

TASMANIA

**DIRECTORS' LIABILITY (MISCELLANEOUS
AMENDMENTS) BILL 2012**

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DIRECTORS' LIABILITY (MISCELLANEOUS AMENDMENTS) BILL 2012

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

**An Act to amend certain enactments in connection with the
liability of directors of bodies corporate and corporations
for offences committed by those bodies corporate or
corporations**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Directors' Liability
(Miscellaneous Amendments) Act 2012*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Further amendment of regulations not prevented

The amendment by this Act of a provision of any
regulations does not prevent that or any other
provision of those regulations from being
amended or rescinded by a later regulation.

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4. Amendments to legislation

The legislation specified in Schedule 1 is amended as specified in that Schedule.

5. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.

SCHEDULE 1 – AMENDMENTS TO LEGISLATION

Section 4

Animal (Brands and Movement) Act 1984

1. Section 32 is repealed.

Animal Farming (Registration) Act 1994

1. Section 26 is repealed.

Animal Health Act 1995

1. Section 95 is repealed and the following section is substituted:

95. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act, except sections 12, 16, 76, 78(6) and clause 8 of Schedule 1;

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officer, in relation to a body corporate,
means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body

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corporate in relation to the
commission of the offence by the
body corporate; and

(c) what steps the officer took, or
could reasonably have taken, to
prevent the commission of the
offence by the body corporate;
and

(d) any other relevant matter.

(4) It is a defence to a charge for an
executive liability offence for an officer
of a body corporate to prove that the
body corporate would not have been
found guilty of the executive liability
offence because of a defence available to
it.

(5) An officer of a body corporate may
commit an executive liability offence
whether or not the body corporate has
been prosecuted for, or found guilty of,
the executive liability offence.

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Animal Health Regulations 2006

- 1.** Before regulation 19, the following regulation is inserted in Part 9:

18A. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this regulation –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of these regulations, except regulations 8, 13, 14 and 17;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the

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management of the body
corporate.

- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the

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body corporate would not have been found guilty of the executive liability offence because of a defence available to it.

- (5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Animal Welfare Act 1993

1. Section 48A(2) is amended by omitting “this Act” first occurring and substituting “sections 7, 8 and 9”.

Building Act 2000

1. Section 239 is repealed and the following section is substituted:
- 239. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)**

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the following provisions of this Act:

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- (a) section 60;
- (b) section 75;
- (c) section 85;
- (d) section 86;
- (e) section 93;
- (f) section 103;
- (g) section 105;
- (h) section 117;
- (i) section 120(1);
- (j) section 162;
- (k) section 170;
- (l) section 172;

officer, in relation to a body corporate,
means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the

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management of the body
corporate.

- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the

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commission of the offence by the
body corporate; and

(c) what steps the officer took, or
could reasonably have taken, to
prevent the commission of the
offence by the body corporate;
and

(d) any other relevant matter.

(5) It is a defence to a charge for an
executive liability offence for an officer
of a body corporate to prove that the
body corporate would not have been
found guilty of the executive liability
offence because of a defence available to
it.

(6) An officer of a body corporate may
commit an executive liability offence
whether or not the body corporate has
been prosecuted for, or found guilty of,
the executive liability offence.

Dangerous Substances (Safe Handling) Act 2005

1. Section 87(1) is amended by inserting “, except
section 60” after “Act”.

Egg Industry Act 2002

1. Section 21 is repealed.

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Farm Water Development Act 1985

1. Section 13 is amended by omitting subsections (5) and (6).

Fire Service Act 1979

1. Section 77I is repealed and the following section is substituted:

77I. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the following provisions of this Act:

- (a) section 71;
- (b) section 77B;
- (c) section 77E;
- (d) section 77G;
- (e) section 77GA;
- (f) section 77H;
- (g) section 128(2);

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officer, in relation to a body corporate,
means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and

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- (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a body corporate may commit an executive liability offence

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whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Gas Act 2000

1. Section 131 is repealed and the following section is substituted:

131. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act, except sections 27, 98, 126, 127 and 128;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by

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whatever name called,
who is concerned in, or
takes part in, the
management of the body
corporate.

- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and

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- (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

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Listening Devices Act 1991

1. Section 25 is repealed and the following section is substituted:

25. Liability of officers of corporation – failure to exercise due diligence

(1) For the purposes of this section –

corporation has the same meaning as in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act;

officer, in relation to a corporation, means –

(a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act); or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the corporation.

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- (2) If a corporation commits an executive liability offence, an officer of the corporation also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the corporation.
- (3) In determining whether an officer of a corporation failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the corporation; and
 - (b) whether or not the officer was in a position to influence the corporation in relation to the commission of the offence by the corporation; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the corporation; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a corporation to prove that the corporation would not have been found guilty of the executive liability offence because of a defence available to it.

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- (5) An officer of a corporation may commit an executive liability offence whether or not the corporation has been prosecuted for, or found guilty of, the executive liability offence.

Meat Hygiene Act 1985

- 1.** Section 64 is repealed and the following section is substituted:

64. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against the following provisions of this Act:

- (a) section 30(6);
- (b) section 62;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or

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- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about

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the commission of the offence by the body corporate; and

- (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

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Occupational Licensing (Electrical Work) Regulations 2008

1. Regulation 25 is amended by inserting after subregulation (2) the following subregulation:
 - (3) An offence against this regulation is not an executive liability offence within the meaning of section 87 of the Act.

Occupational Licensing (Gas-fitting Work) Regulations 2010

1. Regulation 12 is amended by inserting after subregulation (2) the following subregulation:
 - (3) An offence against this regulation is not an executive liability offence within the meaning of section 87 of the Act.

Occupational Licensing (Plumbing Work) Regulations 2010

1. Regulation 12 is amended by inserting after subregulation (2) the following subregulation:
 - (3) An offence against this regulation is not an executive liability offence within the meaning of section 87 of the Act.

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Occupational Licensing Act 2005

1. Section 87 is repealed and the following sections are substituted:

87. Liability of officers of corporation – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

corporation has the same meaning as in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act, except section 24, 41(3), 44, 47 and 98(4);

officer, in relation to a corporation, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act); or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the

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management of the
corporation.

- (2) Subject to subsection (3), if a corporation commits an executive liability offence, an officer of the corporation also commits an executive liability offence.
- (3) An officer of a corporation does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the corporation; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a corporation exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the corporation; and
 - (b) whether or not the officer was in a position to influence the corporation in relation to the commission of the offence by the corporation; and

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- (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the corporation; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a corporation to prove that the corporation would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a corporation may commit an executive liability offence whether or not the corporation has been prosecuted for, or found guilty of, the executive liability offence.

87A. Offences by partnerships, &c.

- (1) If a partner in a partnership commits an offence against this Act in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence and liable to the penalty prescribed for the offence.
- (2) If a person who is concerned in the management of an unincorporated association commits an offence against this Act in the course of the activities of the unincorporated association, each other person who is at the time of the commission of the offence concerned in

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the management of the unincorporated association is also guilty of the offence and liable to the penalty prescribed for the offence.

- (3) It is a defence to a charge brought under this section if the person charged proves that –
- (a) the commission of the offence occurred without the knowledge of the person; or
 - (b) the person was not in a position to influence the conduct of the person who committed the offence; or
 - (c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence; or
 - (d) the person who committed the offence would not have been found guilty of the offence by reason of a defence available under this Act.

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Passenger Transport Services Act 2011

1. Section 62 is repealed and the following section is substituted:

62. Liability of officers of bodies corporate – failure to exercise due diligence

(1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability

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offence because of a defence available to it.

- (5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Pharmacy Control Act 2001

1. Section 79 is repealed and the following section is substituted:

79. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or

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- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the

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offence by the body corporate;
and

(d) any other relevant matter.

(4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.

(5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Plant Quarantine Act 1997

1. Section 84 is repealed and the following section is substituted:

84. Liability of officers of bodies corporate – failure to exercise due diligence

(1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against the provisions of this Act, except sections 62, 63,

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100, 101, 101A and 103 and any
regulation made under this Act;

officer, in relation to a body corporate,
means –

- (a) a person who is an officer
of a corporation (within
the meaning of section 9
of the Corporations Act)
of the body corporate; or
 - (b) a person (other than a
person referred to in
paragraph (a)), by
whatever name called,
who is concerned in, or
takes part in, the
management of the body
corporate.
- (2) If a body corporate commits an executive
liability offence, an officer of the body
corporate also commits an executive
liability offence if the officer failed to
exercise due diligence to prevent the
commission of the offence by the body
corporate.
- (3) In determining whether an officer of a
body corporate failed to exercise due
diligence, a court may have regard to –
- (a) what the officer knew, or ought
reasonably to have known, about
the commission of the offence by
the body corporate; and

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- (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Poisons Act 1971

1. Section 86 is repealed and the following section is substituted:

86. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of this Act;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

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- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability

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offence because of a defence available to it.

- (5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Prepaid Funerals Act 2004

1. Section 26 is amended by omitting subsection (2).

Property Agents and Land Transactions Act 2005

1. Section 210 is repealed.

Retirement Villages Act 2004

1. Section 43 is repealed and the following section is substituted:

43. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against the provisions of this Act, except sections 16, 21 and 33;

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officer, in relation to a body corporate,
means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body

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corporate in relation to the
commission of the offence by the
body corporate; and

(c) what steps the officer took, or
could reasonably have taken, to
prevent the commission of the
offence by the body corporate;
and

(d) any other relevant matter.

(4) It is a defence to a charge for an
executive liability offence for an officer
of a body corporate to prove that the
body corporate would not have been
found guilty of the executive liability
offence because of a defence available to
it.

(5) An officer of a body corporate may
commit an executive liability offence
whether or not the body corporate has
been prosecuted for, or found guilty of,
the executive liability offence.

Second-hand Dealers and Pawnbrokers Act 1994

1. Section 22 is repealed.

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Security-sensitive Dangerous Substances Act 2005

1. Section 68 is repealed and the following section is substituted:

68. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against the provisions of this Act, except sections 33, 34, 36, 37(3), 38(2), 40(1), 50, 60, 61 and 76;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the

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management of the body
corporate.

- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the

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commission of the offence by the body corporate; and

(c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and

(d) any other relevant matter.

(5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.

(6) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Tasmanian Qualifications Authority Act 2003

1. Section 66 is repealed.

Taxation Administration Act 1997

1. Section 109 is repealed and the following section is substituted:

109. Liability of officers of bodies corporate – failure to exercise due diligence (evidential burden of proof)

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against any of the provisions of a taxation law;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

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- (2) Subject to subsection (3), if a body corporate commits an executive liability offence, an officer of the body corporate also commits the executive liability offence.
- (3) An officer of a body corporate does not commit an executive liability offence if –
 - (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and

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- (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Unauthorized Documents Act 1986

- 1. Section 6 is repealed and the following section is substituted:
 - 6. **Liability of officers of bodies corporate – failure to exercise due diligence**
 - (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

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executive liability offence is an offence against any of the provisions of this Act;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
- (a) what the officer knew, or ought reasonably to have known, about

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the commission of the offence by
the body corporate; and

- (b) whether or not the officer was in
a position to influence the body
corporate in relation to the
commission of the offence by the
body corporate; and
 - (c) what steps the officer took, or
could reasonably have taken, to
prevent the commission of the
offence by the body corporate;
and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an
executive liability offence for an officer
of a body corporate to prove that the
body corporate would not have been
found guilty of the executive liability
offence because of a defence available to
it.
- (5) An officer of a body corporate may
commit an executive liability offence
whether or not the body corporate has
been prosecuted for, or found guilty of,
the executive liability offence.

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Veterinary Surgeons Act 1987

- 1.** Section 40 is repealed and the following section is substituted:

40. Liability of officers of veterinary services companies – failure to exercise due diligence

- (1) For the purposes of this section –

executive liability offence is an offence against the provisions of this Act, except sections 58 and 58A;

officer, in relation to a veterinary services company, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the veterinary services company; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the veterinary services company;

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veterinary services company has the same meaning as corporation has in section 57A of the Corporations Act.

- (2) If a veterinary services company commits an executive liability offence, an officer of the veterinary services company also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the veterinary services company.
- (3) In determining whether an officer of a veterinary services company failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the veterinary services company; and
 - (b) whether or not the officer was in a position to influence the veterinary services company in relation to the commission of the offence by the veterinary services company; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the

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offence by the veterinary services
company; and

(d) any other relevant matter.

- (4) It is a defence to a charge for an executive liability offence for an officer of a veterinary services company to prove that the veterinary services company would not have been found guilty of the executive liability offence because of a defence available to it.
- (5) An officer of a veterinary services company may commit an executive liability offence whether or not the veterinary services company has been prosecuted for, or found guilty of, the executive liability offence.

Water Management (Electoral and Polling) Regulations
2009

- 1. Regulation 17 is amended by inserting after subregulation (5) the following subregulation:
 - (5A) Subregulation (5) is taken to have been a provision specified in section 291(2) of the Act.

Water Management (Safety of Dams) Regulations 2011

1. Regulation 9 is rescinded and the following regulation is substituted:

- 9. Guidelines and information to be followed by persons constructing, &c., dams**

- (1) A person must not carry out any activity for the purpose of, or in connection with, the design, construction, surveillance or decommissioning of a dam unless the person –
 - (a) carries out the activity, where appropriate, in accordance with the relevant provisions of the ANCOLD guidelines; and
 - (b) carries out the activity generally in accordance with Information Sheet DSC 2C issued by the Dams Safety Committee constituted by the *Dams Safety Act 1978* of New South Wales.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

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- (2) Subregulation (1) is taken to have been a provision specified in section 291(2) of the Act.
- 2. Regulation 10 is amended by inserting after subregulation (4) the following subregulation:
 - (5) Subregulations (2), (3) and (4) are taken to have been provisions specified in section 291(2) of the Act.
- 3. Regulation 13 is amended by inserting after subregulation (2) the following subregulation:
 - (2A) Subregulation (2) is taken to have been a provision specified in section 291(2) of the Act.

Water Management Act 1999

- 1. Section 291 is repealed and the following section is substituted:
 - 291. Liability of officers of bodies corporate – failure to exercise due diligence**
 - (1) In this section –
 - body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
 - executive liability offence* is an offence against a provision of this

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Act, other than the prescribed provisions;

officer, in relation to a body corporate,
means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) For the purposes of subsection (1), the prescribed provisions are sections 23, 52, 61(8), 121(6), 123E, 126, 128, 129, 133, 135C, 135D, 136D, 136E, 136I, 147, 148, 165J(7), 182, 199, 222, 227, 228, 235, 236, 239, 246, 281, 282, 283 and 284.
- (3) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

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- (4) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (5) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (6) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.

Water Management Regulations 2009

1. Regulation 4 is amended by inserting after subregulation (3) the following subregulation:
 - (3A) Subregulation (3) is taken to have been a provision specified in section 291(2) of the Act.

Water and Sewerage Industry (General) Regulations 2009

1. Regulation 5 is amended by inserting after subregulation (2) the following subregulation:
 - (3) An offence against this regulation is not an executive liability offence within the meaning of section 105 of the Act.
2. Regulation 8 is amended by inserting after subregulation (2) the following subregulation:
 - (3) An offence against this regulation is not an executive liability offence within the meaning of section 105 of the Act.
3. Regulation 15 is amended by inserting after subregulation (4) the following subregulation:
 - (5) An offence against this regulation is not an executive liability offence within the meaning of section 105 of the Act.

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Water and Sewerage Industry Act 2008

1. Section 105 is repealed and the following section is substituted:

105. Liability of officers of corporation – failure to exercise due diligence

- (1) For the purposes of this Act –

corporation has the same meaning as in section 57A of the Corporations Act;

executive liability offence is an offence against the provisions of this Act, except sections 56K, 56ZF, 56ZG, 59, 61, 62, 65, 75 and 107;

officer, in relation to a corporation, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act); or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the

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management of the
corporation.

- (2) If a corporation commits an executive liability offence, an officer of the corporation also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the corporation.
- (3) In determining whether an officer of a corporation failed to exercise due diligence, a court may have regard to –
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the corporation; and
 - (b) whether or not the officer was in a position to influence the corporation in relation to the commission of the offence by the corporation; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the corporation; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a corporation to prove that the corporation would not have been found

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guilty of the executive liability offence because of a defence available to it.

- (5) An officer of a corporation may commit an executive liability offence whether or not the corporation has been prosecuted for, or found guilty of, the executive liability offence.

Weed Management Act 1999

1. Section 55 is repealed and the following section is substituted:

55. Liability of officers of bodies corporate – failure to exercise due diligence

- (1) For the purposes of this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence is an offence against the provisions of this Act, except sections 35, 40, 41, 44, 47, 48, 50, 51, 56, 57 and 58 and any regulation made under this Act;

officer, in relation to a body corporate, means –

- (a) a person who is an officer of a corporation (within the meaning of section 9

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of the Corporations Act)
of the body corporate; or

- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to

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prevent the commission of the
offence by the body corporate;
and

(d) any other relevant matter.

- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the executive liability offence because of a defence available to it.
- (5) An officer of a body corporate may commit an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the executive liability offence.