



New South Wales

# Miscellaneous Acts Amendment (Directors' Liability) Act 2012 No 97

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New South Wales

# **Miscellaneous Acts Amendment (Directors' Liability) Act 2012 No 97**

Act No 97, 2012

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An Act to amend various Acts and Regulations to implement COAG reforms relating to the criminal liability of directors. [Assented to 26 November 2012]

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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 2012*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1 Amendment of Acts and Regulations

### 1.1 Animal Research Act 1985 No 123

#### [1] Section 46 Unlawfully carrying on the business of animal research

Insert at the end of section 46 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 58.

#### [2] Section 47A Keeping animals with intention of using them for animal research

Insert at the end of section 47A (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 58.

#### [3] Section 48 Unlawfully supplying animals for use in connection with animal research

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 58.

#### [4] Sections 58 and 58A

Omit section 58. Insert instead:

##### **58 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 46 (1),
  - (b) section 47A (1),
  - (c) section 48 (1) or (2).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person:

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**58A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 58.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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

### **[1] Section 16A Employer to notify Corporation of employment of workers**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 63.

### **[2] Section 39 Offence for failure to pay long service levy**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 63.

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**[3] Sections 63 and 63A**

Omit section 63. Insert instead:

**63 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 16A,
  - (b) section 39.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence



or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**63A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 63.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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

#### **[1] Section 105 Publication of names and identifying information**

Insert at the end of section 105 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[2] Section 136 Restriction on who may provide statutory out-of-home care**

Insert at the end of section 136 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[3] Section 138 Persons who may arrange for provision of statutory or supported out-of-home care**

Insert at the end of the section:

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[4] Section 154 Restriction on who may provide supported out-of-home care**

Insert at the end of the section:

**Note.** An offence against subsection (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[5] Section 156B Restrictions on who may provide or arrange voluntary out-of-home care**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[6] Section 173 Medical examination of children in need of care and protection**

Insert at the end of section 173 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[7] Section 175 Special medical treatment**

Insert at the end of section 175 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[8] Section 185 Provision and exchange of information**

Insert at the end of section 185 (2A):

**Note.** An offence against subsection (2A) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[9] Section 222 Endangering children in employment**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[10] Section 223 Certain employers of children to be authorised**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[11] Section 228 Neglect of children and young persons**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[12] Section 230 Tattooing of children and young persons**

Insert at the end of section 230 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[13] Section 230A Body piercing of children**

Insert at the end of section 230A (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[14] Section 241 Powers exercisable on entry and inspection**

Insert at the end of the section:

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or

other person involved in the management of the corporation—see section 258.

**[15] Section 254 Disclosure of information**

Insert at the end of section 254 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 258.

**[16] Sections 258–258AB**

Omit section 258. Insert instead:

**258 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 105 (2),
  - (b) section 136 (2),
  - (c) section 138 (2),
  - (d) section 154 (3),
  - (e) section 156B,
  - (f) section 173 (2),
  - (g) section 175 (1),
  - (h) section 185 (2A),
  - (i) section 222,
  - (j) section 223 (1)–(4),
  - (k) section 228,
  - (l) section 230 (2),
  - (m) section 230A (2),
  - (n) section 241 (2),
  - (o) section 254 (1).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

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(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person:

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**258AA Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 258.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

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- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**258AB Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
- (b) the person's reasons for the intention, opinion, belief or purpose.

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

**Section 62**

Omit the section. Insert instead:

**62 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.



- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.5 Contaminated Land Management Act 1997 No 140

### [1] Section 14 Management orders

Insert at the end of section 14 (6):

**Note.** An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or

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other person involved in the management of the corporation—see section 98.

**[2] Section 28 Ongoing maintenance orders**

Insert at the end of section 28 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 98.

**[3] Section 60 Duty to report contamination**

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 98.

**[4] Sections 98–98B**

Omit section 98. Insert instead:

**98 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 14 (6),
  - (b) section 28 (4),
  - (c) section 60 (1) or (2).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
    - (a) action towards:
      - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
      - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
    - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

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- (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**98A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 98.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.

- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**98B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**1.6 Conveyancers Licensing Act 2003 No 3**

**[1] Section 155 Offences by persons other than principal offenders**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 160.

**[2] Section 160**

Omit the section. Insert instead:

**160 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## **1.7 Drug Misuse and Trafficking Act 1985 No 226**

### **[1] Section 19 Aiding, abetting etc commission of offence in New South Wales**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

**[2] Section 20 Aiding, abetting etc commission of offence outside New South Wales**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

**[3] Section 27 Aiding, abetting etc commission of offence in New South Wales**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

**[4] Section 28 Conspiring to commit and aiding etc commission of offence outside New South Wales**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 43B.

**[5] Section 36 Contravention of Act etc by corporations**

Omit the section.

**[6] Section 36ZB**

Omit the section. Insert instead:

**36ZB Evidence as to state of mind of corporation**

- (1) This section applies in relation to proceedings for an offence committed by a corporation under this Part or regulations made under this Part.
- (2) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (3) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
- (b) the person's reasons for the intention, opinion, belief or purpose.

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**[7] Sections 43A and 43B**

Insert after section 43:

**43A Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against the regulations:
  - (a) that is prescribed by the regulations as an offence to which this section applies, and
  - (b) that is committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence



or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**43B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 43A.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.8 Drug Misuse and Trafficking Regulation 2011

### Clause 7A

Insert after clause 7:

#### 7A Liability of directors etc for offences by corporation—offences attracting executive liability

An offence against clause 5, 6 or 7 is prescribed as an offence to which section 43A of the Act applies.

**Note.** An offence against clause 5, 6 or 7 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 43A of the Act.

## 1.9 Duties Act 1997 No 123

### [1] Section 25 Aggregation of dutiable transactions

Insert at the end of section 25 (6):

**Note.** An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

### [2] Section 218C Multi-jurisdictional statement

Insert at the end of section 218C (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

### [3] Section 248 Insurers must be registered

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

### [4] Section 251 Cessation of business and cancellation of registration by the insurer

Insert at the end of section 251 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**[5] Section 262 Lodgment of statement of dutiable value**

Insert at the end of the note to the section:

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**[6] Section 270 Exemptions for motor dealers**

Insert at the end of section 270 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**[7] Section 286 Limitation on use of designated stamps**

Insert at the end of section 286 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**[8] Section 296 Stamping of instruments after execution**

Insert at the end of section 296 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**[9] Section 301 Registration of transactions and instruments**

Insert at the end of section 301 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

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

**[1] Section 16 Electrical articles must meet certain standards before they can be sold**

Insert at the end of section 16 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[2] Section 20 Person must not give false acquisition guarantee**

Insert at the end of section 20 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[3] Section 24 Persons must comply with notices issued under this Division**

Insert at the end of the section:

**Note.** An offence against subsection (1), (2) or (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[4] Section 27 Prohibition of the sale of certain electrical articles and the labelling of such articles**

Insert at the end of section 27 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[5] Section 31 Electrical installation work to comply with regulations**

Insert at the end of section 31 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[6] Sections 45 and 45A**

Omit section 45. Insert instead:

**45 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
- (a) section 16 (1),
  - (b) section 20 (1),
  - (c) section 24 (1)–(3),
  - (d) section 27 (4),
  - (e) section 31 (1).

- 
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if

any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**45A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 45.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.11 Environmentally Hazardous Chemicals Act 1985 No 14

### [1] Section 26 Orders to be observed

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 53.

### [2] Section 32 Licence conditions

Insert at the end of section 32 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 53.



**[3] Sections 53 and 53A**

Omit section 53. Insert instead:

**53 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 26,
  - (b) section 32 (2).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence

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or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**53A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 53.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.12 Explosives Act 2003 No 39

### [1] Section 6 Licences required for handling explosives and explosive precursors

Insert at the end of section 6 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 33.

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**[2] Sections 33 and 33A**

Omit section 33. Insert instead:

**33 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:  
section 6 (1)
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

- (7) In this section:
- director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
- reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
- (a) action towards:
    - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
    - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
  - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
  - (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**33A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 33.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

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- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### 1.13 Food Act 2003 No 43

#### [1] Section 13 Handling of food in unsafe manner

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[2] Section 14 Sale of unsafe food**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[3] Section 15 False description of food**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[4] Section 16 Handling and sale of unsafe food**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[5] Section 17 Handling and sale of unsuitable food**

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[6] Section 18 Misleading conduct relating to sale of food**

Insert at the end of the section:

**Note.** An offence against subsection (1), (2) or (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[7] Section 19 Sale of food not complying with purchaser's demand**

Insert at the end of section 19 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[8] Section 20 Sale of unfit equipment or packaging or labelling material**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or

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other person involved in the management of the corporation—see section 122.

**[9] Section 21 Compliance with Food Standards Code**

Insert at the end of the section:

**Note.** An offence against subsection (1)–(4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[10] Section 35 Failure to comply with emergency order**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[11] Section 64 Contravention of prohibition order**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[12] Section 104 Offences relating to food safety schemes**

Insert at the end of the section:

**Note.** An offence against subsection (1)–(4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 122.

**[13] Sections 122–122B**

Omit section 122. Insert instead:

**122 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
- (a) section 13,
  - (b) section 14,
  - (c) section 15,
  - (d) section 16,
  - (e) section 17 (1) or (2),



- (f) section 18 (1)–(3),
  - (g) section 19 (1),
  - (h) section 20,
  - (i) section 21 (1)–(4),
  - (j) section 35,
  - (k) section 64,
  - (l) section 104 (1)–(4).
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

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- (7) In this section:
- director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
- reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
- (a) action towards:
    - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
    - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
  - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
  - (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**122A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 122.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

(c) the person:

- (i) aids, abets, counsels or procures the commission of the corporate offence, or
- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**122B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.

- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### 1.14 Forestry Act 1916 No 55

**[1] Section 29 Penalty for unlawfully working sawmill**

Omit section 29 (3).

**[2] Section 49**

Insert after section 48:

**49 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.15 Funeral Funds Act 1979 No 106

### Section 90

Omit the section. Insert instead:

#### **90 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

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- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.16 Gaming Machines Act 2001 No 127

### [1] Section 199A

Insert after section 199:

#### **199A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
- (b) the person is:
- (i) a director of the corporation, or
- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or

- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other section of this Act or any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**[2] Section 200 Offences by corporate hoteliers**

Omit section 200 (2). Insert instead:

- (2) If a hotelier that is a corporation is taken to have contravened (whether by act or omission) a provision of this Act or the regulations by reason of a contravention by the manager of the hotel, each person who occupies a position of authority in the corporation is taken to have contravened the provision if the person knowingly authorised or permitted the contravention.

**[3] Section 201 Liability of secretary of club and members of governing body**

Omit section 201 (1). Insert instead:

- (1) If a club contravenes a provision of this Act or the regulations, the secretary and members of the governing body of the club are, whether or not the club is convicted for the contravention, each taken to have contravened the provision if the person charged knowingly authorised or permitted the contravention.

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**[4] Section 202 Liability of management and directors of corporate holders of gaming-related licences**

Omit section 202 (1). Insert instead:

- (1) If the holder of a gaming-related licence that is a corporation contravenes a 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, whether or not the corporation has been convicted for the contravention, taken to have contravened the provision if the person knowingly authorised or permitted the contravention.

**1.17 Health Insurance Levies Act 1982 No 159**

**Section 11 Requirement to furnish a monthly return**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

**1.18 Heritage Act 1977 No 136**

**Section 159**

Omit the section. Insert instead:

**159 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or



- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.19 Jury Act 1977 No 18

### Section 70

Omit the section. Insert instead:

#### **70 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence

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the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## **1.20 Landlord and Tenant (Amendment) Act 1948 No 25**

### **[1] Section 95 Offences and penalties**

Omit section 95 (4).

### **[2] Section 95A**

Insert after section 95:

#### **95A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.

- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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## 1.21 Liquor Act 2007 No 90

### [1] Sections 71 and 71A

Omit section 71. Insert instead:

#### **71 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation (including a licensee that is a corporation).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.

- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**71A Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[2] Section 72 Corporate licences—interpretative provisions**

Omit "However for the purposes of section 71, a person who is a director of a registered club is not a person who occupies a position of authority in that corporation." from section 72 (1).

**1.22 Loan Fund Companies Act 1976 No 94**

**Section 67**

Omit the section. Insert instead:

**67 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.23 Long Service Leave Act 1955 No 38

### [1] Section 4 Long service leave

Insert at the end of the section:

**Note.** An offence against this Act arising under this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 10A.

### [2] Section 8 Records to be kept by employers

Insert at the end of the section:

**Note.** An offence against this Act arising under this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 10A.

**[3] Section 10 Penalties and offences**

Omit section 10 (4).

**[4] Sections 10A and 10B**

Insert after section 10:

**10A Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against this Act arising under any of the following provisions of this Act that is committed by a corporation:
  - (a) section 4,
  - (b) section 8.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

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- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
- director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
- reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
- (a) action towards:
    - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
    - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
  - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
  - (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**10B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being



committed by a corporation, whether or not it is an executive liability offence referred to in section 10A.

- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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## 1.24 Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48

### [1] Section 4 Long service leave

Insert at the end of the section:

**Note.** An offence against this Act arising under this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 10A.

### [2] Section 8 Records to be kept by employer

Insert at the end of the section:

**Note.** An offence against this Act arising under this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 10A.

### [3] Section 10 Penalties and offences

Omit section 10 (4).

### [4] Sections 10A and 10B

Insert after section 10:

#### 10A Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an *executive liability offence* is an offence against this Act arising under any of the following provisions of this Act that is committed by a corporation:
  - (a) section 4,
  - (b) section 8.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
    - (a) action towards:
      - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
      - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
    - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**10B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 10A.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.

- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.25 Mining Act 1992 No 29

### [1] Section 240C Breach of direction

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 378F.

### [2] Section 378D Contravention of condition of authorisation—offence by holder

Insert at the end of section 378D (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 378F.

### [3] Sections 378F and 378FA

Omit section 378F. Insert instead:

#### **378F Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 240C,
  - (b) section 378D (1).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

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(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person:

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**378FA Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 378F.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

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- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.26 Motor Dealers Act 1974 No 52

### Section 54

Omit the section. Insert instead:

#### **54 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
- (b) the person is:
- (i) a director of the corporation, or
- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or



- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.27 Motor Vehicle Repairs Act 1980 No 71

### [1] Section 15 Licences

Insert at the end of section 15 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 88.

### [2] Section 22 Tradesperson's certificate

Insert at the end of the section:

**Note.** An offence against subsection (1), (3) or (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 88.

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**[3] Sections 88 and 88A**

Omit section 88. Insert instead:

**88 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 15 (1),
  - (b) section 22 (1), (3) or (4).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.
- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence

or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**88A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 88.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.28 National Parks and Wildlife Act 1974 No 80

### [1] Section 86 Harming or desecrating Aboriginal objects and Aboriginal places

Insert at the end of the section:

**Note.** An offence against subsection (1), (2) or (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[2] Section 90J Failure to comply with conditions**

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[3] Section 91AA Director-General may make stop work order**

Insert at the end of section 91AA (6):

**Note.** An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[4] Section 91G Failure to comply with interim protection order**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[5] Section 91Q Failure to comply with remediation direction**

Insert at the end of section 91Q (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[6] Section 91R Delay or obstruction of remediation direction**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[7] Section 99 Harming threatened interstate fauna**

Insert at the end of section 99 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

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**[8] Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities**

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[9] Section 118B Buying, selling or possessing threatened species or endangered population**

Insert at the end of section 118B (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[10] Section 118C Damage to critical habitat**

Insert at the end of section 118C (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[11] Section 118D Damage to habitat of threatened species, endangered populations or endangered ecological communities**

Insert at the end of section 118D (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[12] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates**

Insert at the end of section 133 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[13] Section 156A Offence of damaging reserved land**

Insert at the end of section 156A (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 175B.

**[14] Sections 175B and 175C**

Omit section 175B. Insert instead:

**175B Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 86 (1), (2) or (4),
  - (b) section 90J (1) or (2),
  - (c) section 91AA (6),
  - (d) section 91G,
  - (e) section 91Q (1),
  - (f) section 91R,
  - (g) section 99 (1),
  - (h) section 118A (1) or (2),
  - (i) section 118B (1),
  - (j) section 118C (1),
  - (k) section 118D (1),
  - (l) section 133 (4),
  - (m) section 156A (1).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

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- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
- director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
- reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
- (a) action towards:
- (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
- (i) the plant, equipment and other resources, and
- (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,



- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**175C Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[15] Section 176B Ancillary offences**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 176C.

**[16] Section 176C**

Insert after section 176B:

**176C Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 175B.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.29 Native Vegetation Act 2003 No 103

### [1] Section 12 Clearing requiring approval

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

### [2] Section 37 Director-General may make “stop work” order

Insert at the end of section 37 (5):

**Note.** An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[3] Section 38 Directions for remedial work**

Insert at the end of section 38 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 45.

**[4] Sections 45 and 45A**

Omit section 45. Insert instead:

**45 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 12,
  - (b) section 37 (5),
  - (c) section 38 (4).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

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- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.  
*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
- (a) action towards:
    - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
    - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
  - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
  - (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.
-

**45A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 45.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

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## 1.30 Payroll Tax Act 2007 No 21

### Schedule 2 NSW specific provisions

Insert at the end of clause 18 (8):

**Note.** An offence against subclause (8) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121 of the *Taxation Administration Act 1996*.

## 1.31 Pesticides Act 1999 No 80

### [1] Section 7 Injury to persons or damage to property resulting from pesticide use

Insert at the end of section 7 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

### [2] Section 8 Harm to animals or plants resulting from pesticide use

Insert at the end of section 8 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

### [3] Section 9 Material harm to endangered, vulnerable or protected animals

Insert at the end of section 9 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

### [4] Section 10 Injury to persons or damage to property resulting from pesticide use

Insert at the end of section 10 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

### [5] Section 11 Harm to animals or plants resulting from pesticide use

Insert at the end of section 11 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or

other person involved in the management of the corporation—see section 112.

**[6] Section 12 Possession of unregistered pesticide**

Insert at the end of the note to the section:

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[7] Section 13 Use of unregistered pesticide**

Insert at the end of the note to the section:

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[8] Section 14 Requirement to read approved label and permit**

Insert at the end of section 14 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[9] Section 15 Using pesticide contrary to approved label**

Insert at the end of the note to section 15 (1):

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[10] Section 17 Use or possession of restricted pesticides**

Insert at the end of the note to the section:

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[11] Section 19 Environment Protection Authority may direct clean-up action**

Insert at the end of section 19 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[12] Section 25 Offence**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[13] Section 39 Operation of pesticide control order**

Insert at the end of section 39 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[14] Section 41 Destruction of pesticides**

Insert at the end of section 41 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[15] Section 42 Defective equipment**

Insert at the end of section 42 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[16] Section 59 Contravention of conditions**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

**[17] Section 65 Prohibited residue orders**

Insert at the end of section 65 (5):

**Note.** An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.



**[18] Section 111 Causing or permitting offence**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 112A.

**[19] Sections 112–112B**

Omit section 112. Insert instead:

**112 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
- (a) section 7 (1),
  - (b) section 8 (1),
  - (c) section 9 (1),
  - (d) section 10 (1),
  - (e) section 11 (1),
  - (f) section 12,
  - (g) section 13,
  - (h) section 14 (2),
  - (i) section 15 (1),
  - (j) section 17,
  - (k) section 19 (4),
  - (l) section 25,
  - (m) section 39 (4),
  - (n) section 41 (2),
  - (o) section 42 (4),
  - (p) section 59,
  - (q) section 65 (5).
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence

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the conduct of the corporation in relation to the commission of the executive liability offence, and

- (c) the person:
- (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
  - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**112A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 112.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

#### **112B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **1.32 Printing and Newspapers Act 1973 No 46**

#### **Section 6 Liability of directors etc of corporations**

Omit the section.

### 1.33 Property, Stock and Business Agents Act 2002 No 66

#### [1] Section 213 Offences by persons other than principal offenders

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 218.

#### [2] Section 218

Omit the section. Insert instead:

#### **218 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.

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- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **1.34 Protection of the Environment Operations Act 1997 No 156**

#### **[1] Section 47 Licensing requirement—scheduled development work**

Insert at the end of section 47 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

#### **[2] Section 48 Licensing requirement—scheduled activities (premises-based)**

Insert at the end of the section:

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

#### **[3] Section 49 Licensing requirement—scheduled activities (not premises-based)**

Insert at the end of section 49 (2):

**Note.** An offence against subsection (2) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

#### **[4] Section 64 Failure to comply with condition**

Insert at the end of section 64 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

#### **[5] Section 66 Conditions requiring monitoring, certification or provision of information, and related offences**

Insert at the end of the section:

**Note.** An offence against subsection (2) or (4) committed by a corporation is an offence attracting special executive liability for a

director or other person involved in the management of the corporation—see section 169.

**[6] Section 86 Notice for breach of licensing requirements**

Insert at the end of the section:

**Note.** An offence against subsection (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[7] Section 91 Clean-up by occupiers or polluters**

Insert at the end of the section:

**Note.** An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[8] Section 97 Offence**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[9] Section 102 Offence**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[10] Section 112 Obstruction of persons**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[11] Section 113 False or misleading statements in reports**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[12] Section 115 Disposal of waste—harm to environment**

Insert at the end of section 115 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[13] Section 116 Leaks, spillages and other escapes**

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[14] Section 117 Emission of ozone depleting substances**

Insert at the end of section 117 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[15] Section 120 Prohibition of pollution of waters**

Insert at the end of section 120 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[16] Section 132 Maximum penalty for air pollution offences**

Insert at the end of the section:

**Note 1.** An offence against section 124, 125, 126 or 128 committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**Note 2.** An offence against section 129 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[17] Section 141 Maximum penalty for noise offences**

Insert at the end of the section:

**Note.** An offence against section 136, 137, 139 or 140 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.



**[18] Section 142A Pollution of land**

Insert at the end of section 142A (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[19] Section 143 Unlawful transporting or depositing of waste**

Insert at the end of section 143 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[20] Section 144 Use of land as waste facility without lawful authority**

Insert at the end of section 144 (1):

**Note.** An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[21] Section 144AA False or misleading information about waste**

Insert at the end of section 144AA (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[22] Section 152 Offence**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**[23] Section 153A Duty of licence holder to prepare pollution incident response management plan**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

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**[24] Section 153B EPA may direct other persons to prepare pollution incident response management plan**

Insert at the end of section 153B (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[25] Section 153D Keeping of plan**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[26] Section 153E Testing of plan**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[27] Section 153F Implementation of plan**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[28] Section 155 Sale of motor vehicles**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[29] Section 156 Sale of motor vehicles without anti-pollution devices**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[30] Section 167 Control equipment**

Insert at the end of section 167 (4):

**Note.** An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[31] Section 168 Ancillary offences**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 169B.

**[32] Section 169 Liability of directors etc for offences by corporation—offences attracting special executive liability**

Omit “any provision of this Act or the regulations” from section 169 (1).

Insert instead “a provision of this Act attracting special executive liability”.

**[33] Section 169 (1A)**

Insert after section 169 (1):

- (1A) For the purposes of this section, each of the following provisions attract *special executive liability*:
- (a) section 49 (2),
  - (b) section 64 (1),
  - (c) section 66 (2) or (4),
  - (d) section 102,
  - (e) section 113,
  - (f) section 115 (1),
  - (g) section 116 (1) or (2),
  - (h) section 117 (1),
  - (i) section 120 (1),
  - (j) section 124,
  - (k) section 125,
  - (l) section 126,
  - (m) section 128,
  - (n) section 142A (1),
  - (o) section 143 (1),

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- (p) section 144 (1),
  - (q) section 152.

**[34] Section 169 (4) and (5)**

Omit the subsections.

**[35] Sections 169A–169C**

Insert after section 169:

**169A Liability of directors etc for offences by corporation—offences attracting executive liability generally**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 47 (1),
  - (b) section 48 (2),
  - (c) section 86 (3),
  - (d) section 91 (5),
  - (e) section 97,
  - (f) section 112,
  - (g) section 129,
  - (h) section 136,
  - (i) section 137,
  - (j) section 139,
  - (k) section 140,
  - (l) section 144AA (1),
  - (m) section 153A,
  - (n) section 153B (2),
  - (o) section 153D,
  - (p) section 153E,
  - (q) section 153F,
  - (r) section 155,
  - (s) section 156,
  - (t) section 167 (4).
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
- (c) the person:
  - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
  - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
    - (a) action towards:
      - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and

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- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
  - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
  - (c) action towards ensuring that:
    - (i) the plant, equipment and other resources, and
    - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
  - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**169B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an offence referred to in section 169 or 169A.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or

- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**169C Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[36] Section 305 Liability of appropriate regulatory authority, State and others**

Omit "section 169 (Offences by corporations)" from section 305 (2) (b).

Insert instead "sections 169–169B".

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## 1.35 Racing Administration Act 1998 No 114

### Sections 36B and 36BA

Omit section 36B. Insert instead:

**36B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.



- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**36BA Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**1.36 Rural Workers Accommodation Act 1969 No 34**

**Section 22**

Omit the section. Insert instead:

**22 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or

- 
- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### 1.37 Security Industry Act 1997 No 157

#### Section 44

Omit the section. Insert instead:

#### **44 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence

the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **1.38 Sydney Water Catchment Management Act 1998 No 171**

#### **[1] Section 62B Corrective action by occupiers or persons carrying on certain activities**

Insert at the end of the section:

**Note.** An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B.

#### **[2] Section 62F Preventive action**

Insert at the end of the section:

**Note.** An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or

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other person involved in the management of the corporation—see section 64B.

**[3] Section 64 Offence to discharge into works**

Insert at the end of section 64 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B.

**[4] Sections 64B and 64C**

Omit section 64B. Insert instead:

**64B Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is:
  - (a) an offence against any of the following provisions of this Act that is committed by a corporation:
    - (i) section 62B (5),
    - (ii) section 62F (6),
    - (iii) section 64 (1), or
  - (b) an offence against the regulations:
    - (i) that is prescribed by the regulations as an offence to which this section applies, and
    - (ii) that is committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
    - (a) action towards:
      - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
      - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
    - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
    - (c) action towards ensuring that:
      - (i) the plant, equipment and other resources, and
      - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

- 
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**64C Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[5] Section 67 Persons causing offences**

Insert at the end of the section:

- (3) A person does not commit an offence because of this section for any act or omission that is an offence under section 67A.

**[6] Section 67A**

Insert after section 67:

**67A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 64B.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### 1.39 Sydney Water Catchment Management Regulation 2008

#### Clause 23 Certain conduct prohibited on Schedule 1 land and Schedule 2 land

Insert after clause 23 (3):

- (3A) An offence against subclause (1) (f) or (g) is prescribed as an offence to which section 64B of the Act applies.

**Note.** An offence against subclause (1) (f) or (g) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B of the Act.

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## 1.40 Taxation Administration Act 1996 No 97

### [1] Section 10 Requirement for full and true disclosure of relevant facts and circumstances

Insert at the end of section 10 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

### [2] Section 41 Effect of approval

Insert at the end of the section:

**Note.** An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

### [3] Section 42 Stamping of instruments

Insert at the end of section 42 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

### [4] Section 49 Additional records

Insert at the end of section 49 (2):

**Note.** An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

### [5] Section 50 Inclusion of false or misleading information

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

### [6] Section 54 Wilfully destroying records

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.



**[7] Section 55 Knowingly giving false or misleading information**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

**[8] Section 56 Deliberately omitting information**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

**[9] Section 57 Failure to lodge documents**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

**[10] Section 58 Falsifying or concealing identity**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

**[11] Section 72 Power to require information, instruments and records, and attendance**

Insert at the end of the section:

**Note.** An offence against subsection (8) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

**[12] Section 113 Notice of liquidator's appointment**

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

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**[13] Sections 121 and 121A**

Omit section 121. Insert instead:

**121 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of the taxation laws that is committed by a corporation:
- (a) section 10 (1),
  - (b) section 41 (1) or (2),
  - (c) section 42 (2),
  - (d) section 49 (2),
  - (e) section 50,
  - (f) section 54,
  - (g) section 55,
  - (h) section 56,
  - (i) section 57,
  - (j) section 58,
  - (k) section 72 (8),
  - (l) section 113,
  - (m) section 25 (6) of the *Duties Act 1997*,
  - (n) section 218C (1) of the *Duties Act 1997*,
  - (o) section 248 of the *Duties Act 1997*,
  - (p) section 251 (1) of the *Duties Act 1997*,
  - (q) section 262 of the *Duties Act 1997*,
  - (r) section 270 (4) of the *Duties Act 1997*,
  - (s) section 286 (1) of the *Duties Act 1997*,
  - (t) section 296 (1) of the *Duties Act 1997*,
  - (u) section 301 (1) of the *Duties Act 1997*,
  - (v) section 11 of the *Health Insurance Levies Act 1982*,
  - (w) clause 18 (8) of Schedule 2 to the *Payroll Tax Act 2007*.
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person:

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty:** The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**121A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against a taxation law or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 121.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

## 1.41 Threatened Species Conservation Act 1995 No 101

### [1] Section 114 Director-General may make stop work order

Insert at the end of section 114 (6):

**Note.** An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 152.

### [2] Section 141O Offence

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 152.

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**[3] Sections 152–152B**

Omit section 152. Insert instead:

**152 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 114 (6),
  - (b) section 141O.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.
- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence

or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:  
*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**152A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 152.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**152B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.



- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[4] Section 154 Ancillary offences**

Insert at the end of the section:

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 152A.

**1.42 Unlawful Gambling Act 1998 No 113**

**Sections 53 and 53A**

Omit section 53. Insert instead:

**53 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

- 
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

#### **53A Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **1.43 Valuers Act 2003 No 4**

#### **Section 44**

Omit the section. Insert instead:

#### **44 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.

- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

#### **1.44 Veterinary Practice Act 2003 No 87**

##### **[1] Section 15 Prohibition against directing or inciting misconduct**

Omit section 15 (4).

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[2] **Section 99**

Omit the section. Insert instead:

**99 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are

concerned in, or party to, the commission of the corporate offence.

## 1.45 Water Industry Competition Act 2006 No 104

### [1] Section 5 Prohibition of unlicensed network operation and water supply

Insert at the end of section 5 (1):

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 97.

### [2] Section 71 Offence to discharge into drains and sewers

Insert at the end of the section:

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 97.

### [3] Sections 97–97B

Omit section 97. Insert instead:

#### **97 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 5 (1),
  - (b) section 71.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

- 
- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
  - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.
  - reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:
    - (a) action towards:
      - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
      - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
    - (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**97A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 97.
  - (2) A person commits an offence against this section if:
    - (a) a corporation commits a corporate offence, and
    - (b) the person is:
      - (i) a director of the corporation, or
      - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
    - (c) the person:
      - (i) aids, abets, counsels or procures the commission of the corporate offence, or
      - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
      - (iii) conspires with others to effect the commission of the corporate offence, or
      - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.
- Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.
- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.

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- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
  - (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
  - (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**97B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**1.46 Workplace Injury Management and Workers Compensation Act 1998 No 86**

**Section 244**

Omit the section. Insert instead:

**244 Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence



the conduct of the corporation in relation to the commission of the corporate offence, and

- (c) the person:
- (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

[Second reading speech made in—

Legislative Assembly on 17 October 2012

Legislative Council on 24 October 2012]