

Directors' Liability Reform Amendment Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the Directors' Liability Reform Amendment Bill 2012 (the Bill).

Policy objectives and the reasons for them

The objectives of the Bill are to:

- (a) reduce the number of provisions which impose personal and criminal liability on executive officers for corporate fault and only provide for this liability where there is adequate justification;
- (b) reduce red tape and the regulatory burden placed upon Queensland business; and
- (c) achieve greater consistency of approach to the liability of executive officers of corporations with other Australian jurisdictions.

Under Queensland law, a reference to a 'person' includes a reference to a 'corporation' and corporations can be held directly liable for their conduct and can be found guilty of, and punished for, the commission of criminal offences. As a separate legal entity, liability for the offence is imposed on the corporation itself and is not generally attributed to its officers and employees. However, some provisions exist in Queensland (and elsewhere) which impose personal and criminal liability on executive officers for offences committed by their corporations.

In the Bill, an executive officer of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

The Bill reduces, across Queensland's statute book, the number of provisions that hold executive officers personally and criminally liable for offences committed by their corporations. This is in response to the tendency in the past for this liability to be imposed without adequate justification.

The Bill reduces red tape and the regulatory burden placed upon Queensland business and addresses concerns expressed by the business community and legal profession about the number and complexity of provisions which impose personal liability on executive officers for corporate criminal fault. Business groups have suggested that laws of this nature are impacting negatively on entrepreneurialism and economic growth because directors are compelled to adopt an overly cautious approach, in turn curtailing competitiveness, innovation and profitability.

Increased consistency of approach to 'directors' liability' across Australian jurisdictions is a priority of the Council of Australian Governments (COAG). It is one of 27 deregulation priorities under the National Partnership Agreement to deliver a Seamless National Economy 2008-09. Jurisdictional differences in the imposition of personal liability on directors have resulted in confusion and complexity for corporations operating across State boundaries in understanding their legal obligations and responsibilities.

To promote consistency, COAG agreed that jurisdictions would audit their legislation with regard to the same Principles and Guidelines which can be accessed at www.coag.gov.au.

The Principles are, as follows:

- “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.”

The Guidelines provide a practical guide to how the Principles are to be applied.

Under the Guidelines, for a 'directors' liability' provision to be retained, it must be justified according to the following criteria:

- the underlying offence has the potential for significant public harm, which includes:
 - death or disabling injury to individuals;
 - serious damage to the environment and/or serious risk to public health and safety (e.g. offences concerned with preventing toxic contamination);
 - undermining of confidence in financial markets (e.g. trading when insolvent); or
 - otherwise highly morally reprehensible conduct (e.g. serious offences under child protection or animal welfare legislation);
- the size and nature of the penalty applying to the conduct;
- whether the underlying offence (committed by the corporation) is central to the regulatory regime;
- the extent to which directors can directly control the corporate conduct;
- the effectiveness of enforcement against the corporation alone; and
- the extent to which similar offences (in this or other jurisdictions) are subject to directors' liability.

If a 'directors' liability' provision is justified, the type of liability may be one of the following categories, as described in the Guidelines:

- Type 1 liability which is the least onerous, places the onus on the prosecution to prove that the director failed to take reasonable steps to prevent the commission of the offence. This is the default position unless Type 2 or 3 liability can be justified on a case-by-case basis.
- Type 2 liability deems the director liable for the corporation's criminal conduct. However, directors have a defence if they have taken reasonable steps to avoid the contravention. While directors bear the onus of bringing evidence to show that they did take reasonable steps, the prosecution is required to prove beyond reasonable doubt that either those reasonable steps were not taken, or other steps should have been taken.
- Type 3 liability deems a director criminally liable for a corporate breach, thereby reversing the onus of proof. This liability type requires directors to prove that they exercised due diligence, were not in a position to influence the corporation's conduct or took reasonable steps to prevent the commission of the offence by the corporation. Unlike a Type 2 liability, the prosecution is not required to disprove the application of the defence.

The audit of 'directors' liability' provisions for COAG was not concerned with offences which impose direct liability on executive officers for their own acts, as opposed to the acts of the corporation.

Achievement of the Objectives

The Principles and Guidelines have been applied in the audit of Queensland legislation. The Bill reflects the legislative changes that have been identified as necessary across the Queensland statute book to comply with the Principles and Guidelines.

Through the Queensland audit over 3800 executive officer liability offence provisions in over 80 Acts were identified. The Bill will significantly reduce executive officer liability offences and for those remaining offences the type of liability is in some instances reduced from Type 3 to Type 1 or 2.

The following describes the provisions applied in the Bill to provide for the standards of liability mentioned in the Guidelines:

Type 1: Executive liability (standard) provision

An executive officer of a corporation commits an offence if—

- (a) the corporation commits an offence against a stated executive liability provision; and
- (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

The maximum penalty for such contravention is the maximum penalty for an individual for the offence.

In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to—

- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence; and
- (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence; and
- (c) any other relevant matter.

Type 2: Executive liability (evidential burden) provision

If a corporation commits an offence against a stated executive liability provision, each executive officer of the corporation is taken to have also committed an offence against the provision.

However, the executive officer is not taken to have also committed an offence if—

- (a) the officer satisfies the evidential burden of showing that—
 - (i) the officer did not know, and could not reasonably have been expected to have known, of the corporation's conduct constituting its offence; or
 - (ii) the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence; and
- (b) the officer having complied with paragraph (a), the prosecution does not prove the contrary beyond reasonable doubt.

In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to whether the officer was in a position to influence the corporation's conduct in relation to the offence.

Type 3: Executive liability (persuasive burden) provision

If a corporation commits an offence against a stated executive liability provision, each executive officer of the corporation is taken to have also committed an offence against the provision.

However, it is a defence for the executive officer to prove that—

- (a) the officer did not know, and could not reasonably have been expected to have known, of the corporation's conduct constituting its offence; or
- (b) the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence.

In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to whether the officer was in a position to influence the corporation's conduct in relation to the offence.

Executive (deemed) liability provision

If a corporation commits an offence against a provision of an Act containing an executive (deemed) liability provision, each executive officer of the corporation is taken to have also committed the offence if—

- (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
- (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.

Further provisions

For any of the above executive liability provisions, the executive officer may be proceeded against for, and convicted of, an offence whether or not the corporation has been proceeded against for, or convicted of, the offence.

The liability of an executive officer under a Type 1, 2 or 3 executive liability provision does not affect the liability of the corporation for the offence, an executive officer under an executive (deemed) liability provision or any person under the *Criminal Code*, chapter 2.

A reference below to an 'existing executive liability provision' is a reference to a current provision providing for the liability of executive officers of corporations for the relevant Act.

Excluded Acts

Two Acts have been excluded from implementation of the results of the audit – the *Sustainable Planning Act 2009* (which is subject to current comprehensive review) and the *Child Care Act 2006* (which is due to be replaced).

The following Acts are not amended by the Bill because occupational health and safety and environmental legislation were not within the scope of the COAG review: the *Work Health and Safety Act 2011*; the *Environmental Protection Act 1994*; the *Marine Parks Act 2004*; the *Nature Conservation Act 1992*; the *Recreation Areas Management Act 2006*; and the *Vegetation Management Act 1999*.

Alternative ways of achieving policy objectives

Having regard to the Principles and Guidelines, Ministers may, in more fundamentally reviewing their portfolio legislation, consider opportunities for better targeting and streamlining offences to which executive officers' liability is appropriate and whether that liability should be imposed directly or indirectly as a result of corporate offending.

Estimated cost for government implementation

There may be greater costs for government associated with the higher burden of proof in matters to be prosecuted. Should the reduction in executive officers' liability for particular offences be found to promote increased non-compliance by corporations with their regulatory responsibilities, the situation will be monitored and a suitable response developed.

Consistency with fundamental legislative principles

Types 2 and 3 liabilities, which reverse the onus of proof, infringe the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

The offences for which these categories of liability have been provided represent a small fraction of the provisions which are currently subject to Type 3 liability.

They have been assessed against the Principles and Guidelines as not only warranting the imposition of liability on executive officers but also that executive officers be put to proof should a corporation commit the offence.

For Type 2 liability the executive officer must satisfy the evidential burden and for Type 3 liability the executive officer must satisfy the persuasive burden that either:

- the officer did not know, and could not reasonably have been expected to have known, of the corporation's conduct constituting its offence; or
- the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence.

Types 2 and 3 liabilities have been reserved for offences the commission of which creates a risk of significant public harm (particularly, to life, public health and the environment) or are considered essential to protect State revenue collection. Offences in the following categories of harm have been designated with Types 2 and 3 liabilities: animal cruelty; child protection; fire and building safety; public health and safety (in areas including nuclear facilities; water supply, waste services and disposal, food safety; pest management and radiation sources); electricity generation and supply; transport of dangerous goods; marine pollution; environmental and heritage protection; and unauthorised mining activities.

Consultation

General community consultation was not possible due to the timeframes required to introduce the legislation to meet COAG's milestone that legislation to implement the results of the legislative audit be introduced by the end of 2012.

Consistency with legislation of other jurisdictions

The amendments have been developed for consistency with nationally applied Principles and Guidelines.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the Act may be cited as the *Directors' Liability Reform Amendment Act 2012*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of *Animal Care and Protection Act 2001*

Clause 3 provides that the part amends the *Animal Care and Protection Act 2001*.

Clause 4

- replaces section 209, an existing executive liability provision, with Type 2 liability for offences against stated executive liability provisions; and
- inserts new section 209A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to serious animal protection offences, including a breach of the duty of care owed to an animal, animal cruelty and the use of animals for scientific purposes.

Clause 5 makes a consequential amendment to the schedule to replace the definition of 'animal welfare offence'.

Part 3 Amendment of *Biodiscovery Act 2004*

Clause 6 provides that the part amends the *Biodiscovery Act 2004*.

Clause 7

- replaces section 115, an existing executive liability provision, with Type 3 liability for offences against stated executive liability provisions; and
- inserts section 116, an executive (deemed) liability provision for the Act.

The stated executive liability provisions provide for protections in relation to the taking and using of State native biological resources for biodiscovery.

Part 4 Amendment of *Building Act 1975*

Clause 8 provides that the part amends the *Building Act 1975*.

Clause 9

- inserts section 256A which provides for Type 2 liability for offences against stated executive liability provisions; and
- replaces section 257, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to buildings being used according to their classification, fire safety and swimming pool safety.

Part 5 Amendment of *Casino Control Act 1982*

Clause 10 provides that the part amends the *Casino Control Act 1982*.

Clause 11

- replaces section 123, an existing executive liability provision, with Type 1 liability for an offence against section 108(1) which relates to the conduct of unauthorised games in a casino; and
- inserts section 123A, an executive (deemed) liability provision for the Act.

Part 6 Amendment of *Charitable and Non-Profit Gaming Act 1999*

Clause 12 provides that the part amends the *Charitable and Non-Profit Gaming Act 1999*.

Clause 13

- replaces section 170, an existing executive liability provision, with Type 1 liability for an offence against section 20 which relates to the conduct of category 3 games without authority; and
- inserts section 170A, an executive (deemed) liability provision for the Act.

Part 7 Amendment of *Child Employment Act 2006*

Clause 14 provides that the part amends the *Child Employment Act 2006*.

Clause 15

- replaces section 33, an existing executive liability provision, with Type 1 liability for offences against stated executive liability provisions; and
- inserts section 33A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to restrictions on work that may be performed by children.

Clause 16 inserts a definition of 'executive officer' in the schedule.

Part 8 Amendment of *Clean Energy Act 2008*

Clause 17 provides that the part amends the *Clean Energy Act 2008*.

Clause 18 replaces section 27, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 9 Amendment of *Commission for Children and Young People and Child Guardian Act 2000*

Clause 19 provides that the part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

Clause 20

- replaces section 383, an existing executive liability provision, with Type 1 liability for offences against stated executive liability provisions; and
- inserts section 383A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the obligations of employers of persons in regulated employment or in the conduct of regulated businesses which are central to the promotion of the well being of children and protecting them from harm under the blue card system.

Part 10 Amendment of *Criminal Law (Sexual Offences) Act 1978*

Clause 21 provides that the part amends the *Criminal Law (Sexual Offences) Act 1978*.

Clause 22 inserts a definition of 'executive officer' in section 3.

Clause 23

- replaces section 12, an existing executive liability provision, with Type 1 liability for offences against stated executive liability provisions; and
- inserts section 12A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to prohibitions on the publication of complainants' and defendants' identities.

Part 11 Amendment of *Disability Services Act 2006*

Clause 24 provides that the part amends the *Disability Services Act 2006*.

Clauses 25 – 28 omit references to an existing executive liability provision.

Clause 29 replaces section 206, an existing executive liability provision, with Type 1 liability for offences against stated executive liability provisions.

The stated executive liability provisions are probity requirements for persons engaged by department or funded non-government service providers in the disability services sector.

Clause 30 omits a reference to an existing executive liability provision.

Part 12 Amendment of *Domestic Building Contracts Act 2000*

Clause 31 provides that the part amends the *Domestic Building Contracts Act 2000*.

Clause 32 replaces section 95, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 13 Amendment of *Drugs Misuse Act 1986*

Clause 33 provides that the part amends the *Drugs Misuse Act 1986*.

Clause 34 replaces section 43S, an existing executive liability provision, with an executive (deemed) liability provision for part 5A of the Act.

Clause 35 replaces section 113, an existing executive liability provision, with an executive (deemed) liability provision for the 5B of the Act.

Part 14 Amendment of *Education (Queensland College of Teachers) Act 2005*

Clause 36 provides that the part amends the *Education (Queensland College of Teachers) Act 2005*.

Clause 37

- replaces section 228, an existing executive liability provision, with Type 2 liability for offences against stated executive liability provisions; and
- inserts new section 228A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the obligations of an employing authority to only employ approved teachers and to not allow a person to teach if their registration has been suspended.

Clause 38 inserts a definition of 'executive officer' in schedule 3.

Part 15 Amendment of *Electricity Act 1994*

Clause 39 provides that the part amends the *Electricity Act 1994*.

Clause 40

- replaces section 240A, an existing executive liability provision, with Type 1 liability for offences against stated executive liability (standard) provisions;
- inserts section 240B which provides for Type 3 liability for offences against stated executive liability (persuasive burden) provisions; and
- inserts new section 240C, an executive (deemed) liability provision for the Act.

The stated executive liability (standard) provisions relate to the provision of retail services to excluded customers, selling electricity other than as authorised, charging non-market customers other than the notified price for providing services and failure to comply with certain requirements of an independent auditor or the Queensland Competition Authority.

The stated executive liability (persuasive burden) provisions relate to unauthorised operation of a transmission grid or supply network or connection of generating plant to the transmission grid or supply network, the obligations of a defaulting entity and the integrity of gas electricity certificate markets.

Clause 41 inserts a definition of 'executive officer' in schedule 5.

Part 16 Amendment of *Emblems of Queensland Act 2005*

Clause 42 provides that the part amends the *Emblems of Queensland Act 2005*.

Clause 43 replaces section 5, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 17 Amendment of *Explosives Act 1999*

Clause 44 provides that the part amends the *Explosives Act 1999*.

Clause 45

- replaces section 117, an existing executive liability provision, with a provision for Type 3 liability for an offence against section 32(1) which requires the taking of reasonable precautions and use of reasonable care to avoid endangering any person's safety, health or property; and
- inserts new section 117A, an executive (deemed) liability provision for the Act.

Part 18 Amendment of *Fire and Rescue Service Act 1990*

Clause 46 provides that the part amends the *Fire and Rescue Service Act 1990*.

Clause 47

- replaces section 151, an existing executive liability provision, with Type 3 liability for offences against stated executive liability provisions; and
- inserts new section 152, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to a serious risk of harm to human life and property (for example, failure of an occupier of premises to comply with a requisition of the Commissioner to reduce the risk of fire; and maintaining a means of escape from a building, fire safety installations and evacuation plan).

Clause 48 inserts a definition of 'executive officer' in schedule 5.

Part 19 Amendment of *Fisheries Act 1994*

Clause 49 provides that the part amends the *Fisheries Act 1994*.

Clause 50

- replaces section 219A, an existing executive liability provision, with Type 1 liability for stated executive liability provisions; and
- inserts new section 219B, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to a range of offences for the protection of fisheries, for example, non-compliance with development approvals, contravention of quotas, contravention of fishing declarations and the protection of marine plants.

Part 20 Amendment of *Food Act 2006*

Clause 51 provides that the part amends the *Food Act 2006*.

Clause 52

- replaces section 260, an existing executive liability provision, with Type 1 liability for stated executive liability (standard) provisions; and
- inserts section 260A which provides for Type 3 liability for stated executive liability (persuasive burden) provisions; and

- inserts new section 260B, an executive (deemed) liability provision for the Act.

The stated executive liability (standard) provisions relate to the sale of unfit equipment, packaging or labelling material; and the reporting and management of suspected intentional food contamination.

The stated executive liability (persuasive burden) provisions relate to food safety requirements including the handling and sale of unsafe food, false descriptions of food, misleading conduct relating to the sale of food and compliance with the food standards code.

Part 21 Amendment of *Funeral Benefit Business Act 1982*

Clause 53 provides that the part amends the *Funeral Benefit Business Act 1982*.

Clause 54 replaces section 84, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 22 Amendment of *Gaming Machine Act 1991*

Clause 55 provides that the part amends the *Gaming Machine Act 1991*.

Clause 56

- replaces section 352, an existing executive liability provision, with Type 1 liability for an offence against section 325 which relates to a licensee's revenue obligations; and
- inserts section 352A, an executive (deemed) liability provision for the Act.

Part 23 Amendment of *Geothermal Energy Act 2010*

Clause 57 provides that the part amends the *Geothermal Energy Act 2010*.

Clause 58

- replaces section 333, an existing executive liability provision, with Type 3 liability for offending by executive officers against section 327 which relates to restrictions on the carrying out of geothermal activities; and
- inserts new section 333A, an executive (deemed) liability provision for the Act.

Part 24 Amendment of *Greenhouse Gas Storage Act 2009*

Clause 59 provides that the part amends the *Greenhouse Gas Storage Act 2009*.

Clause 60

- replaces section 393, an existing executive liability provision, with Type 3 liability for offending by executive officers against section 386(1) which restricts the carrying out of green house gas storage activities; and
- inserts new section 393A, an executive (deemed) liability provision for the Act.

Part 25 Amendment of *Guide, Hearing and Assistance Dogs Act 2009*

Clause 61 provides that the part amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Clause 62 replaces section 106, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Clause 63 inserts a definition of 'executive officer' in schedule 4.

Part 26 Amendment of *Health Act 1937*

Clause 64 provides that the part amends the *Health Act 1937*.

Clause 65 replaces section 153ZN, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 27 Amendment of *Higher Education (General Provisions) Act 2008*

Clause 66 provides that the part amends the *Higher Education (General Provisions) Act 2008*.

Clause 67 provides for a definition of 'executive officer' for the purposes of section 112 (Responsibility for acts or omissions of representatives).

Clause 68 omits section 113, an existing executive liability provision.

Clause 69 omits the definition of 'executive officer' from schedule 2.

Part 28 Amendment of *Housing Act 2003*

Clause 70 provides that the part amends the *Housing Act 2003*.

Clause 71 replaces section 91, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 29 Amendment of *Industrial Relations Act 1999*

Clause 72 provides that the part amends the *Industrial Relations Act 1999*.

Clause 73 replaces section 673, an existing executive liability provision, with Type 1 liability for stated executive liability provisions.

The stated executive liability provisions relate to the non-payment of wages, allowances and superannuation contributions.

Part 30 Amendment of *Interactive Gambling (Player Protection) Act 1998*

Clause 74 provides that the part amends the *Interactive Gambling (Player Protection) Act 1998*.

Clause 75

- replaces section 247, an existing executive liability provision, with Type 1 liability for an offence against section 119(1) in relation to a licensed provider's revenue obligations; and
- inserts section 247A, an executive (deemed) liability provision for the Act.

Part 31 Amendment of *Introduction Agents Act 2001*

Clause 76 provides that the part amends the *Introduction Agents Act 2001*.

Clause 77 replaces section 94, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 32 Amendment of *Invasion of Privacy Act 1971*

Clause 78 provides that the part amends the *Invasion of Privacy Act 1971*.

Clause 79 omits section 49(2) which provides that it is an offence for an executive officer to knowingly authorise or permit the corporation's commission of an offence and renumbers section 49(3) and (4).

Clause 80 inserts new section 49A, an executive (deemed) liability provision for the Act.

Part 33 Amendment of *Justices Act 1886*

Clause 81 provides that the part amends the *Justices Act 1886*.

Clause 82 omits section 102F(2), an existing executive liability provision.

Clause 83 inserts new section 102FA, an executive (deemed) liability provision for section 102F(1) which relates to the publication of information about a private complaint against a person or to any proceeding in relation to that complaint.

Part 34 Amendment of *Keno Act 1996*

Clause 84 provides that the part amends the *Keno Act 1996*.

Clause 85

- replaces section 226, an existing executive liability provision, with Type 1 liability for an offence against section 116(1) which relates to a keno licensee's revenue obligations; and
- inserts section 226A, an executive (deemed) liability provision for the Act.

Part 35 Amendment of *Land Act 1994*

Clause 86 provides that the part amends the *Land Act 1994*.

Clause 87

- replaces section 431J, an existing executive liability provision, with Type 1 liability for stated executive liability provisions; and
- inserts new section 431K, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to conservation protection and compliance with remedial action notices by lessees and licensees, trespass on non-freehold or trust land and obstruction of officers.

Part 36 Amendment of *Land Sales Act 1984*

Clause 88 provides that the part amends the *Land Sales Act 1984*.

Clause 89 inserts a definition of 'executive officer' in section 6.

Clause 90 replaces section 32B, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 37 Amendment of *Legal Profession Act 2007*

Clause 91 provides that the part amends the *Legal Profession Act 2007*.

Clauses 92 – 97 omit references to an existing executive liability provision.

Clause 98 replaces section 702, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 38 Amendment of *Liquor Act 1992*

Clause 99 provides that the part amends the *Liquor Act 1992*.

Clause 100 amends the definition of 'executive officer'.

Clause 101 amends section 128 to provide that subsection (1)(a) does not impose personal liability on a director of a corporation which has committed an offence under the *Liquor Act 1992*.

Clause 102 inserts new section 229A, an executive (deemed) liability provision for the Act.

Part 39 Amendment of *Lotteries Act 1997*

Clause 103 provides that the part amends the *Lotteries Act 1997*.

Clause 104

- replaces section 212, an existing executive liability provision, with Type 1 liability for an offence against section 99(1) which relates to a primary licensee's revenue obligations; and
- inserts section 212A, an executive (deemed) liability provision for the Act.

Part 40 Amendment of *Manufactured Homes (Residential Parks) Act 2003*

Clause 105 provides that the part amends the *Manufactured Homes (Residential Parks) Act 2003*.

Clause 106 replaces section 139, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 41 Amendment of *Mineral Resources Act 1989*

Clause 107 provides that the part amends the *Mineral Resources Act 1989*.

Clause 108 omits section 412 (Offences and recovery of penalties etc.).

Clause 109 inserts new sections 412A-412C.

New section 412A provides for Type 1 liability for offending by executive officers against section 403(1) which concerns offences about land subject to a mining lease.

New section 412B provides for Type 3 liability for stated executive liability provisions. These stated executive liability provisions relate to obligations about the disclosure and use of confidential information, the provision of false and misleading documents and unauthorised mining.

New section 412C provides for an executive (deemed) liability provision for the Act, except for offences relating to a royalty in respect of a mineral.

Part 42 Amendment of *Motor Racing Events Act 1990*

Clause 110 provides that the part amends the *Motor Racing Events Act 1990*.

Clause 111 replaces section 44, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 43 Amendment of *Nuclear Facilities Prohibition Act 2007*

Clause 112 provides that the part amends the *Nuclear Facilities Prohibition Act 2007*.

Clause 113

- replaces section 22, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 22A which is an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to a prohibition on the construction or operation of a nuclear facility and failure to comply with certain orders relating to activities that constitute or will constitute breaches of the Act.

Clause 114 is consequential in updating cross referencing to current section 22.

Clause 115 inserts a definition of 'executive officer' in the schedule.

Part 44 Amendment of *Offshore Minerals Act 1998*

Clause 116 provides that the part amends the *Offshore Minerals Act 1998*.

Clause 117

- replaces section 443, an existing executive liability provision, with Type 3 liability for offending by executive officers against section 38 which prohibits exploring and mining without appropriate authorisation; and
- inserts new section 443A, an executive (deemed) liability provision for the Act.

Clause 118 inserts a definition of 'executive officer' in schedule 5.

Part 45 Amendment of *Pest Management Act 2001*

Clause 119 provides that the part amends the *Pest Management Act 2001*.

Clause 120

- replaces section 122, an existing executive liability provision, with Type 1 liability for an offence against section 52(2) of the Act for failure to supervise trainees;
- inserts section 122A which provides for Type 3 liability for stated executive liability provisions; and
- inserts new section 122B, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to unauthorised work and carrying out pest management activity when not licensed.

Part 46 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Clause 121 provides that the part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 122

- replaces section 814, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 814A, an executive (deemed) liability provision for the Act, except for offences relating to a petroleum royalty.

The stated executive liability provisions relate to plant and equipment safety, unauthorised activity, the disclosure and use of confidential information and the provision of false and misleading information.

Part 47 Amendment of *Pharmacy Business Ownership Act 2001*

Clause 123 provides that the part amends the *Pharmacy Business Ownership Act 2001*.

Clause 124 replaces section 197, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 48 Amendment of *Place Names Act 1994*

Clause 125 provides that the part amends the *Place Names Act 1994*.

Clause 126 replaces section 17, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 49 Amendment of *Printing and Newspapers Act 1981*

Clause 127 provides that the part amends the *Printing and Newspapers Act 1981*.

Clause 128 replaces section 10, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 50 Amendment of *Private Employment Agents Act 2005*

Clause 129 provides that the part amends the *Private Employment Agents Act 2005*.

Clause 130 replaces section 45, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 51 Amendment of *Private Health Facilities Act 1999*

Clause 131 provides that the part amends the *Private Health Facilities Act 1999*.

Clause 132 replaces section 143, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 52 Amendment of *Property Agents and Motor Dealers Act 2000*

Clause 133 provides that the part amends the *Property Agents and Motor Dealers Act 2000*.

Clauses 134 – 165 omit references to an existing executive liability provision.

Clause 166 replaces section 591, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 53 Amendment of *Prostitution Act 1999*

Clause 167 provides that the part amends the *Prostitution Act 1999*.

Clause 168 replaces section 99, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 54 Amendment of *Public Health Act 2005*

Clause 169 provides that the part amends the *Public Health Act 2005*.

Clause 170

- replaces section 448, an existing executive liability provision, with Type 1 liability for an offence against section 57A(7) of the Act which relates to failure of a water service provider to comply with an improvement notice;
- inserts section 448A which provides for Type 3 liability for stated executive liability provisions; and
- inserts new section 448B, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the safety of drinking water and the supply of recycled water that is not fit for use.

Part 55 Amendment of *Public Health (Infection Control for Personal Appearance Services) Act 2003*

Clause 171 provides that the part amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Clause 172

- replaces section 142, an existing executive liability provision, with Type 1 liability for stated executive liability provisions; and
- inserts new section 142A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the obligation of a business proprietor in relation to minimising the risk of infection of clients and licensing of higher risk personal appearance services.

Part 56 Amendment of *Queensland Building Services Authority Act 1991*

Clause 173 provides that the part amends the *Queensland Building Services Authority Act 1991*.

Clause 174 amends section 103B as a consequence of the next clause.

Clause 175

- replaces section 111B, an existing executive liability provision, with Type 2 liability for stated executive liability provisions; and
- inserts new section 111BA, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the unlawful carrying out of building work and the use of unlicensed persons for fire protection work.

Part 57 Amendment of *Queensland Heritage Act 1992*

Clause 176 provides that the part amends the *Queensland Heritage Act 1992*.

Clause 177

- replaces section 160, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 160A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to contravening a condition of an exemption certificate, non-compliance with notice for conduct of essential maintenance, destruction of protected areas, contravention of condition of permit to enter protected area and contravention of a stop order.

Clause 178 inserts a definition of 'executive officer' in the schedule.

Part 58 Amendment of *Racing Act 2002*

Clause 179 provides that the part amends the *Racing Act 2002*.

Clause 180 replaces section 339, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 59 Amendment of *Radiation Safety Act 1999*

Clause 181 provides that the part amends the *Radiation Safety Act 1999*.

Clause 182

- replaces section 205, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 205A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the relocation of radiation sources and the disposal and abandonment of radioactive material.

Part 60 Amendment of *Residential Services (Accreditation) Act 2002*

Clause 183 provides that the part amends the *Residential Services (Accreditation) Act 2002*.

Clause 184

- replaces section 172, an existing executive liability provision, with Type 2 liability for stated executive liability provisions; and
- inserts new section 172A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to fire safety requirements.

Part 61 Amendment of *Residential Tenancies and Rooming Accommodation Act 2008*

Clause 185 provides that the part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 186

- replaces section 513, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and

- inserts new section 513A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the prohibition on contracting out of requirements of the Act, payment of rental bonds and void terms in contracts.

Part 62 Amendment of *Retirement Villages Act 1999*

Clause 187 provides that the part amends the *Retirement Villages Act 1999*.

Clause 188 replaces section 225, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 63 Amendment of *Second-hand Dealers and Pawnbrokers Act 2003*

Clause 189 provides that the part amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

Clause 190 replaces section 112, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 64 Amendment of *Strategic Cropping Land Act 2011*

Clause 191 provides that the part amends the *Strategic Cropping Land Act 2011*.

Clause 192

- replaces section 250, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 250A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the carrying out of developments having an impact on strategic cropping land.

Part 65 Amendment of *Surveyors Act 2003*

Clause 193 provides that the part amends the *Surveyors Act 2003*.

Clause 194 replaces section 185, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 66 Amendment of *Taxation Administration Act 2001*

Clause 195 provides that the part amends the *Taxation Administration Act 2001*.

Clause 196 replaces section 140, an existing executive liability provision, with Type 3 liability for stated executive liability provisions.

The stated executive liability provisions relate to the use and disclosure of confidential information, wilfully damaging records, providing false and misleading information, self assessments and avoiding taxation.

Part 67 Amendment of *Tobacco and Other Smoking Products Act 1998*

Clause 197 provides that the part amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 198 replaces section 51B, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 68 Amendment of *Tourism Services Act 2003*

Clause 199 provides that the part amends the *Tourism Services Act 2003*.

Clause 200 replaces section 89, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 69 Amendment of *Tow Truck Act 1973*

Clause 201 provides that the part amends the *Tow Truck Act 1973*.

Clause 202

- replaces section 41, an existing executive liability provision, with Type 1 liability for stated executive liability provisions; and
- inserts new section 41A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the requirement to be licensed and to operate in conformity with the authority under the licence.

Part 70 Amendment of the *Trading (Allowable Hours) Act 1990*

Clause 203 provides that the part amends the *Trading (Allowable Hours) Act 1990*.

Clause 204 omits existing executive liability provisions from section 44 (Parties to offences).

Clause 205 inserts new section 44A which provides for an executive (deemed) liability provision for the Act.

Part 71 Amendment of *Transport Operations (Marine Pollution) Act 1995*

Clause 206 provides that the part amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 207

- replaces section 121, an existing executive liability provision, with Type 3 liability for stated executive liability provisions; and
- inserts new section 121A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to offences pertaining to the discharging of oil, noxious and harmful substances, sewage and garbage and breaches of related requirements.

Part 72 Amendment of *Transport Operations (Road Use Management) Act 1995*

Clause 208 provides that the part amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 209

- inserts new section 56A which provides for Type 1 liability for stated executive liability (standard) provisions;
- inserts new section 56B which provides for Type 3 liability for stated executive liability (persuasive burden) provisions; and
- replaces section 57, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

The stated executive liability (standard) provisions are offences for breaching a notice prohibiting the use of a vehicle believed to be unsafe, providing false or misleading information to an officer, and altering, defacing or removing identifying numbers on a motor vehicle.

The stated executive liability (persuasive burden) provisions relate to the transportation of dangerous goods.

Part 73 Amendment of *Transport (Rail Safety) Act 2010*

Clause 210 provides that the part amends the *Transport (Rail Safety) Act 2010*.

Clause 211 replaces section 255, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Clause 212 omits a reference to an existing executive liability provision.

Part 74 Amendment of *Travel Agents Act 1988*

Clause 213 provides that the part amends the *Travel Agents Act 1988*.

Clause 214 replaces section 52, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 75 Amendment of *Vocational Education, Training and Employment Act 2000*

Clause 215 provides that the part amends the *Vocational Education, Training and Employment Act 2000*.

Clause 216 omits section 280, an existing executive liability provision.

Part 76 Amendment of *Wagering Act 1998*

Clause 217 provides that the part amends the *Wagering Act 1998*.

Clause 218

- replaces section 289, an existing executive liability provision, with Type 1 liability for an offence against section 172(1) which relates to an authority holder's revenue obligations; and
- inserts section 289A, an executive (deemed) liability provision for the Act.

Part 77 Amendment of *Waste Reduction and Recycling Act 2011*

Clause 219 provides that the part amends the *Waste Reduction and Recycling Act 2011*.

Clause 220

- replaces section 268, an existing executive liability provision, with Type 1 liability for stated executive liability (standard) provisions;
- inserts section 268A which provides for Type 3 liability for stated executive liability (persuasive burden) provisions; and
- inserts new section 268B, an executive (deemed) liability provision for the Act.

The stated executive liability (standard) provisions relate to the disposal of banned waste and illegal dumping and compliance with certain notices.

The stated executive liability (persuasive burden) provisions relate to failure to comply with conditions of approval, providing false and misleading information, contravening court orders and breaching record keeping requirements.

Part 78 Amendment of the *Water Act 2000*

Clause 221 provides that the part amends the *Water Act 2000*.

Clause 222

- replaces section 828, an existing executive liability provision, with Type 2 liability for stated executive liability provisions; and
- inserts new section 829, an executive (deemed) liability provision for the Act.

The stated executive liability provisions relate to the contravention of certain restrictions on the taking of water and the unauthorised taking, supplying or interfering with water.

Part 79 Amendment of *Water Fluoridation Act 2008*

Clause 223 provides that the part amends the *Water Fluoridation Act 2008*.

Clause 224 replaces section 91, an existing executive liability provision, with an executive (deemed) liability provision for the Act.

Part 80 Amendment of *Water Supply (Safety and Reliability) Act 2008*

Clause 225 provides that the part amends the *Water Supply (Safety and Reliability) Act 2008*.

Clause 226

- replaces section 487, an existing executive liability provision, with Type 1 liability for stated executive liability provisions; and
- inserts new section 487A, an executive (deemed) liability provision for the Act.

The stated executive liability provisions promote public safety in relation to the supply of drinking water, sewerage and water services, recycled water, and the structural safety of dams.

Part 81 Amendment of *Weapons Act 1990*

Clause 227 provides that the part amends the *Weapons Act 1990*.

Clause 228

- amends section 162 (which applies where an offence against this Act is committed by a body or association of persons) as a consequence of the insertion of new section 162A; and
- inserts new section 162A, an executive (deemed) liability provision for the Act.

Part 82 Minor and consequential amendments

Clause 229 provides that Schedule 1 amends the legislation it mentions.

Schedule 1