

South Australia

## **Statutes Amendment (Directors' Liability) Bill 2011**

A BILL FOR

An Act to amend the *Aboriginal Heritage Act 1988*, the *Air Transport (Route Licensing—Passenger Services) Act 2002*, the *Animal Welfare Act 1985*, the *ANZAC Day Commemoration Act 2005*, the *Architectural Practice Act 2009*, the *Authorised Betting Operations Act 2000*, the *Controlled Substances Act 1984*, the *Employment Agents Registration Act 1993*, the *Gaming Machines Act 1992*, the *Health Care Act 2008*, the *Misrepresentation Act 1972*, the *Opal Mining Act 1995*, the *Petroleum Products Regulation Act 1995*, the *Prohibition of Human Cloning for Reproduction Act 2003*, the *Racing (Proprietary Business Licensing) Act 2000*, the *Research Involving Human Embryos Act 2003*, the *Retirement Villages Act 1987*, the *Second-hand Vehicle Dealers Act 1995*, the *Security and Investigation Agents Act 1995*, the *Supported Residential Facilities Act 1992*, the *Survey Act 1992*, the *Taxation Administration Act 1996*, the *Tobacco Products Regulation Act 1997*, the *Travel Agents Act 1986* and the *Veterinary Practice Act 2003*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment (Directors' Liability) Act 2011*.

### **2—Commencement**

5           This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Aboriginal Heritage Act 1988***

### **4—Amendment of section 41—Vicarious liability**

(1) Section 41(2)—delete "an offence against this Act" and substitute:

a prescribed offence

(2) Section 41—after subsection (2) insert:

(3) In this section—

15                               *prescribed offence* means—

(a) an offence against Part 3 (other than an offence against section 20(4), 22(5), 24(10), 32(3) or 36(4)); or

(b) an offence against subsection (1) that relates to such an offence.

### **Part 3—Amendment of *Air Transport (Route Licensing— Passenger Services) Act 2002***

### **5—Repeal of section 23**

Section 23—delete the section

## Part 4—Amendment of *Animal Welfare Act 1985*

### 6—Substitution of section 38

Section 38—delete the section and substitute:

#### 38—Offences by bodies corporate

- 5                   (1) If a body corporate is guilty of a prescribed offence, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- 10                   (2) If a body corporate is guilty of any other offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
- 15                         (a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- (b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- 20                         (c) the member failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is—
- (a) an offence against section 15A, 31B or 31E; or
- 25                            (b) an offence against section 40 that relates to such an offence; or
- (c) an offence against the regulations that is specified as an offence to which subsection (2) does not apply.
- (4) In this section—
- prescribed offence* means—
- 30                            (a) an offence against section 13(1) or (2) or section 14(1), (2) or (4); or
- (b) an offence against section 40 that relates to such an offence.

## Part 5—Amendment of *ANZAC Day Commemoration Act 2005*

### 7—Amendment of section 18—Restriction on public sports and entertainment before 12 noon on ANZAC Day

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Section 18(8)—delete subsection (8)

## Part 6—Amendment of *Architectural Practice Act 2009*

### 8—Repeal of section 64

Section 64—delete the section

## Part 7—Amendment of *Authorised Betting Operations Act 2000*

### 9—Substitution of section 84

Section 84—delete the section and substitute:

#### 84—Offences by bodies corporate

- (1) If a body corporate is guilty of a prescribed offence, the manager of the body corporate and each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the manager or member (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of an offence against this Act other than a prescribed offence, the manager of the body corporate and each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
  - (a) the manager or member (as the case may be) knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
  - (b) the manager or member (as the case may be) was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
  - (c) the manager or member (as the case may be) failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is an offence against section 24(3) or 66 or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply.
- (4) In this section—  
*prescribed offence* means an offence against section 18, 20(1), 27, 32, 33, 40, 61, 62E, 69 or 72.

## Part 8—Amendment of *Controlled Substances Act 1984*

### 10—Repeal of section 45

Section 45—delete the section

## Part 9—Amendment of *Employment Agents Registration Act 1993*

### 11—Repeal of section 27

Section 27—delete the section

## Part 10—Amendment of *Gaming Machines Act 1992*

### 12—Amendment of section 85—Vicarious liability

(1) Section 85—delete subsection (1) and substitute:

(1) If a body corporate that holds a licence is guilty of a prescribed offence, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the person proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(1a) If a body corporate that holds a licence is guilty of any other offence against this Act, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

(a) the person knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the person was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the person failed to exercise due diligence to prevent the commission of the offence.

(1b) Subsection (1a) does not apply if the principal offence is an offence against section 6, 50A, 54, 57, 64, 65, 71 or 80 or is an offence against the regulations that is specified as an offence to which subsection (1a) does not apply.

(1c) If a body corporate that holds a licence is guilty of an offence against this Act, any approved gaming machine manager for the licensed premises is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the manager proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) Section 85—after subsection (3) insert:

(4) In this section—

*prescribed offence* means any offence for which the maximum penalty includes a term of imprisonment of 2 or more years.

## **Part 11—Amendment of *Health Care Act 2008***

### **13—Repeal of section 94**

Section 94—delete the section

## **Part 12—Amendment of *Misrepresentation Act 1972***

### **5   14—Amendment of section 4—Misrepresentation made in the course of trade or business**

Section 4(5)—delete subsection (5)

## **Part 13—Amendment of *Opal Mining Act 1995***

### **15—Amendment of section 82—Offences**

10       Section 82(7)—delete subsection (7)

## **Part 14—Amendment of *Petroleum Products Regulation Act 1995***

### **16—Amendment of section 34—Controls during periods of restriction**

Section 34(6), penalty provisions—delete the penalty provisions and substitute:

15       Maximum penalty:

- (a) in the case of a body corporate—\$250 000;
- (b) in the case of a natural person—\$10 000.

### **17—Amendment of section 35—Controls during rationing periods**

20       Section 35(1) and (2), penalty provisions—delete the penalty provisions and substitute in each case:

Maximum penalty:

- (a) in the case of a body corporate—\$250 000;
- (b) in the case of a natural person—\$10 000.

### **18—Amendment of section 36—Permits**

25       Section 36(5) and (7), penalty provisions—delete the penalty provisions and substitute in each case:

Maximum penalty:

- (a) in the case of a body corporate—\$250 000;
- (b) in the case of a natural person—\$10 000.

### **30   19—Repeal of section 59—Offences by bodies corporate**

Section 59—delete the section



**Part 15—Amendment of *Prohibition of Human Cloning for Reproduction Act 2003***

**20—Repeal of section 29**

Section 29—delete the section

**Part 16—Amendment of *Racing (Proprietary Business Licensing) Act 2000***

**21—Repeal of section 46**

Section 46—delete the section

**Part 17—Amendment of *Research Involving Human Embryos Act 2003***

**22—Repeal of section 34**

Section 34—delete the section

**Part 18—Amendment of *Retirement Villages Act 1987***

**23—Amendment of section 42—Offences**

Section 42(3)—delete subsection (3)

**Part 19—Amendment of *Second-hand Vehicle Dealers Act 1995***

**24—Amendment of section 45—General defence**

Section 45—after its present contents (now to be designated as subsection (1)) insert:

- (2) This section does not apply in relation to a person who is charged with an offence under section 47.

**25—Substitution of section 47**

Section 47—delete the section and substitute:

**47—Offences by bodies corporate**

- (1) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

- (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- (c) the director failed to exercise due diligence to prevent the commission of the offence.

(3) Subsection (2) does not apply if the principal offence is an offence against section 14, 16, 17, 18, 20, 21, 22, 25A or 42 or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply.

(4) In this section—

*prescribed offence* means an offence against section 7, 13, 13A, or 32.

## **Part 20—Amendment of *Security and Investigation Agents Act 1995***

### **26—Amendment of section 40—General defence**

Section 40—after its present contents (now to be designated as subsection (1)) insert:

(2) This section does not apply in relation to a person who is charged with an offence under section 42.

### **27—Substitution of section 42**

Section 42—delete the section and substitute:

#### **42—Offences by bodies corporate**

(1) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

- (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the director failed to exercise due diligence to prevent the commission of the offence.

(3) Subsection (2) does not apply if the principal offence is an offence against section 18, 19, 22, 23C, 23G, 23P or 36 or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply.

(4) In this section—

*prescribed offence* means an offence against section 6, 12A, 13, 23(1), 23(2) or 30.

## **Part 21—Amendment of *Supported Residential Facilities Act 1992***

### **28—Amendment of section 52—Prosecutions**

Section 52(3)—delete subsection (3)

## **Part 22—Amendment of *Survey Act 1992***

### **29—Repeal of section 55B**

Section 55B—delete the section

## **Part 23—Amendment of *Taxation Administration Act 1996***

### **30—Amendment of section 109—General criminal defence**

Section 109—after its present contents (now to be designated as subsection (1)) insert:

(2) This section does not apply in relation to a person who is charged with an offence under section 110.

### **31—Amendment of section 110—Offences by persons involved in management of corporations**

Section 110—delete subsections (1) and (2) and substitute:

(1) If a body corporate is guilty of a prescribed offence, a person who is concerned in, or takes part in, the management of the corporation is guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless the person proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against a taxation law, each person who is concerned in, or takes part in, the management of the corporation is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

- (a) the person knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- (b) the person was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- (c) the person failed to exercise due diligence to prevent the commission of the offence.

(2a) Subsection (2) does not apply if the principal offence is—

- (a) an offence against sections 75, 76, and 106 of this Act; or
- (b) an offence against sections 5(7) and 5(9) of the *Land Tax Act 1936*; or
- (c) an offence against section 97 of the *Payroll Tax Act 2009*; or
- (d) an offence against section 31L of the *Stamp Duties Act 1923*; or
- (e) an offence against the regulations made under a taxation law that is specified as an offence to which subsection (2) does not apply.

(2b) In this section—

***prescribed offence*** means an offence against—

- (a) section 59 of this Act; or
- (b) section 14 of the *Debits Tax Act 1994*.

## **Part 24—Amendment of *Tobacco Products Regulation Act 1997***

### **32—Amendment of section 81—Vicarious liability**

Section 81(1)—delete subsection (1)

## **Part 25—Amendment of *Travel Agents Act 1986***

### **33—Amendment of section 38—General defence**

Section 38—after its present contents (now to be designated as subsection (1)) insert:

- (2) This section does not apply in relation to a person who is charged with an offence under section 40.

### 34—Substitution of section 40

Section 40—delete the section and substitute:

#### 40—Offences by bodies corporate

- 5 (1) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- 10 (2) If a body corporate is guilty of any other offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
- 15 (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- 20 (c) the director failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is an offence against section 14A(2), 33 or 34 or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply.
- 25 (4) In this section—

*prescribed offence* means an offence against section 7, 13, 18C or 35.

### Part 26—Amendment of *Veterinary Practice Act 2003*

#### 35—Repeal of section 73

30 Section 73—delete the section