



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*).
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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*,

- (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.*