

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Directors Liability Legislation Amendment Bill 2012

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J2012-531

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Directors Liability Legislation Amendment Bill 2012

A Bill for

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 **1 Name of Act**

2 This Act is the *Directors Liability Legislation Amendment Act 2012*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Legislation amended**

8 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1** **Legislation amended**

2 **Part 1.1** **Electricity (Greenhouse Gas**
3 **Emissions) Act 2004**

4 **[1.1]** **Section 63**

5 *substitute*

6 **63** **Criminal liability of executive officers**

- 7 (1) An executive officer of a corporation commits an offence if—
- 8 (a) the corporation commits a relevant offence; and
- 9 (b) the officer was reckless about whether the relevant offence
- 10 would be committed; and
- 11 (c) the officer was in a position to influence the conduct of the
- 12 corporation in relation to the commission of the relevant
- 13 offence; and
- 14 (d) the officer failed to take reasonable steps to prevent the
- 15 commission of the relevant offence.
- 16 Maximum penalty: The maximum penalty that may be imposed for
- 17 the commission of the relevant offence by an individual.
- 18 (2) In deciding whether the executive officer took (or failed to take) all
- 19 reasonable steps to prevent the commission of the offence, a court
- 20 must consider any action the officer took directed towards ensuring
- 21 the following (to the extent that the action is relevant to the act or
- 22 omission):
- 23 (a) that the corporation arranges regular professional assessments
- 24 of the corporation's compliance with the provision to which
- 25 the relevant offence relates;

- 1 (b) that the corporation implements any appropriate
2 recommendation arising from such an assessment;
- 3 (c) that the corporation's employees, agents and contractors have a
4 reasonable knowledge and understanding of the requirement to
5 comply with the provision to which the relevant offence
6 relates;
- 7 (d) any action the officer took when the officer became aware that
8 the relevant offence was, or might be, about to be committed.
- 9 (3) Subsection (2) does not limit the matters the court may consider.
- 10 (4) Subsection (1) does not apply if the corporation would have a
11 defence to a prosecution for the relevant offence.
- 12 *Note* The defendant has an evidential burden in relation to the matters
13 mentioned in s (4) (see [Criminal Code](#), s 58).
- 14 (5) This section applies whether or not the corporation is prosecuted for,
15 or convicted of, the relevant offence.
- 16 (6) In this section:
- 17 *executive officer*, of a corporation, means a person, by whatever
18 name called and whether or not the person is a director of the
19 corporation, who is concerned with, or takes part in, the
20 corporation's management.
- 21 *relevant offence* means an offence against—
- 22 (a) section 35 (Scheme administrator may require surrender of
23 certificates); or
- 24 (b) section 37 (Improper creation of abatement certificates—
25 offence).

1 **Part 1.2** **Environment Protection Act 1997**

2 **[1.2] Section 147**

3 *substitute*

4 **147 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***executive officer***, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 ***relevant offence*** means an offence against any of the following:
- 20 (a) section 42 (Conducting prescribed classes of activities);
- 21 (b) section 44 (Conducting activities other than prescribed
22 activities);
- 23 (c) section 45 (Compliance with authorisation);
- 24 (d) section 91D (Order to remediate land);
- 25 (e) section 126 (Contravention of environment protection order);
- 26 (f) section 137 (Causing serious environmental harm);
- 27 (g) section 138 (Causing material environmental harm);

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

6 **Part 1.3 Fisheries Act 2000**

7 **[1.3] Section 111**

8 *substitute*

9 **111 Criminal liability of executive officers**

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

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

- 1 (2) In deciding whether the executive officer took (or failed to take) all
2 reasonable steps to prevent the commission of the offence, a court
3 must consider any action the officer took directed towards ensuring
4 the following (to the extent that the action is relevant to the act or
5 omission):
- 6 (a) that the corporation arranges regular professional assessments
7 of the corporation's compliance with the provision to which
8 the relevant offence relates;
- 9 (b) that the corporation implements any appropriate
10 recommendation arising from such an assessment;
- 11 (c) that the corporation's employees, agents and contractors have a
12 reasonable knowledge and understanding of the requirement to
13 comply with the provision to which the relevant offence
14 relates;
- 15 (d) any action the officer took when the officer became aware that
16 the relevant offence was, or might be, about to be committed.
- 17 (3) Subsection (2) does not limit the matters the court may consider.
- 18 (4) Subsection (1) does not apply if the corporation would have a
19 defence to a prosecution for the relevant offence.
- 20 *Note* The defendant has an evidential burden in relation to the matters
21 mentioned in s (4) (see [Criminal Code](#), s 58).
- 22 (5) This section applies whether or not the corporation is prosecuted for,
23 or convicted of, the relevant offence.
- 24 (6) In this section:
- 25 ***executive officer***, of a corporation, means a person, by whatever
26 name called and whether or not the person is a director of the
27 corporation, who is concerned with, or takes part in, the
28 corporation's management.

- 1 ***relevant offence*** means an offence against any of the following:
- 2 (a) section 45 (Sale of fish by commercial fishers);
- 3 (b) section 49 (Commercial fishers, priority species licence holders
- 4 and fish dealers to supply information);
- 5 (c) section 76 (2) (Importing or exporting live fish without
- 6 authority);
- 7 (d) section 76A (Trafficking in commercial quantity of fish of
- 8 priority species);
- 9 (e) section 76B (Taking commercial quantity of fish of priority
- 10 species);
- 11 (f) section 76C (Possessing commercial quantity of fish of a
- 12 priority species);
- 13 (g) section 77 (Possessing fish obtained illegally);
- 14 (h) section 78 (Noxious fish);
- 15 (i) section 80 (1) (Fishing closure offences);
- 16 (j) section 81 (1) (Prohibited size and weight offences);
- 17 (k) section 86 (1) (Non-permitted fishing gear);
- 18 (l) section 87 (1) (Use and possession of commercial gear).

19 **[1.4] Dictionary, definition of *executive officer***

20 *omit*

1 **Part 1.4** **Guardianship and Management**
2 **of Property Act 1991**

3 **[1.5] Section 74**

4 *substitute*

5 **74 Criminal liability of executive officers**

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

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

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

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

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

- 22 (4) In this section:

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

1 **Part 1.5** **Heritage Act 2004**

2 **[1.6] Section 116**

3 *substitute*

4 **116 Criminal liability of executive officers**

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

14 Maximum penalty: The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***executive officer***, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 ***relevant offence*** means an offence against any of the following:
- 20 (a) section 65 (Contravention of heritage direction—offence);
- 21 (b) section 74 (Diminishing heritage significance of place or
22 object);
- 23 (c) section 75 (Damaging Aboriginal place or object).

1 **Part 1.6** **Medicines, Poisons and**
2 **Therapeutic Goods Act 2008**

3 **[1.7] Section 172**

4 *substitute*

5 **172 Criminal liability of executive officers**

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

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

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***relevant offence*** means an offence against any of the following:
- 16 (a) section 26 (1) (Supplying declared substances);
- 17 (b) section 28 (Supplying declared substances on invalid supply
18 authorities—recklessness);
- 19 (c) section 29 (Supplying declared substances on invalid supply
20 authorities—other offences);
- 21 (d) section 30 (Cancellation etc of invalid supply authorities for
22 declared substances);
- 23 (e) section 34 (1), (2) or (3) (Discarding declared etc substances);
- 24 (f) section 35 (1) (Obtaining certain declared substances);
- 25 (g) section 36 (Possessing certain declared substances);
- 26 (h) section 37 (1) or (3) (Administering certain declared
27 substances);

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

- 1 (2) In deciding whether the executive officer took (or failed to take) all
2 reasonable steps to prevent the commission of the offence, a court
3 must consider any action the officer took directed towards ensuring
4 the following (to the extent that the action is relevant to the act or
5 omission):
- 6 (a) that the corporation arranges regular professional assessments
7 of the corporation's compliance with the provision to which
8 the relevant offence relates;
- 9 (b) that the corporation implements any appropriate
10 recommendation arising from such an assessment;
- 11 (c) that the corporation's employees, agents and contractors have a
12 reasonable knowledge and understanding of the requirement to
13 comply with the provision to which the relevant offence
14 relates;
- 15 (d) any action the officer took when the officer became aware that
16 the relevant offence was, or might be, about to be committed.
- 17 (3) Subsection (2) does not limit the matters the court may consider.
- 18 (4) Subsection (1) does not apply if the corporation would have a
19 defence to a prosecution for the relevant offence.
- 20 *Note* The defendant has an evidential burden in relation to the matters
21 mentioned in s (4) (see [Criminal Code](#), s 58).
- 22 (5) This section applies whether or not the corporation is prosecuted for,
23 or convicted of, the relevant offence.
- 24 (6) In this section:
- 25 *executive officer*, of a corporation, means a person, by whatever
26 name called and whether or not the person is a director of the
27 corporation, who is concerned with, or takes part in, the
28 corporation's management.

- 1 (2) In deciding whether the executive officer took (or failed to take) all
2 reasonable steps to prevent the commission of the offence, a court
3 must consider any action the officer took directed towards ensuring
4 the following (to the extent that the action is relevant to the act or
5 omission):
- 6 (a) that the corporation arranges regular professional assessments
7 of the corporation's compliance with the provision to which
8 the relevant offence relates;
- 9 (b) that the corporation implements any appropriate
10 recommendation arising from such an assessment;
- 11 (c) that the corporation's employees, agents and contractors have a
12 reasonable knowledge and understanding of the requirement to
13 comply with the provision to which the relevant offence
14 relates;
- 15 (d) any action the officer took when the officer became aware that
16 the relevant offence was, or might be, about to be committed.
- 17 (3) Subsection (2) does not limit the matters the court may consider.
- 18 (4) Subsection (1) does not apply if the corporation would have a
19 defence to a prosecution for the relevant offence.
- 20 *Note* The defendant has an evidential burden in relation to the matters
21 mentioned in s (4) (see [Criminal Code](#), s 58).
- 22 (5) This section applies whether or not the corporation is prosecuted for,
23 or convicted of, the relevant offence.
- 24 (6) In this section:
- 25 ***executive officer***, of a corporation, means a person, by whatever
26 name called and whether or not the person is a director of the
27 corporation, who is concerned with, or takes part in, the
28 corporation's management.

- 1 ***relevant offence*** means an offence against any of the following:
- 2 (a) section 42 (Prohibition on abandoning radiation source);
- 3 (b) section 53 (Failure to comply with safety duty—general
- 4 offence);
- 5 (c) section 54 (Failure to comply with safety duty—exposing
- 6 people to substantial risk of death or serious harm);
- 7 (d) section 55 (Failure to comply with safety duty—causing death
- 8 or serious harm to people);
- 9 (e) section 56 (Failure to comply with safety duty—exposing
- 10 property or environment to substantial risk of substantial
- 11 damage);
- 12 (f) section 58 (Failure to comply with condition of licence);
- 13 (g) section 59 (1) and (2) (Dealing with regulated radiation source
- 14 without licence);
- 15 (h) section 61 (Failure to comply with condition of registration of
- 16 radiation source);
- 17 (i) section 62 (Dealings with prohibited radiation source);
- 18 (j) section 63 (1) (Failure to notify council of dangerous event).

19 **[1.10] Section 77 (4), definition of *executive officer***

20 *substitute*

21 ***executive officer***, of a corporation, means a person, by whatever

22 name called and whether or not the person is a director of the

23 corporation, who is concerned with, or takes part in, the

24 corporation's management.

1 **Part 1.9** **Tree Protection Act 2005**

2 **[1.11] Section 108**

3 *substitute*

4 **108 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***executive officer***, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 ***relevant offence*** means an offence against any of the following:
- 20 (a) section 15 (Damaging protected trees—general);
- 21 (b) section 16 (2), (3) or (4) (Damaging protected trees—work
22 done as part of a business);
- 23 (c) section 17 (1) or (2) (Doing prohibited groundwork—general);
- 24 (d) section 18 (2) or (3) (Doing prohibited groundwork—work
25 done as part of a business).

1 **Part 1.10 Unlawful Gambling Act 2009**

2 **[1.12] Section 34**

3 *substitute*

4 **34 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***executive officer***, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 ***relevant offence*** means an offence against any of the following:
- 20 (a) section 23 (Cheating);
- 21 (b) section 24 (Arranging unlawful gambling);
- 22 (c) section 25 (Conducting unlawful gambling);
- 23 (d) section 26 (Owning etc place used for unlawful gambling);
- 24 (e) section 27 (Advertising etc unlawful gambling or place where
25 unlawful gambling conducted);
- 26 (f) section 30 (Receiving proceeds from unlawful gambling);
- 27 (g) section 31 (Possessing instrument of gambling).

1 **Part 1.11** **Waste Minimisation Act 2001**

2 **[1.13] Section 53**

3 *substitute*

4 **53 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 *executive officer*, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 *relevant offence* means an offence against any of the following:
- 20 (a) section 11 (Industry members may be required to give
21 background information);
- 22 (b) section 18 (Contravention of IWRP);
- 23 (c) section 25 (Unlawful use of land as waste disposal facility).

24 **[1.14] Dictionary, definition of *executive officer***

25 *omit*

1 **Part 1.12** **Water Resources Act 2007**

2 **[1.15] Section 104**

3 *substitute*

4 **104 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***executive officer***, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 ***relevant offence*** means an offence against any of the following:
- 20 (a) section 77C (Offence—do waterway work without licence);
- 21 (b) section 77H (Offence—contravene notice prohibiting or
22 restricting taking of water);
- 23 (c) section 77I (Offences—contravene directions).

1 **Part 1.13** **Workers Compensation Act 1951**

2 **[1.16] Section 203**

3 *substitute*

4 **203 Criminal liability of executive officers**

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

14 **Maximum penalty:** The maximum penalty that may be imposed for

15 the commission of the relevant offence by an individual.

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

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the relevant offence
4 relates;
- 5 (d) any action the officer took when the officer became aware that
6 the relevant offence was, or might be, about to be committed.
- 7 (3) Subsection (2) does not limit the matters the court may consider.
- 8 (4) Subsection (1) does not apply if the corporation would have a
9 defence to a prosecution for the relevant offence.
- 10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (4) (see [Criminal Code](#), s 58).
- 12 (5) This section applies whether or not the corporation is prosecuted for,
13 or convicted of, the relevant offence.
- 14 (6) In this section:
- 15 ***relevant offence*** means an offence against one of the following:
- 16 (a) section 152 (Compulsory insurance—insurers);
- 17 (b) section 155 (2) (Information for insurers on application for
18 issue or renewal of policies);
- 19 (c) section 156 (2) (Information for insurers after renewal of
20 policies);
- 21 (d) section 158 (2) (Information for new insurers after change of
22 insurers);
- 23 (e) section 162 (False information causing lower premium);
- 24 (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 2012.

3 Republications of amended laws

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

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