industry Act 1986 No 101**

### **Section 21 Offences by corporations**

Omit section 21 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

## **1.23 Prices Regulation Act 1948 No 26**

### **Section 59 Offences and penalties**

Omit section 59 (4). Insert instead:

- (4) If a corporation contravenes, whether by act or omission, a provision of this Act, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

## **1.24 Private Health Facilities Act 2007 No 9**

### **[1] Section 17 Amendment of licences**

Omit "subsection (4)" from section 17 (7). Insert instead "subsection (6)".

### **[2] Section 62 Offences by corporations**

Insert after section 62 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 16 (1), 17 (7) or 40.

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## **1.25 Property, Stock and Business Agents Act 2002 No 66**

### **Section 218 Offences by corporations**

Insert after section 218 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 90 (1), 91 (1), (2) or (3), 92, 93, 94, 110 (3) or 119 (1).

## **1.26 Public Health Act 1991 No 10**

### **Section 78 Offences by corporations**

Insert after section 78 (1):

- (1A) Subsection (1) does not apply in respect of an offence under a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

## **1.27 Public Health (Disposal of Bodies) Regulation 2002**

### **Clause 51A**

Insert after clause 51:

#### **51A Offences by corporations**

Clauses 8 (1), (3), (4), (5), (6) and (7), 29, 31, 33, 34, 43 (1) and (2) and 48 (1) and (3) are declared to be excluded provisions for the purposes of section 78 of the Act.

## **1.28 Public Health (Swimming Pools and Spa Pools) Regulation 2000**

### **Clause 9A**

Insert after clause 9:

#### **9A Offences by corporations**

Clauses 5 and 6 are declared to be excluded provisions for the purposes of section 78 of the *Public Health Act 1991*.

## **1.29 Racing Administration Act 1998 No 114**

### **[1] Section 36B Offences by corporations**

Insert "(other than section 26G or 26GA)" after "any provision of this Act" in section 36B (1).

**[2] Section 36B (1A)**

Insert after section 36B (1):

- (1A) If a corporation contravenes, whether by act or omission, section 26G or 26GA, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

**1.30 Residential Parks Act 1998 No 142**

**[1] Section 75 Installation of individual mail facilities**

Omit "Mail facilities installed under this section must be" from section 75 (3).

Insert instead "A park owner must ensure that mail facilities installed by the park owner under this section are".

**[2] Section 150 Offences by corporations**

Insert after section 150 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 12 (2), 29 (2), 33 (1), (2) or (4), 63 (3), 66 (6), 67 (2), 68 (1) or (2), 72, 74 (2) or (3), 75 (2) or (3) or 81 (5).

**1.31 Retirement Villages Act 1999 No 81**

**Section 186 Offences by corporations**

Insert after section 186 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 110 (1) or (2).

**1.32 Rice Marketing Act 1983 No 176**

**Section 157 Offences by corporations**

Omit section 157 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, section 152 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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### **1.33 Road Transport (General) Act 2005 No 11**

#### **Section 178 Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees**

Insert after section 178 (4):

- (4A) Subsections (1), (2), (3) and (4) do not apply in respect of an offence under a provision of a regulation made under the road transport legislation that is declared by such a regulation to be an excluded provision for the purposes of this section.

### **1.34 Totalizator Act 1997 No 45**

#### **Section 103 Offences by corporations**

Insert after section 103 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 26 (1).

### **1.35 Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100**

#### **Section 21 Directors and managers liable for offences committed by corporations**

Omit the section.

[Agreement in principle speech made in Legislative Assembly on 4 May 2011  
Second reading speech made in Legislative Council on 4 May 2011]

BY AUTHORITY