

Passed by both Houses



New South Wales

Miscellaneous Acts Amendment (Directors' Liability) Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Miscellaneous Acts Amendment (Directors' Liability) Bill 2011

Act No , 2011

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Miscellaneous Acts Amendment (Directors' Liability) Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Acts and Regulations

1.1 Agricultural Industry Services Act 1998 No 45

Section 50 Directors and managers liable for offences committed by corporations

Omit section 50 (2). Insert instead:

- (1A) Subsection (1) does not apply in respect of a contravention of section 33 (1) or 48.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under the provision.

1.2 Animal Diseases (Emergency Outbreaks) Act 1991 No 73

Section 73 Offences by officers of corporations

Insert after section 73 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 24 (4).

1.3 Apiaries Act 1985 No 16

Section 43 Offences by officers of corporations

Omit section 43 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, section 21, 22 (3), 23 (6) or (10), 24 (7), 24A (3), 26 (5) or (6) or 27 (5), each person who is an officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.4 Building and Construction Industry Long Service Payments Act 1986 No 19

[1] Section 63 Offences by corporations

Insert "(other than section 31A)" after "any provision of this Act" in section 63 (1).

[2] Section 63 (1A)

Insert after section 63 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 31A, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.5 Children and Young Persons (Care and Protection) Act 1998 No 157

[1] Section 258 Offences by corporations

Insert "(other than section 219J or 219ZB)" after "any provision of this Act" in section 258 (1).

[2] Section 258 (1A)

Insert after section 258 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 219J or 219ZB, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

[3] Section 258 (2)

Insert "or (1A)" after "subsection (1)".

1.6 Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

[1] Section 62 Offences by corporations

Insert "(other than section 9 (2) or (4), 12 (1), 13 (1) or 30 (2))" after "any provision of this Act" in section 62 (1).

[2] Section 62 (1A)

Insert after section 62 (1):

- (1A) If a corporation contravenes, whether by act or omission, section 9 (2) or (4), 12 (1), 13 (1) or 30 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.7 Conveyancers Licensing Act 2003 No 3

Section 160 Offences by corporations

Insert after section 160 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 58, 59, 60, 77 or 83 (1).

1.8 Electricity (Consumer Safety) Act 2004 No 4

Section 45 Corporations

Omit section 45 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the person satisfies the court that:
- (a) the corporation contravened the provision without the knowledge of the person, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

1.9 Fertilisers Act 1985 No 5

Section 36 Offences by corporations

Omit the section.

1.10 Food Act 2003 No 43

Section 122 Offences by corporations

Insert after section 122 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

1.11 Food Regulation 2010

Clause 171

Insert after clause 170:

171 Offences by corporations

The provisions of clause 32 (1) and (2) are declared to be excluded provisions for the purposes of section 122 of the Act.

1.12 Funeral Funds Act 1979 No 106

Section 90 Offences by corporation

Insert after section 90 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of:
 - (a) section 16B (2) or 109, or
 - (b) a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

1.13 Funeral Funds Regulation 2006

Clause 20A

Insert after clause 20:

20A Offences by corporation

Clauses 13, 14, 15 and 19 are declared to be excluded provisions for the purposes of section 90 of the Act.

1.14 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88

Section 44 Offences by corporations

Omit section 44 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (1A) Subsection (1) does not apply in respect of a contravention of section 9 or 10.

1.15 Home Building Act 1989 No 147

Section 137 Offence by body corporate—liability of directors etc

Insert after section 137 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of a provision of Division 3 of Part 6A.

1.16 Industrial Relations Act 1996 No 17

Section 400 Offences by corporation

Insert after section 400 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 361.

1.17 Land Sales Act 1964 No 12

Section 25 Liability of directors of corporations

Omit the section.

1.18 Mining Act 1992 No 29

Section 378F Offences by corporations

Insert after section 378F (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 258 (2).

1.19 Motor Vehicle Repairs Act 1980 No 71

Section 88 Offences by corporation

Insert after section 88 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 21 (6) or 22 (4).

1.20 Noxious Weeds Act 1993 No 11

Section 62 Offences by corporations

Insert after section 62 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 54 (1) or (2).

1.21 Parramatta Park Trust Act 2001 No 17

Section 33 Offences by corporations

Insert after section 33 (1):

- (1A) Subsection (1) does not apply in respect of an offence against section 28 (1).

1.22 Poultry Meat Industry Act 1986 No 101

Section 21 Offences by corporations

Omit section 21 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.23 Prices Regulation Act 1948 No 26

Section 59 Offences and penalties

Omit section 59 (4). Insert instead:

- (4) If a corporation contravenes, whether by act or omission, a provision of this Act, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.24 Private Health Facilities Act 2007 No 9

[1] Section 17 Amendment of licences

Omit "subsection (4)" from section 17 (7). Insert instead "subsection (6)".

[2] Section 62 Offences by corporations

Insert after section 62 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 16 (1), 17 (7) or 40.

1.25 Property, Stock and Business Agents Act 2002 No 66

Section 218 Offences by corporations

Insert after section 218 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 90 (1), 91 (1), (2) or (3), 92, 93, 94, 110 (3) or 119 (1).

1.26 Public Health Act 1991 No 10

Section 78 Offences by corporations

Insert after section 78 (1):

- (1A) Subsection (1) does not apply in respect of an offence under a provision of the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

1.27 Public Health (Disposal of Bodies) Regulation 2002

Clause 51A

Insert after clause 51:

51A Offences by corporations

Clauses 8 (1), (3), (4), (5), (6) and (7), 29, 31, 33, 34, 43 (1) and (2) and 48 (1) and (3) are declared to be excluded provisions for the purposes of section 78 of the Act.

1.28 Public Health (Swimming Pools and Spa Pools) Regulation 2000

Clause 9A

Insert after clause 9:

9A Offences by corporations

Clauses 5 and 6 are declared to be excluded provisions for the purposes of section 78 of the *Public Health Act 1991*.

1.29 Racing Administration Act 1998 No 114

[1] Section 36B Offences by corporations

Insert "(other than section 26G or 26GA)" after "any provision of this Act" in section 36B (1).

[2] Section 36B (1A)

Insert after section 36B (1):

- (1A) If a corporation contravenes, whether by act or omission, section 26G or 26GA, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.30 Residential Parks Act 1998 No 142

[1] Section 75 Installation of individual mail facilities

Omit "Mail facilities installed under this section must be" from section 75 (3).

Insert instead "A park owner must ensure that mail facilities installed by the park owner under this section are".

[2] Section 150 Offences by corporations

Insert after section 150 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 12 (2), 29 (2), 33 (1), (2) or (4), 63 (3), 66 (6), 67 (2), 68 (1) or (2), 72, 74 (2) or (3), 75 (2) or (3) or 81 (5).

1.31 Retirement Villages Act 1999 No 81

Section 186 Offences by corporations

Insert after section 186 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 110 (1) or (2).

1.32 Rice Marketing Act 1983 No 176

Section 157 Offences by corporations

Omit section 157 (1). Insert instead:

- (1) If a corporation contravenes, whether by act or omission, section 152 (2), each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

1.33 Road Transport (General) Act 2005 No 11

Section 178 Liability of directors, partners, employers and others for offences by bodies corporate, partnerships, associations and employees

Insert after section 178 (4):

- (4A) Subsections (1), (2), (3) and (4) do not apply in respect of an offence under a provision of a regulation made under the road transport legislation that is declared by such a regulation to be an excluded provision for the purposes of this section.

1.34 Totalizator Act 1997 No 45

Section 103 Offences by corporations

Insert after section 103 (1):

- (1A) Subsection (1) does not apply in respect of a contravention of section 26 (1).

1.35 Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

Section 21 Directors and managers liable for offences committed by corporations

Omit the section.