



New South Wales

Miscellaneous Acts Amendment (Directors' Liability) Bill 2011

Explanatory note

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

Overview of Bill

Various Acts currently impose, on directors and other individuals concerned in the management of corporations, personal liability for certain offences committed by corporations (*directors' liability*). Each of those Acts generally provides for one of the following types of directors' liability:

- (a) if a corporation commits an offence under the Act (or under regulations made under the Act), the director or other individual is taken to have committed the offence if he or she knowingly authorised or permitted the offence (*accessorial liability*),
- (b) if a corporation commits an offence under the Act (or under regulations made under the Act), the director or other individual is taken to have committed the offence unless he or she establishes that:
 - (i) the corporation committed the offence without his or her knowledge, or
 - (ii) he or she was not in a position to influence the conduct of the corporation in relation to its offence, or
 - (iii) he or she was in such a position but used all due diligence to prevent the offence (*deemed liability*).

The object of this Bill is to amend certain Acts that impose directors' liability, and to amend certain regulations made under those Acts, so as to:

- (a) change the type of directors' liability that is imposed for certain offences under those Acts and regulations, from accessorial liability to deemed liability, and
- (b) change the type of directors' liability that is imposed for certain offences under those Acts and regulations, from deemed liability to accessorial liability, and
- (c) remove the imposition of directors' liability in respect of certain offences, and
- (d) make minor amendments in connection with paragraph (c).

The Bill relates to a COAG agreement with respect to the harmonisation across Australian jurisdictions of legislation imposing directors' liability.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Acts and Regulations

Schedule 1 amends the following Acts and Regulations to give effect to the object set out in the Overview above:

- (a) *Agricultural Industry Services Act 1998*,
- (b) *Animal Diseases (Emergency Outbreaks) Act 1991*,
- (c) *Apiaries Act 1985*,
- (d) *Building and Construction Industry Long Service Payments Act 1986*,
- (e) *Children and Young Persons (Care and Protection) Act 1998*,
- (f) *Classification (Publications, Films and Computer Games) Enforcement Act 1995*,
- (g) *Conveyancers Licensing Act 2003*,
- (h) *Electricity (Consumer Safety) Act 2004*,
- (i) *Fertilisers Act 1985*,
- (j) *Food Act 2003*,
- (k) *Food Regulation 2010*,
- (l) *Funeral Funds Act 1979*,
- (m) *Funeral Funds Regulation 2006*,
- (n) *Holiday Parks (Long-term Casual Occupation) Act 2002*,
- (o) *Home Building Act 1989*,
- (p) *Industrial Relations Act 1996*,

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- (q) *Land Sales Act 1964,*
- (r) *Mining Act 1992,*
- (s) *Motor Vehicle Repairs Act 1980,*
- (t) *Noxious Weeds Act 1993,*
- (u) *Parramatta Park Trust Act 2001,*
- (v) *Poultry Meat Industry Act 1986,*
- (w) *Prices Regulation Act 1948,*
- (x) *Private Health Facilities Act 2007,*
- (y) *Property, Stock and Business Agents Act 2002,*
- (z) *Public Health Act 1991,*
- (aa) *Public Health (Disposal of Bodies) Regulation 2002,*
- (ab) *Public Health (Swimming Pools and Spa Pools) Regulation 2000,*
- (ac) *Racing Administration Act 1998,*
- (ad) *Residential Parks Act 1998,*
- (ae) *Retirement Villages Act 1999,*
- (af) *Rice Marketing Act 1983,*
- (ag) *Road Transport (General) Act 2005,*
- (ah) *Totalizator Act 1997,*
- (ai) *Wine Grapes Marketing Board (Reconstitution) Act 2003.*

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New South Wales

Miscellaneous Acts Amendment (Directors' Liability) Bill 2011

No. , 2011

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Miscellaneous Acts Amendment (Directors' Liability) Act 2011</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Acts and Regulations	1
1.1	Agricultural Industry Services Act 1998 No 45	2
	Section 50 Directors and managers liable for offences committed by corporations	3 4
	Omit section 50 (2). Insert instead:	5
	(1A) Subsection (1) does not apply in respect of a contravention of section 33 (1) or 48.	6 7
	(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under the provision.	8 9 10 11
1.2	Animal Diseases (Emergency Outbreaks) Act 1991 No 73	12
	Section 73 Offences by officers of corporations	13
	Insert after section 73 (1):	14
	(1A) Subsection (1) does not apply in respect of a contravention of section 24 (4).	15 16
1.3	Apiaries Act 1985 No 16	17
	Section 43 Offences by officers of corporations	18
	Omit section 43 (1). Insert instead:	19
	(1) If a corporation contravenes, whether by act or omission, section 21, 22 (3), 23 (6) or (10), 24 (7), 24A (3), 26 (5) or (6) or 27 (5), each person who is an officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	20 21 22 23 24
1.4	Building and Construction Industry Long Service Payments Act 1986 No 19	25 26
[1]	Section 63 Offences by corporations	27
	Insert "(other than section 31A)" after "any provision of this Act" in section 63 (1).	28 29

[2] Section 63 (1A)	1
Insert after section 63 (1):	2
(1A) If a corporation contravenes, whether by act or omission, section 31A, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	3 4 5 6 7
1.5 Children and Young Persons (Care and Protection) Act 1998 No 157	8 9
[1] Section 258 Offences by corporations	10
Insert “(other than section 219J or 219ZB)” after “any provision of this Act” in section 258 (1).	11 12
[2] Section 258 (1A)	13
Insert after section 258 (1):	14
(1A) If a corporation contravenes, whether by act or omission, section 219J or 219ZB, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	15 16 17 18 19
[3] Section 258 (2)	20
Insert “or (1A)” after “subsection (1)”.	21
1.6 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63	22 23
[1] Section 62 Offences by corporations	24
Insert “(other than section 9 (2) or (4), 12 (1), 13 (1) or 30 (2))” after “any provision of this Act” in section 62 (1).	25 26
[2] Section 62 (1A)	27
Insert after section 62 (1):	28
(1A) If a corporation contravenes, whether by act or omission, section 9 (2) or (4), 12 (1), 13 (1) or 30 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	29 30 31 32 33

1.7 Conveyancers Licensing Act 2003 No 3	1
Section 160 Offences by corporations	2
Insert after section 160 (1):	3
(1A) Subsection (1) does not apply in respect of a contravention of section 58, 59, 60, 77 or 83 (1).	4 5
1.8 Electricity (Consumer Safety) Act 2004 No 4	6
Section 45 Corporations	7
Omit section 45 (1). Insert instead:	8
(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:	9 10 11 12 13
(a) the corporation contravened the provision without the knowledge of the person, or	14 15
(b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or	16 17 18
(c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.	19 20
1.9 Fertilisers Act 1985 No 5	21
Section 36 Offences by corporations	22
Omit the section.	23
1.10 Food Act 2003 No 43	24
Section 122 Offences by corporations	25
Insert after section 122 (1):	26
(1A) Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.	27 28 29

1.11 Food Regulation 2010	1
Clause 171	2
Insert after clause 170:	3
171 Offences by corporations	4
The provisions of clause 32 (1) and (2) are declared to be excluded provisions for the purposes of section 122 of the Act.	5 6
1.12 Funeral Funds Act 1979 No 106	7
Section 90 Offences by corporation	8
Insert after section 90 (1):	9
(1A) Subsection (1) does not apply in respect of a contravention of:	10
(a) section 16B (2) or 109, or	11
(b) a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.	12 13 14
1.13 Funeral Funds Regulation 2006	15
Clause 20A	16
Insert after clause 20:	17
20A Offences by corporation	18
Clauses 13, 14, 15 and 19 are declared to be excluded provisions for the purposes of section 90 of the Act.	19 20
1.14 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88	21 22
Section 44 Offences by corporations	23
Omit section 44 (1). Insert instead:	24
(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	25 26 27 28 29 30
(1A) Subsection (1) does not apply in respect of a contravention of section 9 or 10.	31 32

1.15 Home Building Act 1989 No 147	1
Section 137 Offence by body corporate—liability of directors etc	2
Insert after section 137 (1):	3
(1A) Subsection (1) does not apply in respect of a contravention of a provision of Division 3 of Part 6A.	4 5
1.16 Industrial Relations Act 1996 No 17	6
Section 400 Offences by corporation	7
Insert after section 400 (1):	8
(1A) Subsection (1) does not apply in respect of a contravention of section 361.	9 10
1.17 Land Sales Act 1964 No 12	11
Section 25 Liability of directors of corporations	12
Omit the section.	13
1.18 Mining Act 1992 No 29	14
Section 378F Offences by corporations	15
Insert after section 378F (1):	16
(1A) Subsection (1) does not apply in respect of a contravention of section 258 (2).	17 18
1.19 Motor Vehicle Repairs Act 1980 No 71	19
Section 88 Offences by corporation	20
Insert after section 88 (1):	21
(1A) Subsection (1) does not apply in respect of a contravention of section 21 (6) or 22 (4).	22 23
1.20 Noxious Weeds Act 1993 No 11	24
Section 62 Offences by corporations	25
Insert after section 62 (1):	26
(1A) Subsection (1) does not apply in respect of a contravention of section 54 (1) or (2).	27 28

1.21 Parramatta Park Trust Act 2001 No 17	1
Section 33 Offences by corporations	2
Insert after section 33 (1):	3
(1A) Subsection (1) does not apply in respect of an offence against section 28 (1).	4 5
1.22 Poultry Meat Industry Act 1986 No 101	6
Section 21 Offences by corporations	7
Omit section 21 (1). Insert instead:	8
(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	9 10 11 12 13 14
1.23 Prices Regulation Act 1948 No 26	15
Section 59 Offences and penalties	16
Omit section 59 (4). Insert instead:	17
(4) If a corporation contravenes, whether by act or omission, a provision of this Act, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	18 19 20 21 22
1.24 Private Health Facilities Act 2007 No 9	23
[1] Section 17 Amendment of licences	24
Omit “subsection (4)” from section 17 (7). Insert instead “subsection (6)”.	25
[2] Section 62 Offences by corporations	26
Insert after section 62 (1):	27
(1A) Subsection (1) does not apply in respect of a contravention of section 16 (1), 17 (7) or 40.	28 29

1.25 Property, Stock and Business Agents Act 2002 No 66	1
Section 218 Offences by corporations	2
Insert after section 218 (1):	3
(1A) Subsection (1) does not apply in respect of a contravention of section 90 (1), 91 (1), (2) or (3), 92, 93, 94, 110 (3) or 119 (1).	4 5
1.26 Public Health Act 1991 No 10	6
Section 78 Offences by corporations	7
Insert after section 78 (1):	8
(1A) Subsection (1) does not apply in respect of an offence under a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.	9 10 11
1.27 Public Health (Disposal of Bodies) Regulation 2002	12
Clause 51A	13
Insert after clause 51:	14
51A Offences by corporations	15
Clauses 8 (1), (3), (4), (5), (6) and (7), 29, 31, 33, 34, 43 (1) and (2) and 48 (1) and (3) are declared to be excluded provisions for the purposes of section 78 of the Act.	16 17 18
1.28 Public Health (Swimming Pools and Spa Pools) Regulation 2000	19 20
Clause 9A	21
Insert after clause 9:	22
9A Offences by corporations	23
Clauses 5 and 6 are declared to be excluded provisions for the purposes of section 78 of the <i>Public Health Act 1991</i> .	24 25
1.29 Racing Administration Act 1998 No 114	26
[1] Section 36B Offences by corporations	27
Insert “(other than section 26G or 26GA)” after “any provision of this Act” in section 36B (1).	28 29

[2] Section 36B (1A)	1
Insert after section 36B (1):	2
(1A) If a corporation contravenes, whether by act or omission, section 26G or 26GA, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	3 4 5 6 7
1.30 Residential Parks Act 1998 No 142	8
[1] Section 75 Installation of individual mail facilities	9
Omit “Mail facilities installed under this section must be” from section 75 (3).	10
Insert instead “A park owner must ensure that mail facilities installed by the park owner under this section are”.	11 12
[2] Section 150 Offences by corporations	13
Insert after section 150 (1):	14
(1A) Subsection (1) does not apply in respect of a contravention of section 12 (2), 29 (2), 33 (1), (2) or (4), 63 (3), 66 (6), 67 (2), 68 (1) or (2), 72, 74 (2) or (3), 75 (2) or (3) or 81 (5).	15 16 17
1.31 Retirement Villages Act 1999 No 81	18
Section 186 Offences by corporations	19
Insert after section 186 (1):	20
(1A) Subsection (1) does not apply in respect of a contravention of section 110 (1) or (2).	21 22
1.32 Rice Marketing Act 1983 No 176	23
Section 157 Offences by corporations	24
Omit section 157 (1). Insert instead:	25
(1) If a corporation contravenes, whether by act or omission, section 152 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	26 27 28 29 30

1.33 Road Transport (General) Act 2005 No 11	1
Section 178 Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees	2 3 4
Insert after section 178 (4):	5
(4A) Subsections (1), (2), (3) and (4) do not apply in respect of an offence under a provision of a regulation made under the road transport legislation that is declared by such a regulation to be an excluded provision for the purposes of this section.	6 7 8 9
1.34 Totalizator Act 1997 No 45	10
Section 103 Offences by corporations	11
Insert after section 103 (1):	12
(1A) Subsection (1) does not apply in respect of a contravention of section 26 (1).	13 14
1.35 Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100	15 16
Section 21 Directors and managers liable for offences committed by corporations	17 18
Omit the section.	19