

## **CLAUSE NOTES**

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

- Clause 1: Short title**  
Sets out the name of the Act.
- Clause 2: Commencement**  
provides that the Act commences on 1 January 2013.
- Clause 3: Further amendment of regulations not prevented**  
provides that amendments made to regulations by this Act do not prevent those regulations from being amended or rescinded by a later regulation.
- Clause 4: Amendments to Legislation**  
provides that the legislation specified in Schedule I is amended as specified in that schedule.
- Clause 5: Repeal of Act**  
provides that the Act will be automatically repealed on the three hundred and sixty fifth day from the day on which it commences. This is a standard sunset clause in all amending legislation.

#### **Schedule I – Amendments to Legislation**

Schedule I amends the following Acts and Regulations to give effect to the objectives outlined below:

*Animal (Brands and Movement) Act 1984*

*Animal Farming (Registration) Act 1994*  
*Animal Health Act 1995*  
*Animal Health Regulations 2006*  
*Animal Welfare Act 1993*  
*Building Act 2000*  
*Dangerous Substances (Safe Handling) Act 2005*  
*Egg Industry Act 2002*  
*Farm Water Development Act 1985*  
*Fire Service Act 1979*  
*Gas Act 2000*  
*Listening Devices Act 1991*  
*Meat Hygiene Act 1985*  
*Occupational Licensing (Electrical Work) Regulations 2008*  
*Occupational Licensing (Gas-fitting Work) Regulations 2010*  
*Occupational Licensing (Plumbing Work) Regulations 2010*  
*Occupations Licensing Act 2005*  
*Passenger Transport Services Act 2011*  
*Pharmacy Control Act 2001*  
*Plant Quarantine Act 1997*  
*Poisons Act 1971*  
*Prepaid Funerals Act 2004*  
*Property Agents and Land Transactions Act 2005*  
*Retirement Villages Act 2004*  
*Second-hand Dealers and Pawnbrokers Act 1994*  
*Security-sensitive Dangerous Substances Act 2005*  
*Tasmanian Qualifications Authority Act 2003*  
*Taxation Administration Act 1997*  
*Unauthorized Documents Act 1986*  
*Veterinary Surgeons Act 1987*  
*Water Management (Electoral and Polling) Regulations 2009*  
*Water Management (Safety of Dams) Regulations 2011*  
*Water Management Act 1999*  
*Water Management Regulations 2009*  
*Water and Sewerage Industry (General) Regulations 2009*  
*Water and Sewerage Industry Act 2008*  
*Weed Management Act 1999*

A Directors' Liability Provisions is a provision that impose individual criminal liability on directors or other corporate officers as a consequence of the corporation having committed some offence (the Underlying Offence), beyond the normal liability that applies to a person who directly commits, or who is an ordinary accessory to, the Underlying Offence.

This Bill relates to a COAG undertaking to reform directors' liability provisions. To undertake this reform, COAG developed a set of principles:

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
3. A "designated officer" approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
  - (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);
  - (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and
  - (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
    - i. the obligation on the corporation, and in turn the director, is clear;
    - ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
    - iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.
5. Where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they:

- (a) have encouraged or assisted in the commission of the offence; or
  - (b) have been negligent or reckless in relation to the corporation's offending.
6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

Three types of directors liability have been identified by COAG:

- **Type 1:** requires the prosecution to prove every element of the offence alleged to have been committed by the director. This is the same as virtually all other criminal offences. The director will be presumed to have taken all reasonable steps to prevent the commission of the offence (and therefore not be liable) unless the prosecution proves otherwise.
- **Type 2:** provides that a director is presumed to be guilty of the offence, unless they can produce prima facie evidence to the contrary. Once this prima facie evidence is produced, the prosecution bears the onus of disproving it.
- **Type 3:** is similar to type 2, in that it presumes that the director is guilty, but the director is required to prove the contrary on the balance of probabilities.

This Bill amends the legislation listed so that Tasmanian legislation now complies with the COAG principles. This means that all directors' liability provisions that do not meet the principles have been either removed entirely or amended to a lower level so that they now comply. The Bill does not introduce any new type three provisions.