

**41ST PARLIAMENT**



## **Report 142**

# **STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW**

*Directors' Liability Reform Bill 2022*

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Presented by  
Hon Donna Faragher MLC (Chair)  
February 2023

## **Standing Committee on Uniform Legislation and Statutes Review**

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**ISBN 978-1-925580-71-6**



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## EXECUTIVE SUMMARY

- 1 The Directors' Liability Reform Bill 2022 (Bill) proposes to amend legislation in Western Australia where criminal liability is imposed on officers of bodies corporate for offences committed by those bodies corporate.
- 2 The Bill would amend *The Criminal Code* with the introduction of new personal liability provisions. A total of 69 other statutes would correspondingly be amended to repeal existing personal liability provisions. In most cases, they are replaced by incorporating one or more of the new *Criminal Code* ones.
- 3 The Bill, if passed, would not affect general fiduciary duties that are owed to the corporate body under the *Corporations Act 2001* (Cth) or other laws. It would affect only 'derivative' personal liability provisions that have been created in Western Australian statutes, where officers may be personally criminally liable for offences committed by the corporate body.
- 4 The Bill has been introduced to fulfil Western Australia's commitment under a reform project of the Council of Australian Governments (COAG) designed to limit directors' liability for corporate fault and to harmonise provisions across all jurisdictions. As part of this project, COAG developed a set of principles against which each Australian jurisdiction has audited its legislation.
- 5 The Bill is a uniform legislation bill for the purposes of Standing Order 126(2) of the Legislative Council in that it will ratify or give effect to a multilateral intergovernmental agreement to which the Government of Western Australia is a party.
- 6 The Uniform Legislation and Statutes Review Committee has examined the Bill, and has found no impact upon the sovereignty and law-making powers of the Parliament of Western Australia, other than in terms of commencement provisions for which (with one exception) the sound reasons expressed are accepted.

## Findings

**Findings are grouped as they appear in the text at the page number indicated:**

### FINDING 1

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The Directors' Liability Reform Bill 2022 proposes to amend legislation imposing liability on directors in Western Australia to limit and standardise relevant provisions in accordance with the Council of Australian Governments' Principles. These proposed amendments represent a significant change to the law with respect to directors' liability and corporate governance in Western Australia.

### FINDING 2

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With reference to the commencement provisions, no information was provided about the *Biodiversity Conservation Act 2016*. However, having noted this exception and drawing it to the attention of the House, the Committee finds there is no impact by any other provisions upon the sovereignty and law-making powers of the Parliament of Western Australia.



# 1 Introduction

- 1.1 The Directors' Liability Reform Bill 2022 (Bill) was introduced into the Legislative Council on 23 November 2022 by Hon Matthew Swinbourn MLC, Parliamentary Secretary to the Attorney General.
- 1.2 The Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) under Standing Order 126 of the Standing Orders of the Legislative Council. The Committee is required to report by 14 February 2023, being the first Legislative Council sitting day following the expiry of the 45 day reporting period directed by Standing Order 126(7)(a).
- 1.3 The purpose of the Bill, according to the accompanying Explanatory Memorandum, is:
  - to reduce and standardise offences in the Western Australian statute book which impose personal criminal liability on officers of bodies corporate for offences committed by those bodies corporate, where those officers have failed to take reasonable steps to prevent the body corporate's offending.<sup>1</sup>
- 1.4 This purpose would be achieved by amending *The Criminal Code* by introducing new personal liability provisions. It would then correspondingly amend 69 other statutes to repeal current personal liability provisions and, in most cases, replace them with one or more of those new *Criminal Code* provisions. In a number of cases, existing personal liability offences would be repealed altogether.
- 1.5 The Bill, if passed, would not affect directors' general fiduciary duties that are owed to the corporate body under the *Corporations Act 2001* (Cth) or other laws. These include the duty to act in good faith in the interests of the body and not for improper purposes, duties of care and diligence and the duty to avoid conflicts of interest. It would affect only 'derivative' personal liability provisions that have been created in Western Australian statutes, where officers may be personally criminally liable for offences committed by the corporate body.
- 1.6 The Bill is a uniform legislation bill for the purposes of Standing Order 126(2) in that it will ratify or give effect to a multilateral intergovernmental agreement to which the Government of Western Australia is a party. The Bill adopts the Complementary Commonwealth-State or Co-operative form of uniform legislation. This approach involves all jurisdictions passing legislation falling within their respective constitutional powers. This allows each jurisdiction to draft its own legislation to suit local conditions, while still carrying into effect any nationally agreed policy.

## 2 Supporting documents

- 2.1 The Committee received copies of the Bill, its second reading speech and its Explanatory Memorandum when the Bill was introduced into the Legislative Council.
- 2.2 Standing Order 126(5) of the Standing Orders of the Legislative Council states:
  - The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 business days after referral ...
- 2.3 The documentation to be provided is set out in Ministerial Office Memorandum 2022/01.

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<sup>1</sup> Directors' Liability Reform Bill 2022, *Explanatory Memorandum*, Legislative Council, p 1.

- 2.4 On 28 November 2022, within that timescale, the Committee received a letter from the Attorney General, Hon John Quigley MLA, enclosing additional relevant documentation, being:
- the National Partnership Agreement to Deliver a Seamless National Economy (National Partnership Agreement)
  - Personal Liability for Corporate Fault - Guidelines for applying the COAG Principles, which includes the Council of Australian Government (COAG) Principles, Guidelines and Checklist (Guidelines)
  - the COAG Communique dated 29 November 2008.
- 2.5 The Committee thanks the Attorney General for the provision of the appropriate documentation within the timescale set by Standing Order 126(5).

### **3 Inquiry procedure**

- 3.1 Under its terms of reference, the Committee is confined to investigating whether a Bill may impact upon the sovereignty and law-making powers of the Parliament of Western Australia. The Committee is not able to consider any other matter, including the policy of the Bill.
- 3.2 Following receipt of the Attorney General's letter of 28 November 2022, and its supporting documents, the Committee sought no further submissions.

## **4 Background to the Bill**

### **COAG Agreement**

- 4.1 The Bill's genesis is a COAG agreement dated 29 November 2008, contained within a communique of the same date, whereby members agreed to 'increased harmonisation in relation to directors' liability.'<sup>2</sup> This was one of the 27 priority areas for reform identified by COAG to deliver a 'seamless national economy', to reduce the costs of regulation and enhance productivity and workforce mobility. It was agreed to and captured in the 'National Partnership Agreement to deliver a seamless national economy', signed by the Commonwealth, States and Territories in 2008 and 2009.<sup>3</sup>
- 4.2 This agreement came about following the publication of a report by the Federal Government's Corporations and Markets Advisory Committee (CAMAC) entitled 'Personal Liability for Corporate Fault' in September 2006.<sup>4</sup> CAMAC identified areas of concern with laws which demonstrated:
- a marked tendency in legislation across Australia to include provisions that impose personal criminal sanctions on individuals for corporate breach by reason of their office or role within the company (rather than their actual acts or omissions) unless they can establish an available defence
  - considerable disparities in the terms of personal liability provisions, resulting in undue complexity and less clarity about requirements for compliance.

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<sup>2</sup> National Competition Council, [Council of Australian Governments Communique, 29 November 2008](#), p 10, accessed 13 December 2022.

<sup>3</sup> Federal Financial Relations, [National Partnerships Agreement to deliver a seamless national economy](#), accessed 13 December 2022.

<sup>4</sup> Takeovers Panel, [Corporations and Markets Advisory Committee: Personal Liability for Corporate Fault](#), September 2006, accessed 13 December 2022.



4.3 CAMAC commented, at page 8 of the report:

The Advisory Committee is concerned about the practice in some statutes of treating directors or other corporate officers as personally liable for misconduct by their company unless they can make out a relevant defence. Provisions of this kind are objectionable in principle and unfairly discriminate against corporate personnel compared with the way in which other people are treated under the law.

4.4 It continued at page 9:

The Committee is also concerned about the marked difference in the form of statutory provisions that impose personal liability for corporate fault. Corporate officers may find themselves subject to a variety of standards of responsibility and available defences under statutes applying to different aspects of a company's operations in different parts of Australia.

4.5 The increased harmonisation of laws was to be achieved thorough the issuing of the Guidelines, the purpose of which was 'to ensure that all Australian jurisdictions, and all agencies within those jurisdictions, interpreted and applied the COAG-agreed principles for assessment of directors' liability provisions (the COAG Principles) consistently and in accordance with the intentions of COAG'.<sup>5</sup>

4.6 The agreed set of COAG Principles, against which each Australian jurisdiction was to audit its own legislation, are as follows:

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

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<sup>5</sup> Parliament of Queensland, [Guidelines for applying the COAG Principles](#), accessed 13 December 2022.

(b) have been negligent or reckless in relation to the corporation's offending.

6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporations' offending if they are not to be personally liable.

4.7 It was explained in Part 1 of the Guidelines that they were to be used for both:

- reviewing existing directors' liability provisions, and where necessary to identify those that need to be repealed or amended in order to ensure consistency with the COAG Principles
- ensuring that no new directors' liability provisions are introduced except in accordance with those Principles.

4.8 The COAG Principles also identified 3 types of liability going forward, Types 1, 2 and 3 (Part 2.3 of the Guidelines):

**Type 1:** the director will be presumed to have taken all reasonable steps to prevent the body corporate committing the offence (and therefore not be liable) unless the prosecution proves that he or she failed to take all reasonable steps.

**Type 2:** provides that a director will be taken to have committed the offence committed by the body corporate unless he or she leads evidence that suggests a reasonable possibility that he or she took all reasonable steps to prevent the commission of the offence by the body corporate. Once this evidence is adduced, the prosecution bears the onus of proving that the director did not take all reasonable steps.

**Type 3:** requires the director to prove on the balance of probabilities that he or she took all reasonable steps.

4.9 These 3 types of liability provision would be inserted into *The Criminal Code* by the Bill, at proposed sections 39 to 41.

## Directors' Liability Reform Bill 2015

4.10 A version of the Bill with very similar content (the 2015 Bill) was introduced into the Legislative Council on 25 February 2015 by Hon Michael Mischin MLC, Attorney General. It was referred to this Committee, resulting in the tabling of Report 92, *Directors' Liability Reform Bill 2015*.<sup>6</sup>

4.11 The 2015 Bill progressed no further, however, and lapsed when Parliament was prorogued in 2017. This Bill is substantially the same. The main differences between the 2015 Bill and this one are due to non-substantive changes in, and additions to, the statute book.

## 5 Structure of the Bill

5.1 Part 1 of the Bill contains commencement provisions.

5.2 Part 2 of the Bill, if passed, would insert a new Chapter 6 into Part I of *The Criminal Code*, consisting of 7 new sections, including the new personal liability provisions.

5.3 Part 3 would then amend 69 other statutes (listed in Appendix 1 to this report) to 'limit and standardise the provisions in the Western Australian statute book that impose personal criminal liability on officers of bodies corporate in a body corporate's offending in

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<sup>6</sup> Standing Committee on Uniform Legislation and Statutes Review, report 92, *Directors' Liability Reform Bill 2015*, Western Australia, Legislative Council, 21 April 2015.

circumstances in which those officers have failed to take all reasonable steps to prevent the offending'.<sup>7</sup>

5.4 It would be an amending Act, not a standalone Act with enduring force.

## Review clause

5.5 Clause 6 of the Bill would insert a new section 740D of *The Criminal Code*, a review clause.

5.6 In its Report 92 in 2015, the Committee made the following recommendation:

**Recommendation 2:** The Committee recommends that the Government introduce an amendment to the Directors' Liability Reform Bill 2015 which will require the legislation to be reviewed within 4 years from the date of commencement and at the expiry of each 4 yearly interval after that anniversary, with a copy of each review to be tabled in both the Legislative Council and the Legislative Assembly.

5.7 The new section 740D would read:

### **Review of amendments made by *Directors' Liability Reform Act 2022***

(1) The Minister must review the operation and effectiveness of the amendments made to this Code by the *Directors' Liability Reform Act 2022*, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which the *Directors' Liability Reform Act 2022* section 5 comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

5.8 The Committee thanks the Attorney General for the inclusion of this review clause.

## 6 Parliamentary sovereignty issues

### Commencement

6.1 Complicated commencement provisions are found at clauses 2 and 3 of the Bill.

#### Clause 2

6.2 Clause 2 of the Bill reads as follows:

#### **Commencement**

This Act comes into operation as follows —

(a) Part 1 — on the day on which this Act receives the Royal Assent (***assent day***);

(b) Part 3 Division 1 —

(i) if the *Aboriginal Cultural Heritage Act 2021* sections 263 to 265 come into operation on or before assent day — on the day after assent day; or

(ii) otherwise — immediately after the *Aboriginal Cultural Heritage Act 2021* sections 263 to 265 come into operation;

(c) Part 3 Division 5 —

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<sup>7</sup> Legislative Council, *Debates*, 2022, p 5763.

- (i) if the *Aquatic Resources Management Act 2016* sections 191 and 192 come into operation on or before assent day — on the day after assent day; or
  - (ii) otherwise — immediately after the *Aquatic Resources Management Act 2016* sections 191 and 192 come into operation;
- (d) section 27 —
- (i) if the *TAB (Disposal) Act 2019* section 70 comes into operation on or before assent day — immediately after section 26 of this Act comes into operation; or
  - (ii) otherwise — on the day on which the *TAB (Disposal) Act 2019* section 70 comes into operation;
- (e) Part 3 Division 9 — on a day fixed by proclamation;
- (f) Part 3 Division 11 —
- (i) if the *Building and Construction Industry (Security of Payment) Act 2021* section 118 comes into operation on or before assent day — on the day after assent day; or
  - (ii) otherwise — immediately after the *Building and Construction Industry (Security of Payment) Act 2021* section 118 comes into operation;
- (g) section 73 —
- (i) if the *Firearms Amendment Act 2022* section 29 comes into operation on or before assent day — immediately after section 72 of this Act comes into operation; or
  - (ii) otherwise — on the day on which the *Firearms Amendment Act 2022* section 29 comes into operation;
- (h) section 80 —
- (i) if the *TAB (Disposal) Act 2019* section 99 comes into operation on or before assent day — immediately after section 79 of this Act comes into operation; or
  - (ii) otherwise — when the *TAB (Disposal) Act 2019* section 99 comes into operation;
- (i) the rest of the Act — on the day after assent day.

6.3 These commencement provisions mean that the proposed amendments to 6 of the statutes listed in Part 3 of the Bill would be subject to the Government proclaiming some parts of those 6 statutes that are not yet in force.

6.4 By way of example, Part 3, Division 1 of the Bill (clauses 7 and 8) would delete sections 263 to 265 of the *Aboriginal Cultural Heritage Act 2021*. However, those three sections are not yet in force. Therefore:

- if those three sections come into force before assent day, the amendments to be made by this Bill will take effect the day after assent day
- alternatively, the amendments take effect immediately after those three sections of the Act come into operation.

### Clause 3

6.5 Clause 3 of the Bill reads:

#### Further provisions relating to commencement

(1) In this section —

**commencement day** means the day after the day on which this Act receives the Royal Assent.

(2) Despite section 2(i), if the *Aboriginal Cultural Heritage Act 2021* section 310 comes into operation on or before commencement day, Part 3 Division 2 of this Act —

(a) does not come into operation; and

(b) is deleted.

(3) Despite section 2(i), if the *Emergency Management Amendment (Temporary COVID-19 Provisions) Act 2022* section 30 comes into operation on or before commencement day, section 54 of this Act —

(a) does not come into operation; and

(b) is deleted.

(4) Despite section 2(i), if the *Aquatic Resources Management Act 2016* section 267 comes into operation on or before commencement day, Part 3 Division 28 of this Act —

(a) does not come into operation; and

(b) is deleted.

(5) Despite section 2(i), if the *Aquatic Resources Management Act 2016* section 268 comes into operation on or before commencement day, Part 3 Division 45 of this Act —

(a) does not come into operation; and

(b) is deleted.

6.6 The commencement provisions in this clause apply to existing provisions that are time-limited or would have the effect of repealing the statutes to be amended by this Bill.

6.7 For example:

- section 310 of the *Aboriginal Cultural Heritage Act 2021* will repeal the *Aboriginal Heritage Act 1972*, when it comes into effect. If that happens before the relevant part of this Bill takes effect, then clearly the proposed amendments to that latter statute (clauses 9 to 11 of the Bill) cannot take effect and are deleted.
- part 6A of the new *Emergency Management Amendment (Temporary COVID-19 Provisions) Act 2022* is due to be deleted on 3 November 2024. If that happens before the amendment in Division 20 of this Bill comes into effect, then the amendment itself is deleted as it would no longer be relevant.

6.8 Therefore, under this clause, proposed amendments to 4 other statutes may never come into force, depending on the Government's timing.

6.9 The Committee's well established position is that commencement by proclamation is an erosion of parliamentary sovereignty because the Executive controls the commencement

date, not Parliament. The Committee has regularly stated that there should be sound reasons for Parliament to permit commencement by proclamation.

6.10 The Explanatory Memorandum points out:

Different commencement provisions have been drafted in clauses 2 and 3 for different Divisions within the Bill because some parts of Acts being amended have not yet been proclaimed. The Bill must reflect the status of legislation at the time that the Bill is prepared, which has resulted in the drafting of alternative commencement provisions in this clause.<sup>8</sup>

6.11 The Committee considers, on the basis of this explanation, that sound reasons exist for Parliament to accept these commencement provisions.

6.12 The Committee did note that one provision (clause 2(e) of the Bill) would lead to a direct proclamation under the provisions of this Bill should it become an Act, being the proposed amendments to the *Biodiversity Conservation Act 2016*. The Committee was provided with no explanation for this one outstanding clause and draws this to the attention of the House.

### Meaning of 'officer'

6.13 Despite the title of the Bill referring to 'directors', the new provisions would apply to 'officers', which is given a wider definition by section 9 of the *Corporations Act 2001* (Cth) and incorporated into these provisions by proposed section 38.

6.14 That definition is as follows:

**officer** of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person:
  - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
  - (ii) who has the capacity to affect significantly the corporation's financial standing; or
  - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

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<sup>8</sup> Directors' Liability Reform Bill 2022, *Explanatory Memorandum*, Legislative Council, p 1.

- 6.15 Where a definition is imported from Commonwealth legislation, an amendment to that definition by the Federal Government would have a trickle-down effect on the amendments to the State legislation covered by this Bill.
- 6.16 However, if that happened, Parliament would have the usual legislative ability to make its own amendments to the State legislation (should it feel the need to do so). There is therefore no impact upon sovereignty and law-making powers.

## 7 Conclusion

### FINDING 1

The Directors' Liability Reform Bill 2022 proposes to amend legislation imposing liability on directors in Western Australia to limit and standardise relevant provisions in accordance with the Council of Australian Governments' Principles. These proposed amendments represent a significant change to the law with respect to directors' liability and corporate governance in Western Australia.

### FINDING 2

With reference to the commencement provisions, no information was provided about the *Biodiversity Conservation Act 2016*. However, having noted this exception and drawing it to the attention of the House, the Committee finds there is no impact by any other provisions upon the sovereignty and law-making powers of the Parliament of Western Australia.

- 7.1 The Bill amends *The Criminal Code* and 69 other statutes, all of which could be subject to further amendment in the future under usual parliamentary procedures. Those other statutes are listed in Appendix 1.



Hon Donna Faragher MLC  
**Chair**

# APPENDIX 1

## STATUTES TO BE AMENDED BY THE BILL

*Aboriginal Cultural Heritage Act 2021*

*Aboriginal Heritage Act 1972*

*Animal Welfare Act 2002*

*Anzac Day Act 1960*

*Aquatic Resources Management Act 2016*

*Architects Act 2004*

*Auction Sales Act 1973*

*Betting Control Act 1954*

*Biodiversity Conservation Act 2016*

*Biosecurity and Agriculture Management Act 2007*

*Building and Construction Industry (Security of Payment) Act 2021*

*Building Services (Complaint Resolution and Administration) Act 2011*

*Building Services (Registration) Act 2011*

*Charitable Collections Act 1946*

*Contaminated Sites Act 2003*

*Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*

*Criminal Procedure Act 2004*

*Dangerous Goods Safety Act 2004*

*Debt Collectors Licensing Act 1964*

*Emergency Management Act 2005*

*Employment Agents Act 1976*

*Energy Operators (Powers) Act 1979*

*Energy Safety Act 2006*

*Environmental Protection Act 1986*

*Exotic Diseases of Animals Act 1993*

*Fair Trading Act 2010*

*Firearms Act 1973*

*Fish Resources Management Act 1994*

*Food Act 2008*

*Gaming and Wagering Commission Act 1987*

*Gas Corporation (Business Disposal) Act 1999*

*Gold Corporation Act 1987*



*Heritage Act 2018*

*Home Building Contracts Act 1991*

*Hope Valley-Wattleup Redevelopment Act 2000*

*Liquor Control Act 1988*

*Litter Act 1979*

*Major Events (Aerial Advertising) Act 2009*

*Medicines and Poisons Act 2014*

*Metropolitan Redevelopment Authority Act 2011*

*Mining Act 1978*

*Misuse of Drugs Act 1981*

*Nuclear Waste Storage and Transportation (Prohibition) Act 1999*

*Pawnbrokers and Second-hand Dealers Act 1994*

*Pearling Act 1990*

*Perry Lakes Redevelopment Act 2005*

*Pharmacy Act 2010*

*Private Hospitals and Health Services Act 1927*

*Prostitution Act 2000*

*Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021*

*Public Health Act 2016*

*Radiation Safety Act 1975*

*Retail Trading Hours Act 1987*

*Retirement Villages Act 1992*

*Road Traffic (Vehicles) Act 2012*

*Security and Related Activities (Control) Act 1996*

*Surveillance Devices Act 1998*

*Swan and Canning Rivers Management Act 2006*

*Tobacco Products Control Act 2006*

*Transport Co-ordination Act 1966*

*Transport (Road Passenger Services) Act 2018*

*Unauthorised Documents Act 1961*

*Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*

*Veterinary Practice Act 2021*

*Waste Avoidance and Resource Recovery Act 2007*

*Water Services Act 2012*

*Waterways Conservation Act 1976*

*Western Australian Products Symbol Act 1972*

*Workers' Compensation and Injury Management Act 1981*

## GLOSSARY

Term	Definition
<b>2015 Bill</b>	The Directors' Liability Reform Bill 2015
<b>Bill</b>	The Directors' Liability Reform Bill 2022
<b>Committee</b>	The Standing Committee on Uniform Legislation and Statutes Review
<b>CAMAC</b>	The Corporations and Markets Advisory Committee
<b>COAG</b>	The Council of Australian Governments
<b>COAG Principles</b>	COAG-agreed principles for assessment of directors' liability provisions
<b>Derivative liability</b>	Personal liability of officers of corporate bodies for offences committed by those corporate bodies in circumstances in which officers have not taken all reasonable steps to prevent the body corporate committing the offence
<b>Guidelines</b>	<i>Personal Liability for Corporate Fault - Guidelines for applying the COAG Principles</i> , which includes the Council of Australian Government (COAG) Principles, Guidelines and Checklist
<b>National Partnership Agreement</b>	<i>National Partnership Agreement to deliver a Seamless National Economy</i> , signed for and on behalf of the Commonwealth and each State and Territory in December 2008 and February 2009
<b>Type 1 liability</b>	Proposed section 39 of <i>The Criminal Code</i> (clause 5 of the Bill) The officer is presumed to have taken all reasonable steps to prevent the body corporate committing the offence (and therefore not be liable). The onus is on the prosecution to prove otherwise
<b>Type 2 liability</b>	Proposed section 40 of <i>The Criminal Code</i> (clause 5 of the Bill) If an officer adduces evidence that suggests a reasonable possibility that he or she took all reasonable steps to prevent the commission of the offence by the body corporate, the prosecution bears the onus of proving that the director did not take all reasonable steps
<b>Type 3 liability</b>	Proposed section 41 of <i>The Criminal Code</i> (clause 5 of the Bill) The onus is on the officer to prove on the balance of probabilities that he or she took all reasonable steps to prevent the commission of the offence by the body corporate

## **Standing Committee on Uniform Legislation and Statutes Review**

### **Date first appointed:**

17 August 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **'6. Uniform Legislation and Statutes Review Committee**

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
  - (a) to consider and report on Bills referred under Standing Order 126;
  - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
  - (c) to review the form and content of the statute book; and
  - (d) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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