

NORTHERN TERRITORY OF AUSTRALIA

STATUTE LAW AMENDMENT (DIRECTORS' LIABILITY) ACT 2015

Act No. 26 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 26 of 2015

An Act to amend provisions relating to directors' liability in legislation of the Territory

[Assented to 18 September 2015]
[Second reading 18 June 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Statute Law Amendment (Directors' Liability) Act 2015*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of legislation

Division 1 Agricultural and Veterinary Chemicals (Control of Use) Act

3 Act amended

This Division amends the *Agricultural and Veterinary Chemicals (Control of Use) Act*.

4 Section 111 replaced

Section 111

repeal, insert

111 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 13, 14(2), 20(1), 22(1), 26(1), 36(1), 38(1) or (3), 39(1), 53(4), 54(2), 55(5), 79(3) or 87(2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

5 Part 14 inserted

After section 132

insert

Part 14 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

133 Offences – before and after commencement

- (1) Section 111, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 1 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
- (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

- (2) Section 111, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 2 Annual Leave Act

6 Act amended

This Division amends the *Annual Leave Act*.

7 Section 19 amended

Section 19(3)

omit

8 Section 19AA amended

Section 19AA

omit

sections 15 and 19(3)

insert

section 15

Division 3 Commercial and Private Agents Licensing Act

9 Act amended

This Division amends the *Commercial and Private Agents Licensing Act*.

10 Section 46 repealed

Section 46

repeal

Division 4 Consumer Affairs and Fair Trading Act

11 Act amended

This Division amends the *Consumer Affairs and Fair Trading Act*.

12 Section 330 replaced

Section 330

repeal, insert

330 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 47(1), 124A(1) or (2) or 176(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

13 **Schedule 3 amended**

Schedule 3, at the end

insert

Part 3 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

1 Offences – before and after commencement

- (1) Section 330, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 4 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

- (2) Section 330, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subparagraph (1), the new section does not apply.

Division 5 Criminal Code

14 Criminal Code amended

This Division amends the Criminal Code.

15 Section 125D replaced

Section 125D

repeal, insert

125D Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening section 125B(1), 125C(1) or 125E (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

Note for subsection (3)

A matter mentioned in subsection (3) must be proved on the balance of probabilities – see section 440.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

16 Part XI, Division 11 inserted

After section 453

insert

**Division 11 Statute Law Amendment (Directors' Liability)
Act 2015**

454 Offences – before and after commencement

- (1) Section 125D, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 5 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 125D, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 6 Electoral Act

17 Act amended

This Division amends the *Electoral Act*.

18 Section 299 repealed

Section 299

repeal

Division 7 Electricity Reform Act

19 Act amended

This Division amends the *Electricity Reform Act*.

20 Section 105 replaced

Section 105

repeal, insert

105 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.

23 Part 11 inserted

After section 116

insert

**Part 11 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

117 Offences – before and after commencement

- (1) Section 105, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 7 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 105, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 8 Energy Pipelines Act

24 Act amended

This Division amends the *Energy Pipelines Act*.

25 Section 58G replaced

Section 58G

repeal, insert

58G Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.

- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 12(1) or (2), 15A(6), 26(2), 28(4), 37(1), 37A(1) or (3), 38(3), 39, 40(3), 42(6), 65 or 66(1), (2), (3) or (5); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

26 Part VIII inserted

After section 71

insert

Part VIII Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

72 Offences – before and after commencement

- (1) Section 58G, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 8 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 58G, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 9 Energy Pipelines Regulations

27 Regulations amended

This Division amends the *Energy Pipelines Regulations*.

28 Part 6, Division 3 inserted

After regulation 51, in Part 6

insert

Division 3 Offences

51A Declared provisions

For section 58G(7) of the Act, definition **declared provision**, paragraph (b), regulations 10, 14, 16, 20(1), 21, 22(1) and (2), 43(1) and 49 are prescribed.

Division 10 Fire and Emergency Act

29 Act amended

This Division amends the *Fire and Emergency Act*.

30 Section 49 replaced

Section 49

repeal, insert

49 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or

- (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:
 - declared provision** means:
 - (a) section 25(4), 27A(3) or 30(6); or
 - (b) a provision of the Regulations prescribed by regulation.
 - executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

31 Part 8 inserted

After section 54

insert

**Part 8 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

55 Offences – before and after commencement

- (1) Section 49, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 10 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 49, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a corporation before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 11 Firearms Act

32 Act amended

This Division amends the *Firearms Act*.

33 Section 107 replaced

Section 107

repeal, insert

106B Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 26(2), 46(1), 58(1) or (6), 61(1) or (2), 61A(2), 62(1) or (2), 63(1) or (2) or 63A(1), (2) or (3); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

34 Section 114 amended

Section 114

renumber as section 112

35 Part 13 and Part 13, Division 1 headings inserted

Before section 113

insert

Part 13 Transitional matters

Division 1 Firearms Amendment Act 2003

36 Part 13, Division 2 inserted

After section 113

insert

**Division 2 Statute Law Amendment (Directors' Liability)
Act 2015**

114 Offences – before and after commencement

- (1) Sections 106B and 107, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new sections***) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 11 of that Act (the ***commencement***) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 107, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Division 12 Flag and Emblem Act

37 Act amended

This Division amends the *Flag and Emblem Act*.

38 Section 10 repealed

Section 10

repeal

Division 13 Food Act

39 Act amended

This Division amends the *Food Act*.

40 Section 114 replaced

Section 114

repeal, insert

114 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
- (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 32(4); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

**114A Criminal liability of executive officer of body corporate –
 deemed liability if body corporate commits offence**

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.

- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 12, 13, 15(1) or (2), 16(1) or (2), 17(1), (2) or (3), 18(1), 19(1), (2) or (3), 20(1) or (2), 52(1), 73(3), 75(5), 79(7), 102, 107 or 129(3); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

41 Part 14 inserted

After section 145

insert

Part 14 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

146 Offences – before and after commencement

- (1) Sections 114 and 114A, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new sections**) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 13 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 114, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and

- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Division 14 Gaming Control Act

42 Act amended

This Division amends the *Gaming Control Act*.

43 Section 17 amended

Section 17(4)(c)

omit

corporation

insert

body corporate

44 Section 20 amended

Section 20(5)

omit (all references)

corporation

insert

body corporate

45 Section 40 amended

Section 40(4A)(c)

omit

corporation

insert

body corporate

46 Section 46C amended

Section 46C(4)(ba)

omit

corporation

insert

body corporate

47 Section 46F amended

Section 46F(5)

omit (all references)

corporation

insert

body corporate

48 Section 47C amended

Section 47C(4)(ba)

omit

corporation

insert

body corporate

49 Section 47F amended

Section 47F(5)

omit (all references)

corporation

insert

body corporate

50 Section 72 replaced

Section 72

repeal, insert

72 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 27(6), 49(1) or 55; or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

51 Part 7, Division 4 inserted

After section 91

insert

Division 4 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

92 Offences – before and after commencement

- (1) Section 72, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 14 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 72, as in force before the commencement:

- (a) continues to apply in relation to offences committed by a corporation before the commencement; and
- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 15 Gaming Machine Act

52 Act amended

This Division amends the *Gaming Machine Act*.

53 Section 180 replaced

Section 180

repeal, insert

180 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

- (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:
- declared provision** means:
- (a) section 47(1A); or
 - (b) a provision of the Regulations prescribed by regulation.
- executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

54 Part 12 inserted

After section 203

insert

**Part 12 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

204 Offences – before and after commencement

- (1) Sections 180 and 180A, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new sections***) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 15 of that Act (the ***commencement***) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 180, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Division 16 Health Practitioners Act

55 Act amended

This Division amends the *Health Practitioners Act*.

56 Section 127 replaced

Section 127

repeal, insert

127 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) Schedule 7, clause 2(1), 3, 4(1) or (2), 5(1) or (2), 7(1), (2) or (3) or 8(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

57 Part 14 inserted

After section 158

insert

Part 14 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

159 Offences – before and after commencement

- (1) Section 127, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 16 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

- (2) Section 127, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 17 Higher Education Act

58 Act amended

This Division amends the *Higher Education Act*.

59 Section 55 repealed

Section 55

repeal

Division 18 Kava Management Act

60 Act amended

This Division amends the *Kava Management Act*.

61 Section 26 replaced

Section 26

repeal, insert

26 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or

- (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:
- declared provision** means:
- (a) section 12(1) or (2), 13 or 14; or
 - (b) a provision of the Regulations prescribed by regulation.
- executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

62 Part 13 inserted

After section 99

insert

**Part 13 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

100 Offences – before and after commencement

- (1) Section 26, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new section***) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 18 of that Act (the ***commencement***) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 26, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 19 Liquor Act

63 Act amended

This Division amends the *Liquor Act*.

64 Section 25 amended

- (1) Section 25(3)

omit

(2) Section 25(5)

omit, insert

(5) If a licence is granted to a body corporate that has nominated a manager under subsection (2):

- (a) the name of the manager must, in addition to the name of the body corporate, be endorsed on the licence; and
- (b) the written approval of the Director-General is necessary before any change of the manager will be recognised for this Act; and
- (c) for this Act, the manager is taken to be a joint licensee with the body corporate of the licensed premises.

(3) Section 25(6) and (7)

omit

65 Section 123B inserted

After section 123A

insert

**123B Criminal liability of executive officer of body corporate –
evidential burden of proof on defence**

(1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

(2) An offence against subsection (1) is an offence of absolute liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:

- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
- (b) took reasonable steps to prevent the contravention; or
- (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 31A(6), 33I, 113A(1) or 115; or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

66 Part XXI inserted

After section 163

insert

**Part XXI Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

164 Offences

Section 123B applies in relation to a relevant offence committed by a body corporate after the commencement of that section (the **commencement**) only if:

- (a) all the conduct constituting the relevant offence occurred after the commencement; and
- (b) all the conduct of the executive officer constituting the offence against that section occurred after the commencement.

Division 20 Livestock Act

67 Act amended

This Division amends the *Livestock Act*.

68 Section 134 replaced

Section 134

repeal, insert

**134 Criminal liability of executive officer of body corporate –
evidential burden of proof on defence**

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(9) In this section:

declared provision means:

- (a) section 41, 45, 48(3), 53(4), 56(3) or (4), 59(3), 64, 67 or 68(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

69 Part 11 inserted

After section 146

insert

Part 11 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

147 Offences – before and after commencement

- (1) Section 134, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 20 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 134, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 21 Long Service Leave Act

70 Act amended

This Division amends the *Long Service Leave Act*.

71 Section 18 amended

Section 18(3)

omit

Division 22 Major Cricket Events Act

72 Act amended

This Division amends the *Major Cricket Events Act*.

73 Section 9 repealed

Section 9

repeal

Division 23 Medicines, Poisons and Therapeutic Goods Act

74 Act amended

This Division amends the *Medicines, Poisons and Therapeutic Goods Act*.

75 Section 215 amended

(1) Section 215(1)

omit, insert

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared EO liability provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

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

- (1A) Strict liability applies to subsection (1)(b).
- (2) Section 215(2)(a)(i) and (iii)
omit
declared provision
insert
declared EO liability provision
- (3) Section 215(5)
omit
convicted
insert
found guilty
- (4) After section 215(6)
insert
- (7) In this section:
declared EO liability provision means:
- (a) section 37, 39, 40, 41, 42, 43(1) or (2), 44(2), 46, 47, 49, 50, 51, 52(1), 53, 54(1), 110(1), (2) or (3), 111(1), (2) or (3), 112, 113(1) or (2) or 115(4); or
- (b) a provision of the Regulations prescribed by regulation.

76 Part 9.3 inserted

After section 294

insert

**Part 9.3 Transitional matters for Statute Law Amendment
(Directors' Liability) Act 2015**

295 Offences – before and after commencement

- (1) Section 215, as amended by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 23 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 215, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement: and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

**Division 24 Medicines, Poisons and Therapeutic Goods
Regulations**

77 Regulations amended

This Division amends the *Medicines, Poisons and Therapeutic Goods Regulations*.

78 Regulation 81A inserted

After regulation 81, in Part 6

insert

81A Declared provisions

For section 215(7) of the Act, definition **declared EO liability provision**, paragraph (b), regulation 31 is prescribed.

Division 25 Misuse of Drugs Act

79 Act amended

This Division amends the *Misuse of Drugs Act*.

80 Section 39 replaced

Section 39

repeal, insert

39 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

- (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 5(1), 6(1) or (2), 7(1), 8(1) or 8A(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

81 Part IV and Part IV, Division 1 headings inserted

After section 43

insert

Part IV Transitional matters

Division 1 Acts commencing before 2015

82 Part IV, Division 2 inserted

After section 46

insert

**Division 2 Statute Law Amendment (Directors' Liability)
Act 2015**

47 Offences – before and after commencement

- (1) Section 39, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 25 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 39, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a corporation before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 26 Ombudsman Act

83 Act amended

This Division amends the *Ombudsman Act*.

84 Section 131 repealed

Section 131

repeal

Division 27 Plant Health Act

85 Act amended

This Division amends the *Plant Health Act*.

86 Section 67 replaced

Section 67

repeal, insert

67 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

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

- (2) Strict liability applies to subsection (1)(b).
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 15(1), 16(1), 17(6), 18(4), 19(6) or 20(4); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

87 Part 6 inserted

After section 81

insert

**Part 6 Transitional matters for Statute Law
 Amendment (Directors' Liability) Act 2015**

82 Offences – before and after commencement

- (1) Sections 67 and 67A, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new sections***) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 27 of that Act (the ***commencement***) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 67, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Division 28 Poppy Regulation Act

88 Act amended

This Division amends the *Poppy Regulation Act*.

89 Section 42 replaced

Section 42

repeal, insert

42 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

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

- (2) Strict liability applies to subsection (1)(b).
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.

- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (7) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (8) In this section:

declared provision means:

- (a) section 32, 33, 34(1) or 36(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

90 Part 6 inserted

After section 49

insert

Part 6 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

50 Offences – before and after commencement

- (1) Section 42, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 28 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 42, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 29 Price Exploitation Prevention Act

91 Act amended

This Division amends the *Price Exploitation Prevention Act*.

92 Section 59 replaced

Section 59

repeal, insert

59 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

- (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 15(1), (2) or (3), 23(2), 25(2), 26(1), (3) or (5A), 27(1) or (4A), 28(1), 29, 30(1), 31(1) or 43(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

93 Section 66 inserted

After section 65

insert

66 Transitional matters for *Statute Law Amendment (Directors' Liability) Act 2015*

- (1) Section 59, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 29 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

- (2) Section 59, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 30 Printers and Newspapers Act

94 Act amended

This Division amends the *Printers and Newspapers Act*.

95 Section 10 replaced

Section 10

repeal, insert

10 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):

- (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 4(1) or (2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

96 Part IV inserted

After section 12

insert

**Part IV Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

13 Offences – before and after commencement

- (1) Section 10, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 30 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 10, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 31 Prostitution Regulation Act

97 Act amended

This Division amends the *Prostitution Regulation Act*.

98 Section 48 repealed

Section 48

repeal

Division 32 Public and Environmental Health Act

99 Act amended

This Division amends the *Public and Environmental Health Act*.

100 Section 119 amended

(1) Section 119(1)

omit, insert

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a declared provision other than section 88, 111, 112(1) or 113(1) or (2) (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

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

(1A) Strict liability applies to subsection (1)(b).

(2) Section 119(5)

omit

convicted

insert

found guilty

101 Part 11, Division 3 inserted

After section 139

insert

**Division 3 Transitional matters for Statute Law Amendment
(Directors' Liability) Act 2015**

140 Offences – before and after commencement

- (1) Section 119, as amended by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 32 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 119, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 33 Public Holidays Act

102 Act amended

This Division amends the *Public Holidays Act*.

103 Section 16 amended

Section 16(3)

omit

104 Section 16A amended

Section 16A

omit

Subject to section 16(3), an

insert

An

Division 34 Residential Tenancies Act

105 Act amended

This Division amends the *Residential Tenancies Act*.

106 Section 11 repealed

Section 11

repeal

Division 35 Sexual Offences (Evidence and Procedure) Act

107 Act amended

This Division amends the *Sexual Offences (Evidence and Procedure) Act*.

108 Section 13 replaced

Section 13

repeal, insert

13 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a ***relevant offence***).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(9) In this section:

declared provision means:

- (a) section 11(1) or (2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

14 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

(1) Section 13, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 35 of that Act (the **commencement**) only if:

- (a) all the conduct constituting the relevant offence occurred after the commencement; and
- (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

(2) Section 13, as in force before the commencement:

- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 36 Surveillance Devices Act

109 Act amended

This Division amends the *Surveillance Devices Act*.

- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the declared offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the declared offence.
- (9) In this section:

declared provision means:

- (a) section 11(1), 12(1), 15(1), 45(1) or 52(1) or (2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

111 Part 11, Division 1 heading inserted

Before section 78, in Part 11

insert

**Division 1 Repeals and transitional matters for Surveillance
Devices Act 2007**

112 Section 79 amended

Section 79

omit

Part:

insert

Division:

113 Part 11, Division 2 inserted

After section 83

insert

**Division 2 Transitional matters for Statute Law Amendment
(Directors' Liability) Act 2015**

84 Offences – before and after commencement

- (1) Section 72, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a declared offence committed by a body corporate after the commencement of Part 2, Division 36 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the declared offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 72, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to declared offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 37 Taxation Administration Act

114 Act amended

This Division amends the *Taxation Administration Act*.

115 Section 137 replaced

Section 137

repeal, insert

137 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.

- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 24(1) or (3), 33(6), 52(1) or (2), 60(6), 74(1), 75(2), 76, 77(1), 78(1), 79(1), 80(1), 81(1), 82(1) or (2), 83, 84, 85, 91(6) or 97(1) or (2); or
- (b) section 24(2), 39(1), 56K(9), 56W(3), 57(1), 59(5) or 83B(5) of the *Stamp Duty Act*; or
- (c) a provision of regulations made under this Act or the *Stamp Duty Act* prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

116 Part 17 inserted

After section 166

insert

**Part 17 Transitional matters for Statute Law
 Amendment (Directors' Liability) Act 2015**

167 Offences – before and after commencement

- (1) Section 137, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 37 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

- (2) Section 137, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a company before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 38 Totalisator Licensing and Regulation Act

117 Act amended

This Division amends the *Totalisator Licensing and Regulation Act*.

118 Section 106 replaced

Section 106

repeal, insert

106 Criminal liability of executive officer of body corporate or club

- (1) An executive officer of a body corporate or club commits an offence if:
- (a) the body corporate or club commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate or club in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
- (i) the body corporate or club arranged regular professional assessments of the body corporate's or club's compliance with the declared provision;
 - (ii) the body corporate or club implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's or club's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate or club.
- (5) This section applies whether or not the body corporate or club is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate or club would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 35, 36, 110(1) or (2) or 115(4); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate or club, means a director or other person who is concerned with, or takes part in, the management of the body corporate or club.

119 Part 13 inserted

After section 141

insert

**Part 13 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

142 Offences – before and after commencement

- (1) Section 106, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate or club after the commencement of Part 2, Division 38 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 106, as in force before the commencement:
- (a) continues to apply in relation to offences committed or allegedly committed by a club, company or other body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate or club after the commencement to which, as a result of subsection (1), the new section does not apply.

**Division 39 Transport of Dangerous Goods by Road and Rail
(National Uniform Legislation) Act**

120 Act amended

This Division amends the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*.

121 Section 126 amended

(1) Section 126(1)

omit, insert

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a declared EO liability provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

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

(1A) Strict liability applies to subsection (1)(b).

(2) Section 126(2)(a)(i) and (iii)

omit

declared provision

insert

declared EO liability provision

(3) Section 126(5)

omit

convicted

insert

found guilty

(4) Section 126(7)

insert (in alphabetical order)

declared EO liability provision means:

- (a) section 67(5) or (7), 68(3), 83(1), 84, 85(1), 87(1), 108, 110 or 138(2), (3) or (7); or
- (b) a provision of the Regulations prescribed by regulation.

122 Part 9 inserted

After section 152

insert

**Part 9 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

153 Offences – before and after commencement

- (1) Section 126, as amended by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 39 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 126, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 40 Utilities Commission Act

123 Act amended

This Division amends the *Utilities Commission Act*.

124 Section 39 repealed

Section 39

repeal

Division 41 Waste Management and Pollution Control Act

125 Act amended

This Division amends the *Waste Management and Pollution Control Act*.

126 Section 91 replaced

Section 91

repeal, insert

91 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

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

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

Note for subsection (3)

A matter mentioned in subsection (3) must be proved on the balance of probabilities – see section 440 of the Criminal Code.

- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 14(1) or (2), 30(1), (2) or (3), 39(1) or (2), 43(1), 51(1), 52(1), (2), (3) or (4), 63(1) or (2), 80(1) or (2) or 83(1), (2), (3), (4), (5), (6) or (7); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

127 Part 15 inserted

After section 123

insert

**Part 15 Transitional matters for Statute Law
Amendment (Directors' Liability) Act 2015**

124 Offences – before and after commencement

- (1) Section 91, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new section***) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 41 of that Act (the ***commencement***) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 91, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a body corporate before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Division 42 Water Supply and Sewerage Services Act

128 Act amended

This Division amends the *Water Supply and Sewerage Services Act*.

129 Section 112 replaced

Section 112

repeal, insert

112 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.

- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 14(1), 33(6) or (7), 43(1), 46(2) or (3), 82(1), 88(1), 90(1), 95(1), 99(1) or (2) or 101(3); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

130 Part 7 and Part 7, Division 1 headings inserted

After section 119

insert

Part 7 Transitional matters

Division 1 Water Supply and Sewerage Services Act 2000

131 Part 7, Division 2 inserted

After section 120

insert

Division 2 Statute Law Amendment (Directors' Liability) Act 2015

121 Offences – before and after commencement

- (1) Section 112, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new section**) applies in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 42 of that Act (the **commencement**) only if:
- (a) all the conduct constituting the relevant offence occurred after the commencement; and

- (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 112, as in force before the commencement:
- (a) continues to apply in relation to offences committed by a corporation before the commencement; and
 - (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new section does not apply.

Part 3 Expiry of Act

132 Expiry of Act

This Act expires on the day after it commences.