



Australian Capital Territory

Directors Liability Legislation Amendment Act 2013

A2013-4

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J2012-531

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Directors Liability Legislation Amendment Act 2013

A2013-4

An Act to amend legislation in relation to directors liability, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2012-531

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Directors Liability Legislation Amendment Act 2013*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

Part 1.1 Electricity (Greenhouse Gas Emissions) Act 2004

[1.1] Section 63

substitute

63 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;

- (b) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against—

- (a) section 35 (Scheme administrator may require surrender of certificates); or
- (b) section 37 (Improper creation of abatement certificates—offence).

Part 1.2 Environment Protection Act 1997

[1.2] Section 147

substitute

147 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 42 (Conducting prescribed classes of activities);
- (b) section 44 (Conducting activities other than prescribed activities);
- (c) section 45 (Compliance with authorisation);
- (d) section 91D (Order to remediate land);
- (e) section 126 (Contravention of environment protection order);
- (f) section 137 (Causing serious environmental harm);
- (g) section 138 (Causing material environmental harm);

- (h) section 139 (Causing environmental harm);
- (i) section 141 (Causing environmental nuisance);
- (j) section 142 (Placing pollutant where it could cause harm);
- (k) section 159A (National pollutant inventory—provision of information).

Part 1.3 Fisheries Act 2000

[1.3] Section 111

substitute

111 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 45 (Sale of fish by commercial fishers);
- (b) section 49 (Commercial fishers, priority species licence holders and fish dealers to supply information);
- (c) section 76 (2) (Importing or exporting live fish without authority);
- (d) section 76A (Trafficking in commercial quantity of fish of priority species);
- (e) section 76B (Taking commercial quantity of fish of priority species);
- (f) section 76C (Possessing commercial quantity of fish of a priority species);
- (g) section 77 (Possessing fish obtained illegally);
- (h) section 78 (Noxious fish);
- (i) section 80 (1) (Fishing closure offences);
- (j) section 81 (1) (Prohibited size and weight offences);
- (k) section 86 (1) (Non-permitted fishing gear);
- (l) section 87 (1) (Use and possession of commercial gear).

[1.4] Dictionary, definition of *executive officer*

omit

Part 1.4 Guardianship and Management of Property Act 1991

[1.5] Section 74

substitute

74 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a an offence against section 72; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the offence.

- (4) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

Part 1.5 **Heritage Act 2004**

[1.6] Section 116

substitute

116 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 65 (Contravention of heritage direction—offence);
- (b) section 74 (Diminishing heritage significance of place or object);
- (c) section 75 (Damaging Aboriginal place or object).

Part 1.6 Medicines, Poisons and Therapeutic Goods Act 2008

[1.7] Section 172

substitute

172 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

relevant offence means an offence against any of the following:

- (a) section 26 (1) (Supplying declared substances);
- (b) section 28 (Supplying declared substances on invalid supply authorities—recklessness);
- (c) section 29 (Supplying declared substances on invalid supply authorities—other offences);
- (d) section 30 (Cancellation etc of invalid supply authorities for declared substances);
- (e) section 34 (1), (2) or (3) (Discarding declared etc substances);
- (f) section 35 (1) (Obtaining certain declared substances);
- (g) section 36 (Possessing certain declared substances);
- (h) section 37 (1) or (3) (Administering certain declared substances);

- (i) section 38 (1) (Issuing purchase orders for declared substances);
- (j) section 40 (1) or (3) (Prescribing medicines);
- (k) section 41 (Issuing requisitions for medicines);
- (l) section 42 (Issuing standing orders for medicines);
- (m) section 43 (1) or (2) (Medicines for animals not to be prescribed etc for human use);
- (n) section 44 (Contravening authorisation conditions for regulated substances);
- (o) section 45 (1) (Pretending to be authorised to deal with regulated substance);
- (p) section 55 (Registers—changes etc to entries);
- (q) section 59 (1) (Packaging of supplied regulated substances);
- (r) section 60 (1) (Labelling of supplied regulated substances);
- (s) section 61 (Storing declared substances);
- (t) section 64 (2) (False statements to obtain certain regulated substances etc);
- (u) section 65 (Falsely representing substance is regulated);
- (v) section 68 (Vending machines—use for supply of regulated substances);
- (w) section 69 (Vending machines—use for supply of unscheduled medicines);
- (x) section 70 (Manufacture, supply and use of paints containing white lead);
- (y) section 71 (3) (Manufacture, supply and use of paints for certain purposes);
- (z) section 72 (Manufacture, supply and use of paints for toys);

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 42 (Prohibition on abandoning radiation source);
- (b) section 53 (Failure to comply with safety duty—general offence);
- (c) section 54 (Failure to comply with safety duty—exposing people to substantial risk of death or serious harm);
- (d) section 55 (Failure to comply with safety duty—causing death or serious harm to people);
- (e) section 56 (Failure to comply with safety duty—exposing property or environment to substantial risk of substantial damage);
- (f) section 58 (Failure to comply with condition of licence);
- (g) section 59 (1) and (2) (Dealing with regulated radiation source without licence);
- (h) section 61 (Failure to comply with condition of registration of radiation source);
- (i) section 62 (Dealings with prohibited radiation source);
- (j) section 63 (1) (Failure to notify council of dangerous event).

[1.10] Section 77 (4), definition of *executive officer*

substitute

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

Part 1.9 Tree Protection Act 2005

[1.11] Section 108

substitute

108 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 15 (Damaging protected trees—general);
- (b) section 16 (2), (3) or (4) (Damaging protected trees—work done as part of a business);
- (c) section 17 (1) or (2) (Doing prohibited groundwork—general);
- (d) section 18 (2) or (3) (Doing prohibited groundwork—work done as part of a business).

Part 1.10 Unlawful Gambling Act 2009

[1.12] Section 34

substitute

34 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 23 (Cheating);
- (b) section 24 (Arranging unlawful gambling);
- (c) section 25 (Conducting unlawful gambling);
- (d) section 26 (Owning etc place used for unlawful gambling);
- (e) section 27 (Advertising etc unlawful gambling or place where unlawful gambling conducted);
- (f) section 30 (Receiving proceeds from unlawful gambling);
- (g) section 31 (Possessing instrument of gambling).

Part 1.11 Waste Minimisation Act 2001

[1.13] Section 53

substitute

53 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 11 (Industry members may be required to give background information);
- (b) section 18 (Contravention of IWRP);
- (c) section 25 (Unlawful use of land as waste disposal facility).

[1.14] Dictionary, definition of *executive officer*

omit

Part 1.12 Water Resources Act 2007

[1.15] Section 104

substitute

104 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

relevant offence means an offence against any of the following:

- (a) section 77C (Offence—do waterway work without licence);
- (b) section 77H (Offence—contravene notice prohibiting or restricting taking of water);
- (c) section 77I (Offences—contravene directions).

Part 1.13 Workers Compensation Act 1951

[1.16] Section 203

substitute

203 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits a relevant offence; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
 - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (6) In this section:

relevant offence means an offence against one of the following:

- (a) section 152 (Compulsory insurance—insurers);
- (b) section 155 (2) (Information for insurers on application for issue or renewal of policies);
- (c) section 156 (2) (Information for insurers after renewal of policies);
- (d) section 158 (2) (Information for new insurers after change of insurers);
- (e) section 162 (False information causing lower premium);
- (f) section 163 (Employment after 2nd offence).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 November 2012.

2 Notification

Notified under the [Legislation Act](#) on 21 February 2013.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Directors Liability Legislation Amendment Bill 2013, which originated in the Legislative Assembly as the Directors Liability Legislation Amendment Bill 2012 and was passed by the Assembly on 14 February 2013.

Clerk of the Legislative Assembly

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