

House of Assembly—No 106A

As reported with amendments, report agreed to and passed remaining stages,
6 March 2013

South Australia

Statutes Amendment (Directors' Liability) Bill 2012

A BILL FOR

An Act to amend various Acts to modify or remove the liability of directors and other executives of bodies corporate for offences committed by the bodies corporate.

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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 2012*.

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 under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Agricultural and Veterinary Products (Control of Use) Act 2002*

4—Substitution of section 34

Section 34—delete the section and substitute:

34—Offences by body corporate

- (1) If a body corporate is guilty of a prescribed offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member or the manager (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 any other offence against this Act (other than an offence against the regulations), each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
 - (a) the member or manager (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 member or manager (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 member or manager (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 14(5), 16, 27, 29, 30(7), 32 or 38.
- (4) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.
- (5) The regulations may make provision in relation to the criminal liability of a member of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.
- (6) In this section—
prescribed offence means an offence against section 6, 7, 8, 11, 15, 22 or 30(6).

5—Amendment of section 36—General defence

Section 36—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 34.

5 **Part 3—Amendment of *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981***

6—Amendment of section 23—Offence in relation to obtaining permission to carry out mining operations

Section 23(2)—delete subsection (2)

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

7—Amendment of section 38—Offences by bodies corporate

- (1) Section 38(2)—after "this Act" insert:

(other than an offence against the regulations)

- (2) Section 38(3)—delete paragraph (c)

- 15 (3) Section 38—after subsection (3) insert:

(3a) The regulations may make provision in relation to the criminal liability of members of the governing body of a body corporate that is guilty of an offence against the regulations.

Part 5—Amendment of *Aquaculture Act 2001*

20 **8—Amendment of section 88—Liability of directors**

Section 88(1)—delete subsection (1) and substitute:

- (1) If a corporation is guilty of an offence against section 17 or 58, each director of the corporation is guilty of an offence and is 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.

(1a) If a corporation is guilty of an offence against section 16 or 52, each director of the corporation is guilty of an offence and is liable to the same penalty as is prescribed for the principal offence when committed by a natural person 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 corporation 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.

9—Amendment of section 89—General defence

Section 89—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) This section does not apply in relation to a person who is charged with an offence under section 88.

Part 6—Amendment of *Authorised Betting Operations Act 2000*

10—Amendment of section 84—Offences by bodies corporate

- 10 (1) Section 84(2)—delete "an offence against this Act other than a prescribed offence" and substitute:
- any other offence against this Act (other than an offence against the regulations)
- (2) Section 84(3)—delete "or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply"
- 15 (3) Section 84—after subsection (3) insert:
- (3a) The regulations may make provision in relation to the criminal liability of members of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.

Part 7—Amendment of *Building Work Contractors Act 1995*

20 **11—Repeal of section 56**

Section 56—delete the section

Part 8—Amendment of *Citrus Industry Act 2005*

12—Repeal of section 24

Section 24—delete the section

25 **Part 9—Amendment of *Classification (Publications, Films and Computer Games) Act 1995***

13—Amendment of section 86—Proceedings against body corporate

Section 86(4)—delete subsection (4) and substitute:

- 30 (4) 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 when committed by a natural person unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(5) In this section—

prescribed offence means an offence against section 34(1), 42(1), 51(1), 59 or 62(1).

Part 10—Amendment of *Collections for Charitable Purposes Act 1939*

14—Amendment of section 15—Accounts, statements and audit

(1) Section 15(7)—delete subsection (7) and substitute:

(7) The holder of a licence who contravenes or fails to comply with a provision of this section is guilty of an offence.

Penalty: Division 6 fine.

(7a) If a body corporate is guilty of an offence against this section, 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 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

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

(7b) If an unincorporated body is guilty of an offence against this section, each member of the unincorporated body 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 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

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

(2) Section 15(8)—after "this section" insert:

other than an offence against subsection (7a) or 7(b)

Part 11—Amendment of *Conveyancers Act 1994*

15—Repeal of section 61

Section 61—delete the section

Part 12—Amendment of *Development Act 1993*

16—Amendment of section 48—Governor to give decision on development

Section 48(14), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

Default penalty: \$500.

17—Amendment of section 49—Crown development and public infrastructure

Section 49(14a), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

Default penalty: \$500.

18—Amendment of section 49A—Electricity infrastructure development

Section 49A(16), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

Default penalty: \$500.

19—Amendment of section 69—Emergency orders

Section 69(12), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

Default penalty: \$200.

20—Amendment of section 71—Fire safety

Section 71(14), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

Default penalty: \$200.

21—Amendment of section 105—General provisions relating to offences

(1) Section 105(3)—delete subsection (3) and substitute:

(3) If a body corporate is guilty of a prescribed offence, each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the chief executive officer (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.

5 (3a) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

10 (a) the director or chief executive officer (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 director or chief executive officer (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

15 (c) the director or chief executive officer (as the case may be) failed to exercise due diligence to prevent the commission of the offence.

20 (3b) Subsection (3a) does not apply if the principal offence is an offence against section 19, 20, 31A, 45A, 48C, 54, 54A, 56B, 59, 60, 66, 67, 69(7), 71(4), 71(10), 71AA, 74, 84, 88B, 91, 92, 93, 95, 101, 102, or 103.

(3c) The regulations may make provision in relation to the criminal liability of a director or the chief executive of a body corporate that is guilty of an offence against the regulations.

25 (2) Section 105—after subsection (7) insert:

(8) In this section—

prescribed offence means an offence against section 44, 45, 48, 49, 49A, 55, 57A, 69(12), 71(14) or 106A(8).

Part 13—Amendment of *Electricity Act 1996*

30 22—Amendment of section 61—Electrical installation work

(1) Section 61(1), penalty provision—delete "\$5 000" and substitute:

\$10 000

(2) Section 61(4), penalty provision—delete "\$5 000" and substitute:

\$10 000

35 23—Amendment of section 61A—Unsafe installation of electrical equipment

Section 61A, penalty provision—delete "\$5 000" and substitute:

\$10 000

24—Amendment of section 84—Unlawful interference with electricity infrastructure or electrical installation

Section 84(1), penalty provision—delete "\$10 000" and substitute:

\$20 000

5 **25—Amendment of section 85—Unlawful taking of electricity, interference with meters or positioning of lines**

Section 85(1), penalty provision—delete "\$10 000" and substitute:

\$20 000

26—Amendment of section 92—General defence

10 Section 92—after subsection (2) insert:

- (3) Subsection (1) does not apply in relation to a person who is charged with an offence under section 93.

27—Substitution of section 93

Section 93—delete the section and substitute:

15 **93—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 when committed by a natural person unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) In this section—

prescribed offence means an offence against section 15, 25, 60 or 61.

Part 14—Amendment of *Emergency Management Act 2004*

25 **28—Amendment of section 28—Failure to comply with directions**

Section 28—after its present contents (now to be designated as subsection (1)) insert:

(2) If a body corporate is guilty of an offence against this section, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the manager (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.

(3) A person may be prosecuted and convicted of an offence under subsection (2) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

29—Repeal of section 35

Section 35—delete the section

Part 15—Amendment of *Energy Products (Safety and Efficiency) Act 2000*

30—Amendment of section 8—Prohibition of sale or use of unsafe energy products

5 Section 8—after subsection (5) insert:

(6) If a body corporate is guilty of an offence against this section, 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—

10 (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

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

31—Amendment of section 17—General defence

Section 17—after its present contents (now to be designated as subsection (1)) insert:

20 (2) This section does not apply in relation to a person who is charged with an offence under section 8(6).

32—Repeal of section 18

Section 18—delete the section

Part 16—Amendment of *Essential Services Act 1981*

33—Repeal of section 10B

Section 10B—delete the section

Part 17—Amendment of *Essential Services Commission Act 2002*

34—Repeal of section 46

Section 46—delete the section

Part 18—Amendment of *Fair Trading Act 1987*

35—Amendment of section 43—Unlawful actions and representations

Section 43(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

In the case of a body corporate—\$25 000.

In any other case—\$5 000 or imprisonment for 6 months.

36—Amendment of section 88—Defences

Section 88—after subsection (4) insert:

- 5 (5) This section does not apply in relation to a person who is charged with an offence under section 90(3).

37—Amendment of section 90—Vicarious liability

Section 90(3)—delete subsection (3) and substitute:

- 10 (3) If a body corporate is guilty of an offence against section 28A or 37, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person 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
 - (c) the director failed to exercise due diligence to prevent the commission of the offence.

Part 19—Amendment of *Fire and Emergency Services Act 2005*

38—Amendment of section 86—Fire safety at premises

Section 86(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 25 (a) if the offender is a body corporate—\$50 000;
(b) if the offender is a natural person—\$10 000.

39—Substitution of section 138

Section 138—delete the section and substitute:

138—Offences by body corporate

- 30 (1) If a body corporate is guilty of an offence against this Act (other than an offence against the regulations), each director and the manager of the body corporate are guilty of an offence and is liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- 35 (a) the director or manager (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 director or manager (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 director or manager (as the case may be) failed to exercise due diligence to prevent the commission of the offence.

5 (2) Subsection (1) does not apply if the principal offence is an offence against section 40, 79, 87, 89, 91, 125, 126, 131, 133, 134, 135, 136, or 142.

(3) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

10 (4) The regulations may make provision in relation to the criminal liability of a director or manager of a body corporate that is guilty of an offence against the regulations.

Part 20—Amendment of *Fisheries Management Act 2007*

40—Amendment of section 71—Taking, injuring etc aquatic mammals and protected species prohibited

15 Section 71—after subsection (3) insert:

(4) Subsection (3)(a) does not apply in relation to a person who is charged with an offence under section 120(1) or (1a).

41—Amendment of section 120—Offences committed by bodies corporate or agents, or involving registered boats

20 (1) Section 120(1)—delete subsection (1) and substitute:

(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 when committed by a natural person unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

25 (1a) If a body corporate is guilty of an offence against this Act (other than a prescribed offence or an offence against the regulations), each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

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

35 (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

40 (c) the director 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 59, 67, 73, 75, 76, 77, 84, 88 or 91.

(2) Section 120—after subsection (4) insert:

(5) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

5 (6) In this section—

prescribed offence means—

- (a) an offence against section 52, 53, 72, 74, 78 or 102; or
- (b) an offence against section 71 that involves an aquatic mammal.

10 **Part 21—Amendment of *Gaming Machines Act 1992***

42—Amendment of section 85—Vicarious liability

(1) Section 85(1a)—after "this Act" insert:

(other than an offence against the regulations)

15 (2) Section 85(1b)—delete "or is an offence against the regulations that is specified as an offence to which subsection (1a) does not apply"

(3) Section 85(1c)—after "this Act" insert:

(other than an offence against the regulations)

(4) Section 85(2)—after "this Act" insert:

(other than an offence against the regulations)

20 (5) Section 85—after subsection (3) insert:

(3a) The regulations may make provision in relation to the criminal liability for a body corporate that is guilty of an offence against the regulations of—

- 25 (a) a person occupying a position of authority in the body corporate; or
- (b) a gaming machine manager for the associated licensed premises for which the body corporate holds the licence.

Part 22—Amendment of *Gas Act 1997*

30 **43—Amendment of section 81—Unlawful interference with distribution system or gas installation**

Section 81, penalty provision—delete "\$10 000" and substitute:

\$20 000

44—Amendment of section 82—Unlawful abstraction or diversion of gas

Section 82(1), penalty provision—delete "\$10 000" and substitute:

35 \$20 000

45—Amendment of section 88—General defence

Section 88—after subsection (2) insert:

- (3) Subsection (1) does not apply in relation to a person who is charged with an offence under section 89.

46—Substitution of section 89

Section 89—delete the section and substitute:

89—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 (other than an offence against the regulations), 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 10, 34, 34D, 40, 44, 56, 57, 57A, 58, 68, 69, 70, 78, 81, 82, 83, 85 or 86.
- (4) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.
- (5) In this section—

prescribed offence means an offence against section 19, 27, 37, 37A or 55.

Part 23—Amendment of *Genetically Modified Crops Management Act 2004*

47—Amendment of section 22—Offences by bodies corporate

(1) Section 22(1)—delete subsection (1) and substitute:

5 (1) If a body corporate is guilty of an offence against this Act (other than
an offence against section 20 or an offence against the regulations),
each member of the governing body, and the manager, of the body
corporate are guilty of an offence and liable to the same penalty as is
prescribed for the principal offence unless the member or the
10 manager (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) Section 22—after subsection (2) insert:

15 (3) The regulations may make provision in relation to the criminal
liability of a member of the governing body, or the manager, of a
body corporate that is guilty of an offence against the regulations.

Part 24—Amendment of *Harbors and Navigation Act 1993*

48—Repeal of section 86

Section 86—delete the section

Part 25—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

49—Substitution of section 72

Section 72—delete the section and substitute:

72—Vicarious liability for offences

25 (1) If a body corporate 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 when committed by an individual unless the person
occupying the position of authority proves that he or she could not by
30 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 (other than an offence against the regulations), 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.

(3) Subsection (2) does not apply if the principal offence is an offence against section 42, 44, 45, 47, 50(4), 58, 64, 65, or 69.

(4) The regulations may make provision in relation to the criminal liability of a person occupying a position of authority in a body corporate that is guilty of an offence against the regulations.

(5) In this section—

prescribed offence means an offence against section 50(1), 51, 55 or 67.

Part 26—Amendment of *Heritage Places Act 1993*

50—Amendment of section 36—Damage or neglect

Section 36(3), penalty provision—delete "\$25 000" and substitute:

\$50 000

51—Amendment of section 42—General provisions relating to offences

(1) Section 42(2)—delete subsection (2) and substitute:

- (2) If a body corporate is guilty of a prescribed offence, each director and the chief executive officer of the body corporate are guilty of an offence and, subject to subsection (4), liable to the same penalty as is prescribed for the principal offence unless the director or the chief executive officer (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.

(2a) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each director and the chief executive officer of the body corporate are guilty of an offence and, subject to subsection (4), liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

- (a) the director or chief executive officer (as the case may be) knew, or ought to have known, that there was a significant risk that such an offence would be committed; and
- (b) the director or chief executive officer (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 director or chief executive officer (as the case may be) failed to exercise due diligence to prevent the commission of the offence.

(2b) Subsection (2a) does not apply if the principal offence is an offence against section 27(2), 29A or 41.

(2) Section 42(3)—after "subsection (2)" insert:

or (2a)

(3) Subsection 42(4)(b)—delete "or (2)" and substitute:

, (2) or (2a)

(4) Section 42—after subsection (5) insert:

(6) The regulations may make provision in relation to the criminal liability of a director or the chief executive of a body corporate that is guilty of an offence against the regulations.

(7) In this section—

prescribed offence means—an offence against section 30, 36(1), 38, 38A or 39A.

Part 27—Amendment of *Highways Act 1926*

52—Amendment of section 39G—Power to close roads or railway lines

Section 39G(4)—delete "subsection (2)" and substitute:

subsection (3)

53—Repeal of section 41A

Section 41A—delete the section

Part 28—Amendment of *Hydroponics Industry Control Act 2009*

54—Substitution of section 31

Section 31—delete the section and substitute:

31—Offences by bodies corporate

5 (1) If a body corporate is guilty of an offence against section 10 or 11, 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 (other than an offence against the regulations), 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

20 (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, 17, 21, 22, 23, 24, 26, 27 or 28.

25 (4) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

55—Amendment of section 33—General defence

Section 33—after its present contents (now to be designated as subsection (1)) insert:

30 (2) This section does not apply in relation to a person who is charged with an offence under section 31.

Part 29—Amendment of *Irrigation Act 2009*

56—Amendment of section 40—Protection and facilitation of systems

Section 40(8), penalty provision—delete the penalty provision and substitute:

35 Maximum penalty:

(a) in the case of a body corporate—\$100 000;

(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

57—Amendment of section 62—Protection of irrigation system etc

Section 62, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—\$100 000;

(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

58—Amendment of section 63—Unauthorised use of water

Section 63, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—\$100 000;

(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

59—Repeal of section 64

Section 64—delete the section

Part 30—Amendment of *Land Agents Act 1994*

60—Repeal of section 59

Section 59—delete the section

Part 31—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

61—Repeal of section 39

Section 39—delete the section

Part 32—Amendment of *Land Valuers Act 1994*

62—Repeal of section 20

Section 20—delete the section

Part 33—Amendment of *Legal Practitioners Act 1981*

63—Substitution of section 27

Section 27—delete the section and substitute:

27—Criminal liability of directors

- 5 (1) If a company is guilty of an offence against this Act or any other Act
(other than an offence against the regulations), each director of the
company is guilty of an offence and liable to the same penalty as is
prescribed for the principal offence if the prosecution proves that—
- 10 (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
company in relation to the commission of such an offence;
and
- 15 (c) the director failed to exercise due diligence to prevent the
commission of the offence.
- (2) Subsection (1) does not apply if the principal offence is an offence
against section 21, 22, 23, 23D, 24, 25, 33, 35, 36, 37, 41, 44, 49, 50,
52AA, 52AAB, 62, 73, 76, 77A, 84, 94, 95B or 95BA.
- 20 (3) The regulations may make provision in relation to the criminal
liability of a director of a company that is guilty of an offence against
the regulations.

Part 34—Amendment of *Liquor Licensing Act 1997*

64—Amendment of section 134—Vicarious liability

25 Section 134(1) and (2)—delete subsections (1) and (2)

Part 35—Amendment of *Livestock Act 1997*

65—Amendment of section 27—Requirement to report notifiable conditions

- (1) Section 27(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

30 In the case of an exotic disease—\$10 000;

In any other case—\$2 500.

Expiation fee: For an offence against paragraph (a) or (b)—\$210.

- (2) Section 27(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

35 In the case of an exotic disease—\$10 000;

In any other case—\$2 500.

Expiation fee: \$210.

66—Amendment of section 33—Prohibition on entry of livestock or other property absolutely or without required health certificate etc

5 Section 33(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

67—Amendment of section 78—General defence

Section 78—after its present contents (now to be designated as subsection (1)) insert:

- 10 (2) This section does not apply in relation to a person who is charged with an offence under section 80.

68—Substitution of section 80

Section 80—delete the section and substitute:

80—Offences by bodies corporate

- 15 (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.
- 20 (2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), 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—
- 25 (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
- 30 (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 25, 26A, 28, 35, 37(5), 38(6), 38(7), 53, 54, 62, 69, 70, 72(6) or 75.
- 35 (4) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

(5) In this section—

prescribed offence means an offence against section 20, 24, 27(1) or 33(5).

Part 36—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

69—Amendment of section 25—Offence in relation to obtaining permission to carry out mining operations

Section 25(2)—delete subsection (2)

Part 37—Amendment of *Motor Vehicles Act 1959*

70—Repeal of section 143A

Section 143A—delete the section

Part 38—Amendment of *Natural Resources Management Act 2004*

71—Amendment of section 218—General defence

Section 218—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 219.

72—Substitution of section 219

Section 219—delete the section and substitute:

219—Offences by bodies corporate

(1) If a body corporate is guilty of a prescribed offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the member or the manager (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 any other offence against this Act (other than an offence against the regulations), each member of the governing body, and the manager, of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

(a) the member or manager (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

- 5
- (b) the member or manager (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 member or manager (as the case may be) failed to exercise due diligence to prevent the commission of the offence.
- 10
- (3) Subsection (2) does not apply if the principal offence is—
- (a) an offence against section 11, 32, 71, 106, 132, 144, 145, 169, 175(2) or (3), 180, 183(11) 186, 187, 188, 190, 192, 193, 195, 214 or 215; or
- 15
- (b) an offence against section 127(6) that relates to the breach of a prescribed condition of a water management authorisation; or
- (c) an offence against section 176 or 177 that relates to a Category 3 animal or plant; or
- (d) an offence against section 178 that relates to a Category 3 plant; or
- 20
- (e) an offence against section 181 that relates to a Category 3 animal or plant; or
- (f) an offence against Schedule 1 clause 3.
- (4) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.
- 25
- (5) The regulations may make provision in relation to the criminal liability of a member of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.
- (6) In this section—
- prescribed offence* means—
- 30
- (a) an offence against section 123(12), 130, 131 or 183(9); or
- (b) an offence against section 181 that relates to a Category 1 or Category 2 animal or plant.

Part 39—Amendment of *Passenger Transport Act 1994*

73—Amendment of section 5—Application of Act

35 Section 5(5), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

74—Amendment of section 27—Accreditation of operators

Section 27(1), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

75—Amendment of section 28—Accreditation of drivers

Section 28(1), penalty provision—delete "Division 6 fine" and substitute:

Division 5 fine

76—Amendment of section 29—Accreditation of centralised booking services

5 Section 29(2), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

77—Amendment of section 31—Conditions

Section 31(7), penalty provision—delete the penalty provision and substitute:

Penalty:

10 (a) In the case of an accreditation under Division 1—Division 3 fine;

(b) In the case of an accreditation under Division 2—Division 5 fine;

(c) In the case of an accreditation under Division 3—Division 3 fine.

Expiation fee: In the case of an accreditation under Division 2—\$315.

78—Amendment of section 35—Related matters

15 Section 35(1), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

79—Amendment of section 36—Disciplinary powers

Section 36(9), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

20 **80—Amendment of section 39—Service contracts**

Section 39(4), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

81—Amendment of section 42—Assignment of rights under contract

Section 42(1), penalty provision—delete the penalty provision and substitute:

25 Penalty: Division 3 fine.

82—Amendment of section 45—Requirement for licence

Section 45(8), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

83—Amendment of section 49—Transfer of licences

30 Section 49(1), penalty provision—delete the penalty provision and substitute:

Penalty: Division 3 fine.

84—Amendment of section 54—Inspections

- (1) Section 54(14), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

- (2) Section 54(15), penalty provision—delete the penalty provision and substitute:

Penalty: Division 4 fine.

- (3) Section 54(18), penalty provision—delete the penalty provision and substitute:

Penalty: Division 5 fine.

Expiation fee: \$315.

85—Amendment of section 59—General provisions relating to offences

Section 59(1)—delete subsection (1)

Part 40—Amendment of *Plant Health Act 2009*

86—Amendment of section 54—Vicarious liability

Section 54—delete subsection (2) and substitute:

(2) 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 when committed by a natural person unless the member proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(3) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), 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 when committed by a natural person if the prosecution proves that—

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

(4) Subsection (3) does not apply if the principal offence is—

- (a) an offence against section 6(2), 11(2), 12, 13, 14, 15, 23, 24, 32, 33, 38, 39, 42, 45, 48 or 51; or
- (b) an offence against section 7 that is a minor offence within the meaning of that section; or
- (c) an offence against section 8 that is a minor offence within the meaning of that section; or

- (d) an offence against section 20(3) consisting of a contravention of a prescribed condition of accreditation.
- (5) The regulations may make provision in relation to the criminal liability of a member of the governing body of a body corporate that is guilty of an offence against the regulations.
- (6) In this section—
- prescribed offence* means—
- (a) an offence against section 6(1), 9, 11(1) or 28; or
- (b) an offence against section 7 other than a minor offence within the meaning of that section; or
- (c) an offence against section 8 other than a minor offence within the meaning of that section; or
- (d) an offence against section 20(3) other than a contravention of a prescribed condition.

Part 41—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

87—Repeal of section 38

Section 38—delete the section

Part 42—Amendment of *Primary Produce (Food Safety Schemes) Act 2004*

88—Amendment of section 43—General defence

Section 43—after subsection (2) insert:

- (3) This section does not apply in relation to a person who is charged with an offence under section 44.

89—Substitution of section 44

Section 44—delete the section and substitute:

44—Offences by bodies corporate

- (1) If a body corporate is guilty of a prescribed offence, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director or the manager (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) In this section—
- prescribed offence* means an offence against section 12, 16(2), 32 or 35.

Part 43—Amendment of *Renmark Irrigation Trust Act 2009*

90—Amendment of section 41—Protection and facilitation of systems

Section 41(8), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 5 (a) in the case of a body corporate—\$100 000;
(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

91—Amendment of section 67—Protection of irrigation system etc

Section 67, penalty provision—delete the penalty provision and substitute:

10 Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

92—Amendment of section 68—Unauthorised use of water

15 Section 68, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
(b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

93—Repeal of section 69

20 Section 69—delete the section

Part 44—Amendment of *Second-hand Vehicle Dealers Act 1995*

94—Amendment of section 47—Offences by bodies corporate

(1) Section 47(2)—after "this Act" insert:

25 (other than an offence against the regulations)

(2) Section 47(3)—delete "or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply"

(3) Section 47—after subsection (3) insert:

30 (3a) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

Part 45—Amendment of *Security and Investigation Agents Act 1995*

95—Amendment of section 42—Offences by bodies corporate

(1) Section 42(2)—after "this Act" insert:

(other than an offence against the regulations)

(2) Section 42(3)—delete "or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply"

(3) Section 42—after subsection (3) insert:

(3a) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

Part 46—Amendment of *South Australian Public Health Act 2011*

96—Amendment of section 59—Defence of due diligence

Section 59—after subsection (2) insert:

(3) This section does not apply in relation to a person who is charged with an offence under section 106.

97—Substitution of section 106

Section 106—delete the section and substitute:

106—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 an offence against section 57(3), 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 when committed by a natural person if the prosecution proves that—
 - (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
 - (c) the member failed to exercise due diligence to prevent the commission of the offence.

(3) In this section—

prescribed offence means an offence against section 57(1), 57(2), 58 or 92(10).

Part 47—Amendment of *Taxation Administration Act 1996*

5 98—Amendment of section 110—Offences by persons involved in management of corporations

(1) Section 110—delete "body corporate" wherever occurring and substitute in each case:
corporation

(2) Section 110(2)—after "taxation law" insert:

10 (other than an offence against the regulations)

(3) Section 110(2a)—delete paragraph (e)

(4) Section 110(2b)—delete the subsection

(5) After subsection (5) insert:

15 (6) The regulations may make provision in relation to the criminal liability of a person who is concerned in, or takes part in, the management of a corporation that is guilty of an offence against the regulations.

(7) In this section—

prescribed offence means an offence against—

20 (a) section 59 of this Act; or

(b) section 14 of the *Debits Tax Act 1994*.

Part 48—Amendment of *Teachers Registration and Standards Act 2004*

25 99—Amendment of section 59—Liability of members of governing bodies of bodies corporate

Section 59(1)—delete subsection (1) and substitute:

30 (1) If a body corporate is guilty of an offence against this Act (other than an offence against the regulations), each member of the governing body, and the manager, of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

35 (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 member failed to exercise due diligence to prevent the commission of the offence.

(1a) The regulations may make provision in relation to the criminal liability of a member of the governing body, and the manager, of a body corporate that is guilty of an offence against the regulations.

100—Amendment of section 60—General defence

Section 60—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 59.

Part 49—Amendment of *Travel Agents Act 1986*

101—Amendment of section 40—Offences by bodies corporate

(1) Section 40(2)—after "this Act" insert:

(other than an offence against the regulations)

(2) Section 40(3)—delete "or is an offence against the regulations that is specified as an offence to which subsection (2) does not apply"

(3) Section 40—after subsection (3) insert:

(3a) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

Part 50—Amendment of *Water Efficiency Labelling and Standards Act 2006*

102—Amendment of section 72B—Liability of officers of body corporate

(1) Section 72B(1) and (2)—delete subsections (1) and (2)

(2) Section 72B(4)—delete "(1) or"

Part 51—Amendment of *Water Industry Act 2012*

103—Amendment of section 103—General defence

Section 103—after subsection (2) insert:

(3) Subsection (1) does not apply in relation to a person who is charged with an offence under section 104.

104—Substitution of section 104

Section 104—delete the section and substitute:

104—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 when committed by a natural person 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 (other than an offence against the regulations), each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person 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 11, 36, 39, 45, 49, 50(5), 50(6), 51, 53, 54, 56(5), 57, 59, 60, 69, 70, 76, 77, 78, 79, 80, 88, 92, 97, 100, 101, 108 or Schedule 2 Part 8.
- 25
- (4) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.
- 30
- (5) In this section—
- prescribed offence* means an offence against section 18, 27, 67 or 68.