

Directors' Liability Reform Bill 2015

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Western Australia

LEGISLATIVE COUNCIL

Directors' Liability Reform Bill 2015

A Bill for

An Act to amend *The Criminal Code* and various other Acts in relation to the criminal liability of directors and other persons involved in the management of bodies corporate, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Directors' Liability Reform Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *The Criminal Code* amended**

2 **3. Act amended**

3 This Part amends *The Criminal Code*.

4 **4. Part I Chapter VI inserted**

5 At the end of Part I insert:

6

7 **Chapter VI — Criminal liability of officers of**
8 **bodies corporate**

9 **44A. Overview**

10 (1) This Chapter contains a set of standard provisions
11 (sections 44C, 44D and 44E) that set out certain
12 circumstances in which directors and other officers of a
13 body corporate can incur criminal liability as a result of
14 an offence by the body corporate.

15 (2) Only one of sections 44C, 44D and 44E can apply to an
16 offence.

17 **44B. Term used: officer**

18 In this Chapter —
19 *officer*, in relation to a body corporate, has the meaning
20 given in the *Corporations Act 2001* (Commonwealth)
21 section 9.

22 **44C. Officer liability for corporate offence: onus on**
23 **prosecution to prove reasonable steps not taken**

24 (1) This section applies to an offence if a provision of this
25 Code, or of another written law, expressly provides that
26 it applies to the offence.

s. 4

- 1 (2) If a body corporate is guilty of an offence to which this
2 section applies, an officer of the body corporate is also
3 guilty of the offence if the officer failed to take all
4 reasonable steps to prevent the commission of the
5 offence by the body corporate.
- 6 (3) In determining whether things done or omitted to be
7 done by the officer constitute reasonable steps, a court
8 must have regard to —
- 9 (a) what the officer knew, or ought to have known,
10 about the commission of the offence by the
11 body corporate; and
- 12 (b) whether the officer was in a position to
13 influence the conduct of the body corporate in
14 relation to the commission of the offence; and
- 15 (c) any other relevant matter.
- 16 **44D. Officer liability for corporate offence: onus on**
17 **prosecution to prove reasonable steps not taken if**
18 **evidence suggesting reasonable steps adduced**
- 19 (1) This section applies to an offence if a provision of this
20 Code, or of another written law, expressly provides that
21 it applies to the offence.
- 22 (2) If a body corporate is guilty of an offence to which this
23 section applies, an officer of the body corporate is also
24 guilty of the offence unless the officer took all
25 reasonable steps to prevent the commission of the
26 offence by the body corporate.
- 27 (3) The prosecutor has the onus of proving that the officer
28 failed to take all reasonable steps to prevent the
29 commission of the offence by the body corporate if,
30 and only if, evidence that suggests a reasonable
31 possibility that the officer took all reasonable steps is
32 first adduced by or on behalf of the officer.

- 1 (4) In determining whether things done or omitted to be
2 done by the officer constitute reasonable steps, a court
3 must have regard to —
- 4 (a) what the officer knew, or ought to have known,
5 about the commission of the offence by the
6 body corporate; and
- 7 (b) whether the officer was in a position to
8 influence the conduct of the body corporate in
9 relation to the commission of the offence; and
- 10 (c) any other relevant matter.
- 11 **44E. Officer liability for corporate offence: onus on**
12 **officer to prove reasonable steps taken**
- 13 (1) This section applies to an offence if a provision of this
14 Code, or of another written law, expressly provides that
15 it applies to the offence.
- 16 (2) If a body corporate is guilty of an offence to which this
17 section applies, an officer of the body corporate is also
18 guilty of the offence unless the officer took all
19 reasonable steps to prevent the commission of the
20 offence by the body corporate.
- 21 (3) The officer has the onus of proving that the officer took
22 all reasonable steps to prevent the commission of the
23 offence by the body corporate.
- 24 (4) In determining whether things done or omitted to be
25 done by the officer constitute reasonable steps, a court
26 must have regard to —
- 27 (a) what the officer knew, or ought to have known,
28 about the commission of the offence by the
29 body corporate; and
- 30 (b) whether the officer was in a position to
31 influence the conduct of the body corporate in
32 relation to the commission of the offence; and
- 33 (c) any other relevant matter.

s. 4

- 1 **44F. Further provisions**
- 2 (1) This Chapter does not affect the liability of a body
3 corporate for any offence.
- 4 (2) This Chapter does not affect the liability of an officer,
5 or any other person, under Chapters II, LVII, LVIII and
6 LIX.
- 7 (3) An officer of a body corporate may be charged with,
8 and convicted of, an offence in accordance with
9 section 44C, 44D or 44E whether or not the body
10 corporate is charged with, or convicted of, the principal
11 offence committed by the body corporate.
- 12 (4) If an officer of a body corporate who is charged with
13 an offence in accordance with section 44C, 44D or 44E
14 claims that the body corporate would have a defence if
15 it were charged with the offence —
- 16 (a) the onus of proving the defence is on the
17 officer; and
- 18 (b) the standard of proof required is the standard
19 that would apply to the body corporate in
20 relation to the defence.
- 21 (5) Subsection (4) does not limit any other defence
22 available to the officer.
- 23 **44G. Penalties**
- 24 (1) This section applies to an offence if —
- 25 (a) section 44C, 44D or 44E applies to the offence;
26 and
- 27 (b) the specified penalty for the offence applies
28 only to a body corporate.
- 29 (2) If this section applies to an offence, the maximum
30 penalty for the offence if committed by an officer of a

- 1 body corporate is one-fifth of the maximum penalty
2 that could be imposed on the body corporate.
- 3 (3) This section does not limit the *Sentencing Act 1995*.
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Part 3 — Amendments to other Acts

Division 1 — *Aboriginal Heritage Act 1972* amended

5. Act amended

This Division amends the *Aboriginal Heritage Act 1972*.

6. Section 57 amended

Delete section 57(2).

7. Section 58 inserted

After section 57 insert:

58. Liability of officers for offence by body corporate

The Criminal Code section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in the Table.

Table

s. 17	s. 43(7)
s. 55	

Division 2 — *Animal Welfare Act 2002* amended

8. Act amended

This Division amends the *Animal Welfare Act 2002*.

1 **9. Section 80 replaced**

2 Delete section 80 and insert:

3

4 **80. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 6(1) and (2)	s. 7(1)
s. 13	s. 19(1)
s. 31(1)	s. 32(1)
s. 50(7)	

10 **81A. Unincorporated scientific establishments**

- 11 (1) In this section —
- 12 *officer*, in relation to a scientific establishment that is
13 neither an individual nor a body corporate, has the
14 meaning given in the *Corporations Act 2001*
15 (Commonwealth) section 9.
- 16 (2) If a licence is issued in respect of a scientific
17 establishment that is neither an individual nor a body
18 corporate, every officer of the establishment has the
19 same rights and duties as a licensee, whether or not the
20 officer is named on the licence.
- 21 (3) If —
- 22 (a) a licence is issued in respect of a scientific
23 establishment that is neither an individual nor a
24 body corporate; and

1 (b) an officer of the establishment (the *principal*
2 *officer*) commits an offence under this Act
3 (other than an offence under Part 3 that is
4 unrelated to the activity authorised by the
5 licence),

6 each other officer of the establishment also commits
7 the offence if that officer failed to take all reasonable
8 steps to prevent the commission of the offence by the
9 principal officer.

10 (4) In determining whether things done or omitted to be
11 done by the officer constitute reasonable steps, a court
12 must have regard to —

13 (a) what the officer knew, or ought to have known,
14 about the commission of the offence by the
15 principal officer; and

16 (b) whether the officer was in a position to
17 influence the conduct of the principal officer in
18 relation to the commission of the offence; and

19 (c) any other relevant matter.
20

21 **Division 3 — *Anzac Day Act 1960* amended**

22 **10. Act amended**

23 This Division amends the *Anzac Day Act 1960*.

24 **11. Section 4 amended**

25 In section 4(4) delete “held, and each member of the managing
26 body or committee of that racing club,” and insert:

27

28 held
29

1 **12. Section 5 amended**

2 In section 5(2) delete “club, and each member of the managing
3 body or committee of that racing club,” and insert:

4
5 club
6

7 **13. Section 6 amended**

8 In section 6(4) delete “held, and each member of the managing
9 body or committee of that club, association or body,” and insert:

10
11 held
12

13 **14. Section 7 amended**

14 In section 7(2):

15 (a) delete “body, and each member of its managing body or
16 committee,” and insert:

17
18 body
19

20 (b) delete “\$400, but no such member is liable if it is shown
21 that such failure occurred without his knowledge or
22 approval.” and insert:

23
24 \$400.
25

26 **Division 4 — *Architects Act 2004* amended**

27 **15. Act amended**

28 This Division amends the *Architects Act 2004*.

1 **16. Section 76 replaced**

2 Delete section 76 and insert:

3

4 **76. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 14(1)	s. 15
s. 42(2)	s. 64(2) and (3)
s. 65(1)	s. 66
s. 67(2), (3) and (4)	s. 69(1)
s. 70	

10

11 **Division 5 — *Auction Sales Act 1973* amended**

12 **17. Act amended**

13 This Division amends the *Auction Sales Act 1973*.

14 **18. Section 35 amended**

15 Delete section 35(4).

16 **Division 6 — *Betting Control Act 1954* amended**

17 **19. Act amended**

18 This Division amends the *Betting Control Act 1954*.

1 **20. Section 27G replaced**

2 Delete section 27G and insert:

3

4 **27G. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 11(6)	s. 11B(11) and (14)
s. 11C(9) and (13)	s. 11E(5)
s. 11G(1) and (2)	s. 20A(2)
s. 20B(6)	s. 23(1)
s. 24(1)	s. 26C(1)
s. 27	s. 27A(2) and (3)
s. 27D(2A)	s. 27H(2)
s. 28C	s. 28D

10

11 **21. Section 27H amended**

12 Delete section 27H(3).

13 Note: The heading to amended section 27H is to read:

14 **Liability of natural persons, partners, bodies corporate and**
15 **licensed managers**

1 **Division 7 — *Biosecurity and Agriculture Management***
2 ***Act 2007* amended**

3 **22. Act amended**

4 This Division amends the *Biosecurity and Agriculture*
5 *Management Act 2007*.

6 **23. Section 110 replaced**

7 Delete section 110 and insert:
8

9 **110. Liability of officers for offence by body corporate**

10 *The Criminal Code* section 44C (which provides for
11 the criminal liability of officers of a body corporate)
12 applies to an offence under a provision listed in the
13 Table.

14

Table

s. 15(1), (2) and (3)	s. 17
s. 18	s. 23(1) and (3)
s. 24(2) and (4)	s. 25
s. 26(1)	s. 29
s. 30(2) and (3)	s. 32
s. 56(1), (2), (3), (4), (5) and (6)	s. 57
s. 58(2)	s. 60

s. 61(1)	s. 62(1)
s. 84(5)	s. 92

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2

Division 8 — *Building Services (Complaint Resolution and Administration) Act 2011* amended

3

4

24. Act amended

5

This Division amends the *Building Services (Complaint Resolution and Administration) Act 2011*.

6

7

25. Section 105 replaced

8

Delete section 105 and insert:

9

10

105. Liability of officers for offence by body corporate

11

The Criminal Code section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in the Table.

12

13

14

15

Table

s. 53(1)	s. 71(2)
s. 80(7)	

16

17

Division 9 — *Building Services (Registration) Act 2011* amended

18

26. Act amended

19

This Division amends the *Building Services (Registration) Act 2011*.

20

1 **27. Section 97 replaced**

2 Delete section 97 and insert:

3

4 **97. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 4(1)	s. 5(2)
s. 6(1)	s. 7(1) and (5)
s. 22(2)	s. 25
s. 33(1)	s. 34(1) and (3)
s. 35(1), (2) and (3)	s. 36(1)
s. 37(1)	s. 99

10

11 **Division 10 — Charitable Collections Act 1946 amended**

12 **28. Act amended**

13 This Division amends the *Charitable Collections Act 1946*.

14 **29. Section 15 amended**

15 Delete section 15(4).

1 **30. Section 16A inserted**

2 After section 15 insert:

3

4 **16A. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under section 15(3).

8

9 **Division 11 — *Criminal Procedure Act 2004* amended**

10 **31. Act amended**

11 This Division amends the *Criminal Procedure Act 2004*.

12 **32. Section 180 replaced**

13 Delete section 180 and insert:

14

15 **180. Liability of officers for offence by body corporate**

16 *The Criminal Code* section 44C (which provides for
17 the criminal liability of officers of a body corporate)
18 applies to an offence under a provision listed in the
19 Table.

20

Table

s. 137(5)	s. 155(4)
s. 170(4)	

21

1 **Division 12 — *Dangerous Goods Safety Act 2004* amended**

2 **33. Act amended**

3 This Division amends the *Dangerous Goods Safety Act 2004*.

4 **34. Section 61 replaced**

5 Delete section 61 and insert:

6

7 **61. Liability of officers for offence by body corporate**

8 *The Criminal Code* section 44C (which provides for
9 the criminal liability of officers of a body corporate)
10 applies to an offence under a provision listed in the
11 Table.

12

Table

s. 8(1)	s. 9(2)
s. 10	s. 11(2)
s. 12	s. 13
s. 14(1)	s. 15(1)
s. 16	s. 17(2)
s. 24	s. 47(7)
s. 55(1), (2) and (3)	s. 65(5)

13

14 **Division 13 — *Debt Collectors Licensing Act 1964* amended**

15 **35. Act amended**

16 This Division amends the *Debt Collectors Licensing Act 1964*.

1 **36. Section 23 deleted**

2 Delete section 23.

3 **Division 14 — *Emergency Management Act 2005* amended**

4 **37. Act amended**

5 This Division amends the *Emergency Management Act 2005*.

6 **38. Section 98 deleted**

7 Delete section 98.

8 **Division 15 — *Employment Agents Act 1976* amended**

9 **39. Act amended**

10 This Division amends the *Employment Agents Act 1976*.

11 **40. Section 30 amended**

12 Delete section 30(3).

13 **Division 16 — *Energy Operators (Powers) Act 1979* amended**

14 **41. Act amended**

15 This Division amends the *Energy Operators (Powers) Act 1979*.

16 **42. Section 86 amended**

17 Delete section 86(1) to (2a).

18 Note: The heading to amended section 86 is to read:

19 **Liability of bodies corporate**

20 **Division 17 — *Energy Safety Act 2006* amended**

21 **43. Act amended**

22 This Division amends the *Energy Safety Act 2006*.

1 **44. Section 35 deleted**

2 Delete section 35.

3 **Division 18 — *Environmental Protection Act 1986* amended**

4 **45. Act amended**

5 This Division amends the *Environmental Protection Act 1986*.

6 **46. Section 118 amended**

7 Delete section 118(1) to (3).

8 Note: The heading to amended section 118 is to read:

9 **Establishing state of mind of body corporate**

10 **47. Section 119A inserted**

11 After section 118 insert:

12

13 **119A. Liability of officers for offence by body corporate**

14 *The Criminal Code* section 44E (which provides for the
15 criminal liability of officers of a body corporate)
16 applies to Tier 1 offences and Tier 2 offences.

17

18 **Division 19 — *Exotic Diseases of Animals Act 1993* amended**

19 **48. Act amended**

20 This Division amends the *Exotic Diseases of Animals Act 1993*.

1 **49. Section 58 replaced**

2 Delete section 58 and insert:
3

4 **58. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9 **Table**

s. 8	s. 9(2)
s. 10(1)	s. 22
s. 32(1)	s. 37(1)
s. 39(3)	

10

11 **Division 20 — Fair Trading Act 2010 amended**

12 **50. Act amended**

13 This Division amends the *Fair Trading Act 2010*.

14 **51. Section 95A inserted**

15 After section 94 insert:
16

17 **95A. Liability of officers for offence by body corporate**

18 *The Criminal Code* section 44C (which provides for
19 the criminal liability of officers of a body corporate)
20 applies to an offence under this Act.
21

1 **52. Section 95 amended**

2 Delete section 95(1) to (3).

3 Note: The heading to amended section 95 is to read:

4 **Vicarious liability of employers, principals and other persons**

5 **Division 21 — *Firearms Act 1973* amended**

6 **53. Act amended**

7 This Division amends the *Firearms Act 1973*.

8 **54. Section 21B amended**

9 (1) In section 21B(1):

10 (a) delete paragraph (a);

11 (b) delete “each” and insert:

12

13 the person

14

15 (2) Delete section 21B(2) to (4).

16 Note: The heading to amended section 21B is to read:

17 **Liability for certain offences**

18 **55. Section 21C inserted**

19 After section 21B insert:

20

21 **21C. Liability of officers for offence by body corporate**

22 (1) In this section —

23 ***relevant offence*** means an offence under one of the
24 following provisions, when committed in the course of
25 the business carried on under a Dealer’s Licence, a
26 Repairer’s Licence or a Manufacturer’s Licence —

27 (a) section 19(2) and (4);

- 1 (b) section 23(1), (5), (7) and (9).
2 (2) *The Criminal Code* section 44C (which provides for
3 the criminal liability of officers of a body corporate)
4 applies to a relevant offence.
5

6 **Division 22 — *Fish Resources Management Act 1994* amended**

7 **56. Act amended**

8 This Division amends the *Fish Resources Management*
9 *Act 1994*.

10 **57. Section 204 replaced**

11 Delete section 204 and insert:
12

13 **204. Liability of officers for offence by body corporate**

14 *The Criminal Code* section 44C (which provides for
15 the criminal liability of officers of a body corporate)
16 applies to an offence under a provision listed in the
17 Table.

18 **Table**

s. 7(7)	s. 46	s. 47
s. 48A(2)	s. 49	s. 74(1) and (2)
s. 77(1) and (2)	s. 79(1)	s. 82(1)
s. 86	s. 88	s. 90
s. 96	s. 97A	s. 100A(1), (2), (3), (4) and (5)
s. 104	s. 105	s. 155(2)

s. 170(1)	s. 171(1)	s. 172
s. 173(1)	s. 174(1)	s. 175(1)
s. 176	s. 225(4) and (5)	s. 255(3)

1

2

Division 23 — Food Act 2008 amended

3

58. Act amended

4

This Division amends the *Food Act 2008*.

5

59. Section 128 replaced

6

Delete section 128 and insert:

7

8

128. Liability of officers for offence by body corporate

9

(1) *The Criminal Code* section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 22(1).

10

11

12

(2) *The Criminal Code* section 44E (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in the Table.

13

14

15

16

Table

s. 14(1) and (2)	s. 15(1) and (2)
s. 16(1), 2, 3 and (4)	s. 17(1) and (2)
s. 18(1) and (2)	s. 19(1), (2) and (3)

s. 20(1)	s. 21(1) and (2)
s. 22(2), (3) and (4)	

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Division 24 — *Gaming and Wagering Commission Act 1987* amended

60. Act amended

This Division amends the *Gaming and Wagering Commission Act 1987*.

61. Section 37 replaced

Delete section 37 and insert:

37. Liability of officers for offence by body corporate

The Criminal Code section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in the Table.

Table

s. 22(5)	s. 29(1) and (2)
s. 41(3)	s. 42(4)
s. 44(1)	s. 45(1), (2), (3) and (4)
s. 57(3)	s. 58(4)
s. 85(4)	s. 88(3)
s. 89(2)	s. 91(1) and (4)

Directors' Liability Reform Bill 2015

Part 3 Amendments to other Acts

Division 25 Gas Corporation (Business Disposal) Act 1999 amended

s. 62

s. 93	s. 104(4)
s. 104C(4)	s. 104E(1), (2) and (3)
s. 104F(1) and (4)	s. 104L(1), (2) and (3)
s. 104M(1), (2) and (3)	s. 106(1) and (2)
s. 109H(2)	

1

2 **62. Section 99 amended**

3 In section 99(d) delete “who pursuant to section 37 would be
4 liable in relation to a conviction of that body for an offence of
5 failing to pay those moneys on demand.” and insert:

6

7 who, if that body committed an offence of failing to
8 pay those moneys on demand, would be criminally
9 liable in accordance with *The Criminal Code*
10 section 44C.

11

12 **Division 25 — Gas Corporation (Business Disposal)**
13 **Act 1999 amended**

14 **63. Act amended**

15 This Division amends the *Gas Corporation (Business Disposal)*
16 *Act 1999*.

17 **64. Section 13 deleted**

18 Delete section 13.

1 **Division 26 — *Gold Corporation Act 1987* amended**

2 **65. Act amended**

3 This Division amends the *Gold Corporation Act 1987*.

4 **66. Section 76 deleted**

5 Delete section 76.

6 **Division 27 — *Heritage of Western Australia Act 1990* amended**

7 **67. Act amended**

8 This Division amends the *Heritage of Western Australia*
9 *Act 1990*.

10 **68. Section 68 amended**

11 Delete section 68(2) and (3).

12 **69. Section 69A inserted**

13 After section 68 insert:
14

15 **69A. Liability of officers for offence by body corporate**

16 *The Criminal Code* section 44C (which provides for
17 the criminal liability of officers of a body corporate)
18 applies to an offence under a provision listed in the
19 Table.

20 **Table**

s. 61(1) and (2)	s. 62(3)
s. 79(1)	s. 80(3)

21

1 **70. Section 70 amended**

2 In section 70(3) delete “section 68” and insert:

3

4 section 68 or 69A

5

6 **Division 28 — *Home Building Contracts Act 1991* amended**

7 **71. Act amended**

8 This Division amends the *Home Building Contracts Act 1991*.

9 **72. Section 30 replaced**

10 Delete section 30 and insert:

11

12 **30. Liability of officers for offence by body corporate**

13 *The Criminal Code* section 44C (which provides for
14 the criminal liability of officers of a body corporate)
15 applies to an offence under a provision listed in the
16 Table.

17

Table

s. 5(3)	s. 10(1) and (5)
s. 12(1)	s. 13(1)
s. 14(1)	s. 25C(1) and (2)
s. 25J(2) and (3)	s. 25L(1)
s. 28(3)	

18

1 **Division 29 — *Hope Valley-Wattleup Redevelopment***
2 ***Act 2000* amended**

3 **73. Act amended**

4 This Division amends the *Hope Valley-Wattleup Redevelopment*
5 *Act 2000*.

6 **74. Section 30 deleted**

7 Delete section 30.

8 **Division 30 — *Hospitals and Health Services Act 1927* amended**

9 **75. Act amended**

10 This Division amends the *Hospitals and Health Services*
11 *Act 1927*.

12 **76. Section 26M replaced**

13 Delete section 26M and insert:
14

15 **26M. Liability of officers for offence by body corporate**

16 *The Criminal Code* section 44C (which provides for
17 the criminal liability of officers of a body corporate)
18 applies to an offence under a provision listed in the
19 Table.

20 **Table**

s. 26DA(1)	s. 26G(2)
s. 26K	s. 26L

21

1 **Division 31 — *Liquor Control Act 1988* amended**

2 **77. Act amended**

3 This Division amends the *Liquor Control Act 1988*.

4 **78. Section 96 amended**

5 In section 96(3) after “section 164” insert:

6

7 or 165A

8

9 **79. Section 164 amended**

10 In section 164(1):

11 (a) delete paragraph (a);

12 (b) delete “each” and insert:

13

14 the manager

15

16 **80. Section 165A inserted**

17 After section 164 insert:

18

19 **165A. Liability of officers for offence by body corporate**

20 *The Criminal Code* section 44C (which provides for
21 the criminal liability of officers of a body corporate)
22 applies to an offence under a provision listed in the
23 Table.

24

Table

s. 37A	s. 77(1)
s. 100(2), (2a) and (8)	s. 101(3)

s. 102(1)	s. 104(1)
s. 106(1) and (3)	s. 109(4A)
s. 110(1), (2), (3) and (7)	s. 115(1) and (2)
s. 117(7)	s. 119A(5)
s. 121(1) and (2)	s. 122(2)
s. 126D(2)	s. 152M
s. 154(3)	

1

2 **81. Section 167 amended**

3 In section 167(2)(b) delete “section 101, 164 or 165” and insert:

4

5 section 101, 164, 165A or 165

6

7 **Division 32 — *Litter Act 1979* amended**

8 **82. Act amended**

9 This Division amends the *Litter Act 1979*.

10 **83. Section 24C deleted**

11 Delete section 24C.

12 **Division 33 — *Major Events (Aerial Advertising)***
 13 ***Act 2009* amended**

14 **84. Act amended**

15 This Division amends the *Major Events (Aerial Advertising)*
 16 *Act 2009*.

1 **85. Section 3 amended**

2 In section 3 delete the definition of *officer*.

3 **86. Section 16 replaced**

4 Delete section 16 and insert:

5

6 **16. Liability of officers for offence by body corporate**

7 *The Criminal Code* section 44C (which provides for
8 the criminal liability of officers of a body corporate)
9 applies to an offence under section 11(1).

10

11 **Division 34 — Marketing of Potatoes Act 1946 amended**

12 **87. Act amended**

13 This Division amends the *Marketing of Potatoes Act 1946*.

14 **88. Section 41A deleted**

15 Delete section 41A.

16 **Division 35 — Medicines and Poisons Act 2014 amended**

17 **89. Act amended**

18 This Division amends the *Medicines and Poisons Act 2014*.

19 **90. Section 118 replaced**

20 Delete section 118 and insert:

21

22 **118. Liability of officers for offence by body corporate**

23 (1) *The Criminal Code* section 44C (which provides for
24 the criminal liability of officers of a body corporate)

1 applies to an offence under a provision listed in
2 Table A.

3 **Table A**

s. 13(1) and (4)	s. 15(1) and (2)
s. 19	s. 20(1)
s. 23(1) and (2)	s. 24(2)
s. 54(1)	s. 64
s. 106(1)	s. 107(2)

4 (2) *The Criminal Code* section 44E (which provides for the
5 criminal liability of officers of a body corporate)
6 applies to an offence under a provision listed in
7 Table B.

8 **Table B**

s. 14(1), (2) and (4)	s. 16(1), (2) and (3)
s. 17	s. 18(1) and (2)
s. 21(3)	s. 22(1)
s. 24(4)	

9

10 **Division 36 — Metropolitan Redevelopment Authority**
11 **Act 2011 amended**

12 **91. Act amended**

13 This Division amends the *Metropolitan Redevelopment*
14 *Authority Act 2011*.

1 **92. Section 129 deleted**

2 Delete section 129.

3 **Division 37 — *Mines Safety and Inspection Act 1994* amended**

4 **93. Act amended**

5 This Division amends the *Mines Safety and Inspection*
6 *Act 1994*.

7 **94. Section 4 amended**

8 In section 4(4) delete “100A(2)(a)(iii)” and insert:

9

10 100(2)(b)

11

12 **95. Sections 100 and 100A replaced**

13 Delete sections 100 and 100A and insert:

14

15 **100. Liability of officers for offence by body corporate**

16 (1) *The Criminal Code* section 44C (which provides for
17 the criminal liability of officers of a body corporate)
18 applies to an offence under a provision listed in
19 Table A.

20

Table A

s. 9A(2)	s. 12A(2)
s. 12C(2)	s. 13A(2)
s. 15(1) and (2)	s. 15E(2)
s. 15F(4)	s. 29(4)

s. 31A(1)	s. 31AG(1)
s. 31AJ(1)	s. 31BM(5)
s. 41(1)	s. 68A(4)
s. 68B(3)	s. 75(3)
s. 81(2)	

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- (2) If—
- (a) a body corporate commits an offence under a provision listed in Table B; and
 - (b) an officer of the body corporate (as defined in *The Criminal Code* section 44B) knew that the commission of the offence would be likely to cause the death of, or serious harm to, a person to whom a duty was owed,

The Criminal Code section 44C applies to the offence in relation to that officer.

Table B

s. 9A(1)	s. 12A(1)
s. 12C(1)	s. 13A(1)
s. 15E(1)	

- (3) If a body corporate commits an offence under a provision listed in Table B to subsection (2) (the ***principal offence***) and subsection (2)(b) does not apply—
- (a) *The Criminal Code* section 44C applies to the principal offence; but

- 1 (b) section 44C is modified so that an officer of the
2 body corporate is not liable to the penalty for
3 the principal offence but instead is liable to the
4 penalty for an offence under —
- 5 (i) section 9A(2), if the principal offence is
6 under section 9A(1);
- 7 (ii) section 12A(2), if the principal offence
8 is under section 12A(1);
- 9 (iii) section 12C(2), if the principal offence
10 is under section 12C(1);
- 11 (iv) section 13A(2), if the principal offence
12 is under section 13A(1);
- 13 (v) section 15E(2), if the principal offence
14 is under section 15E(1).
15

16 **Division 38 — *Mining Act 1978* amended**

17 **96. Act amended**

18 This Division amends the *Mining Act 1978*.

19 **97. Section 154 amended**

20 Delete section 154(3).

21 **98. Section 154A inserted**

22 After section 154 insert:
23

24 **154A. Liability of officers for offence by body corporate**

25 *The Criminal Code* section 44C (which provides for
26 the criminal liability of officers of a body corporate)
27 applies to an offence under section 155(1).
28

1 **Division 39 — *Misuse of Drugs Act 1981* amended**

2 **99. Act amended**

3 This Division amends the *Misuse of Drugs Act 1981*.

4 **100. Section 35 replaced**

5 Delete section 35 and insert:

6

7 **35. Liability of officers for offence by body corporate**

8 *The Criminal Code* section 44C (which provides for
9 the criminal liability of officers of a body corporate)
10 applies to an offence under a provision listed in the
11 Table.

12

Table

s. 5(1)	s. 6(1) and (2)
s. 7(1) and (2)	s. 7A(1) and (3)
s. 18(1)	

13

14 **Division 40 — *Nuclear Waste Storage and Transportation***
15 ***(Prohibition) Act 1999* amended**

16 **101. Act amended**

17 This Division amends the *Nuclear Waste Storage and*
18 *Transportation (Prohibition) Act 1999*.

1 **102. Section 8 replaced**

2 Delete section 8 and insert:

3

4 **8. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under section 7(2) or 7A(2).

8

9 **Division 41 — *Pawnbrokers and Second-hand Dealers***
10 ***Act 1994* amended**

11 **103. Act amended**

12 This Division amends the *Pawnbrokers and Second-hand*
13 *Dealers Act 1994*.

14 **104. Section 89 amended**

15 (1) Delete section 89(3).

16 (2) In section 89(4) delete “licensee and the defence available to an
17 officer under subsection (3) is not available to an officer who is
18 also the licensee.” and insert:

19

20 licensee.

21

22 Note: The heading to amended section 89 is to read:

23 **Liability of partners and bodies corporate**

24 **Division 42 — *Pearling Act 1990* amended**

25 **105. Act amended**

26 This Division amends the *Pearling Act 1990*.

1 **106. Section 56 replaced**

2 Delete section 56 and insert:

3

4 **56. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 7(2)	s. 8(2)
s. 12(4)	s. 16
s. 19(2)	s. 20
s. 21(1)	

10

11 **Division 43 — *Perry Lakes Redevelopment Act 2005* amended**

12 **107. Act amended**

13 This Division amends the *Perry Lakes Redevelopment Act 2005*.

14 **108. Section 50 deleted**

15 Delete section 50.

16 **Division 44 — *Pharmacy Act 2010* amended**

17 **109. Act amended**

18 This Division amends the *Pharmacy Act 2010*.

1 **110. Section 71 replaced**

2 Delete section 71 and insert:

3

4 **71. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 52	s. 53
s. 54(1)	s. 55(2) and (5)
s. 56(4)	s. 57
s. 59	s. 60
s. 64(1)	

10

11 **Division 45 — *Radiation Safety Act 1975* amended**

12 **111. Act amended**

13 This Division amends the *Radiation Safety Act 1975*.

14 **112. Section 56 amended**

15 Delete section 56(4).

1 **113. Section 57A inserted**

2 After section 56 insert:

3

4 **57A. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 25(1)	s. 28(4)
s. 36(3)	s. 46(5)
s. 52(1) for a contravention of s. 48(1)	s. 52(2)

10

11 **Division 46 — *Rail Safety Act 2010* amended**

12 **114. Act amended**

13 This Division amends the *Rail Safety Act 2010*.

14 **115. Section 189 amended**

- 15 (1) In section 189(1) delete the definition of *officer*.
- 16 (2) Delete section 189(2).
- 17 (3) In section 189(5) delete “Subsections (2), (3) and (4)” and
18 insert:

19

20 Subsections (3) and (4)

21

1 (4) In section 189(7) delete “body corporate or other”.

2 (5) Delete section 189(9)(a).

3 Note: The heading to amended section 189 is to read:

4 **Offences relating to partnerships, associations and employees**

5 **116. Section 190A inserted**

6 At the end of Part 8 Division 1 insert:

7

8 **190A. Liability of officers for offence by body corporate**

9 *The Criminal Code* section 44C (which provides for
10 the criminal liability of officers of a body corporate)
11 applies to an offence under a provision listed in the
12 Table.

13

Table

s. 28(1)	s. 29(2)
s. 30(1) and (2)	s. 32(1)

14

15 **Division 47 — Retail Trading Hours Act 1987 amended**

16 **117. Act amended**

17 This Division amends the *Retail Trading Hours Act 1987*.

18 **118. Section 34 deleted**

19 Delete section 34.

20 **Division 48 — Retirement Villages Act 1992 amended**

21 **119. Act amended**

22 This Division amends the *Retirement Villages Act 1992*.

1 **120. Section 79 replaced**

2 Delete section 79 and insert:

3

4 **79. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 6(3)	s. 13(2), (3) and (5)
s. 14A(2)	s. 15(1), (4) and (5)
s. 16(1) and (2)	s. 18(2A), (3) and (5)
s. 23(6)	s. 24(9)
s. 25(1)	s. 75F(2)
s. 75H(3) and (5)	s. 75(6)

10

11 **Division 49 — *Security and Related Activities (Control)***
12 ***Act 1996* amended**

13 **121. Act amended**

14 This Division amends the *Security and Related Activities*
15 *(Control) Act 1996*.

16 **122. Section 88A amended**

17 In section 88A(1) delete “section 89, 90” and insert:

18

19 section 89

20

1 **123. Section 89 amended**

2 In section 89(3) delete “licensee and the defence available to an
3 officer under section 90 is not available to an officer who is also
4 the licensee.” and insert:

5

6 licensee.

7

8 **124. Section 90 deleted**

9 Delete section 90.

10 **Division 50 — *Surveillance Devices Act 1998* amended**

11 **125. Act amended**

12 This Division amends the *Surveillance Devices Act 1998*.

13 **126. Section 39 deleted**

14 Delete section 39.

15 **Division 51 — *Swan and Canning Rivers Management***
16 ***Act 2006* amended**

17 **127. Act amended**

18 This Division amends the *Swan and Canning Rivers*
19 *Management Act 2006*.

20 **128. Section 121 amended**

21 Delete section 121(1) to (3).

22 Note: The heading to amended section 121 is to read:

23 **Establishing state of mind of body corporate**

1 **129. Section 122A inserted**

2 At the end of Part 8 Division 1 insert:

3

4 **122A. Liability of officers for offence by body corporate**

5 *The Criminal Code* section 44C (which provides for
6 the criminal liability of officers of a body corporate)
7 applies to an offence under a provision listed in the
8 Table.

9

Table

s. 30(3)	s. 32(5)
s. 70(1) and (2)	s. 71(1)
s. 88	s. 101
s. 116(4)	

10

11 **Division 52 — Taxation Administration Act 2003 amended**

12 **130. Act amended**

13 This Division amends the *Taxation Administration Act 2003*.

14 **131. Section 109 replaced**

15 Delete section 109 and insert:

16

17 **109. Liability of officers for offence by body corporate**

18 (1) *The Criminal Code* section 44C (which provides for
19 the criminal liability of officers of a body corporate)
20 applies to an offence under a provision of a taxation
21 Act listed in the 2nd column of the Table to this section.

Directors' Liability Reform Bill 2015

Part 3 Amendments to other Acts

Division 52 Taxation Administration Act 2003 amended

s. 131

- 1 (2) *The Criminal Code* section 44E (which provides for the
2 criminal liability of officers of a body corporate)
3 applies to an offence under a provision of a taxation
4 Act listed in the 3rd column of the Table to this section.

5

Table

Taxation Act	Criminal Code s. 44C	Criminal Code s. 44E
<i>Duties Act 2008</i>	s. 22(1) s. 23(1) s. 31(5) s. 105(2) s. 123(2) s. 204 s. 217(2) s. 220(4) and (5) s. 223(2) s. 227(1) and (2) s. 234(1) and (3) s. 239(2) s. 249(1) s. 252(1) and (3) s. 256 s. 264(4) s. 276(1) and (3) s. 277(2) s. 280(2)	

Taxation Act	Criminal Code s. 44C	Criminal Code s. 44E
<i>Land Tax Assessment Act 2002</i>	s. 9A s. 28(5)	
<i>Pay-roll Tax Assessment Act 2002</i>	s. 24(1) and (2) s. 26 s. 27 s. 28(2) s. 29(8) and (9) s. 44(1) and (2)	
<i>Stamp Act 1921</i>	s. 17A(4) s. 17B(1) s. 17BA(1), (2), (3) and (5) s. 28(1) s. 31B(1) and (10) s. 31C(1) s. 35(2) s. 63AE(1) s. 63AJ(1) s. 73D(2) s. 73DAA(1) s. 73DE(1) s. 75HA(3) s. 76AG(1)	s. 26(1) and (3) s. 75JG(3)

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Part 3 Amendments to other Acts

Division 52 Taxation Administration Act 2003 amended

s. 131

Taxation Act	Criminal Code s. 44C	Criminal Code s. 44E
	s. 76AN(1) s. 76AT(16) s. 76ATG(15) s. 76E(3) s. 76G s. 76H(1) and (2) s. 76I(1) s. 76J(1) s. 76N s. 77A(1) and (5) s. 86(4) s. 93 s. 94(1) and (3) s. 95A(1) s. 96B(1) and (2) s. 112J(2) s. 112L(1) and (3) s. 112M(1) and (2) s. 112MA(1) s. 112MB(3) s. 112NB(6) s. 112NC	

Taxation Act	Criminal Code s. 44C	Criminal Code s. 44E
<i>Taxation Administration Act 2003</i>	s. 21(3) s. 50(3) s. 52(4) s. 55(5) s. 65(7) s. 87 s. 89(3) s. 114(2)	s. 51 s. 90 s. 94(5) s. 103(9) s. 106(1) s. 107(1)

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Division 53 — Tobacco Products Control Act 2006 amended

132. Act amended

This Division amends the *Tobacco Products Control Act 2006*.

133. Section 109 replaced

Delete section 109 and insert:

109. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in Table A.

Table A

s. 6	s. 8(1) and (2)	s. 9
s. 10	s. 11	s. 16(1)

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Part 3 Amendments to other Acts

Division 54 Transport Co-ordination Act 1966 amended

s. 134

s. 17	s. 18	s. 19
s. 20(1)	s. 21	s. 22(1)
s. 24(1) and (2)	s. 25(1), (2), (3) and (4)	s. 26(2) and (3)
s. 27(1) and (2)	s. 28(2) and (3)	s. 29
s. 30(1)	s. 34	s. 50(5)
s. 51	s. 57(1), (3) and (5)	s. 58(1) and (2)
s. 90(1) and (2)	s. 103(1) and (2)	s. 104
s. 105	s. 106	s. 107F(2)

- 1 (2) *The Criminal Code* section 44E (which provides for the
2 criminal liability of officers of a body corporate)
3 applies to an offence under a provision listed in
4 Table B.

5 **Table B**

s. 31(1), (2), (3) and (4)	s. 33(1)
s. 35(2) and (3)	

6

7 **134. Glossary amended**

8 In the Glossary clause 1 delete the definition of *officer*.

9 **Division 54 — Transport Co-ordination Act 1966 amended**

10 **135. Act amended**

11 This Division amends the *Transport Co-ordination Act 1966*.

1 **136. Section 55A deleted**

2 Delete section 55A.

3 **Division 55 — Unauthorised Documents Act 1961 amended**

4 **137. Act amended**

5 This Division amends the *Unauthorised Documents Act 1961*.

6 **138. Section 6 deleted**

7 Delete section 6.

8 **Division 56 — Veterinary Chemical Control and Animal Feeding**
9 **Stuffs Act 1976 amended**

10 **139. Act amended**

11 This Division amends the *Veterinary Chemical Control and*
12 *Animal Feeding Stuffs Act 1976*.

13 **140. Section 61 amended**

14 Delete section 61(1).

15 Note: The heading to amended section 61 is to read:

16 **Vicarious liability for sales**

17 **141. Section 62A inserted**

18 After section 61 insert:

19

20 **62A. Liability of officers for offence by body corporate**

21 *The Criminal Code* section 44C (which provides for
22 the criminal liability of officers of a body corporate)
23 applies to an offence under a provision listed in the
24 Table.

1

Table

s. 11(1) and (2)	s. 13(1) and (2)
s. 14(2)	s. 36D
s. 53	

2

3

Division 57 — *Water Services Act 2012* amended

4

142. Act amended

5

This Division amends the *Water Services Act 2012*.

6

143. Section 196 replaced

7

Delete section 196 and insert:

8

9

196. Liability of officers for offence by body corporate

10

The Criminal Code section 44C (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision listed in the Table.

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Table

s. 5(1)	s. 88(1)
s. 89(1) and (2)	s. 99(1)
s. 102(1)	

15

1 **Division 58 — *Waterways Conservation Act 1976* amended**

2 **144. Act amended**

3 This Division amends the *Waterways Conservation Act 1976*.

4 **145. Section 73 amended**

5 Delete section 73(1).

6 **Division 59 — *Western Australian Products Symbol***
7 ***Act 1972* amended**

8 **146. Act amended**

9 This Division amends the *Western Australian Products Symbol*
10 *Act 1972*.

11 **147. Section 13 deleted**

12 Delete section 13.

13 **Division 60 — *Workers' Compensation and Injury Management***
14 ***Act 1981* amended**

15 **148. Act amended**

16 This Division amends the *Workers' Compensation and Injury*
17 *Management Act 1981*.

18 **149. Section 170 amended**

19 (1) In section 170(2b) delete “amount, whether or not the
20 responsible officer has been convicted under subsection (5).”
21 and insert:

22
23 amount.
24

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Part 3 Amendments to other Acts

Division 60 Workers' Compensation and Injury Management Act 1981
amended

s. 150

1 (2) Delete section 170(5) and (6) and insert:
2

3 (6) In subsections (2b) and (2c) —
4 **responsible officer**, in relation to the commission of an
5 offence by a body corporate, means a person who is
6 convicted of that offence in accordance with
7 *The Criminal Code* section 44C.
8

9 **150. Section 171A inserted**

10 After section 170 insert:
11

12 **171A. Liability of officers for offence by body corporate**

13 *The Criminal Code* section 44C (which provides for
14 the criminal liability of officers of a body corporate)
15 applies to an offence under section 170(1).
16

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17
