





# **Personal Liability for Corporate Fault Reform Act 2012**

**No. 180, 2012**

**An Act to amend the law relating to personal  
liability for offences committed by corporations,  
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to personal  
liability for offences committed by corporations,  
and for related purposes**

*[Assented to 10 December 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Personal Liability for Corporate  
Fault Reform Act 2012*.

## **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Corporations Act 2001**

### **1 Section 188**

Repeal the section, substitute:

#### **188 Responsibility of secretaries etc. for certain corporate contraventions**

##### *Responsibility of company secretaries*

- (1) A secretary of a company contravenes this subsection if the company contravenes any of the following provisions (each of which is a *corporate responsibility provision*):
- (a) section 142 (registered office);
  - (b) section 145 (public company's registered office to be open to public);
  - (c) section 146 (change of principal place of business);
  - (d) section 178A (change to proprietary company's member register);
  - (e) section 178C (change to proprietary company's share structure);
  - (f) section 205B (lodgement of notices with ASIC);
  - (g) section 254X (issue of shares);
  - (h) section 319 (lodgement of annual reports with ASIC);
  - (i) section 320 (lodgement of half-year reports with ASIC);
  - (j) section 346C (response to extract of particulars);
  - (k) section 348D (response to return of particulars);
  - (l) section 349A (change to proprietary company's ultimate holding company).

Note 1: See section 204A for the circumstances in which a company must have a secretary.

Note 2: This subsection is a civil penalty provision (see section 1317E).

##### *Responsibility of directors of proprietary companies*

- (2) Each director of a proprietary company contravenes this subsection if:

- (a) the proprietary company contravenes a corporate responsibility provision; and
- (b) the proprietary company does not have a secretary when it contravenes that provision.

Note 1: See section 204A for the circumstances in which a company must have a secretary.

Note 2: This subsection is a civil penalty provision (see section 1317E).

*Defence of reasonable steps*

- (3) A person does not contravene subsection (1) or (2) in relation to a company's contravention of a corporate responsibility provision if the person shows that he or she took reasonable steps to ensure that the company complied with the provision.

**2 Subsection 208(1) (note)**

Omit "Note", substitute "Note 1".

**3 At the end of subsection 208(1)**

Add:

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this subsection, see subsection 209(3). Section 79 defines *involved*.

**4 Subsection 254J(1) (note)**

Omit "Note", substitute "Note 1".

**5 At the end of subsection 254J(1)**

Add:

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 254L(3). Section 79 defines *involved*.

**6 Section 254K (note)**

Omit "Note", substitute "Note 1".

**7 At the end of section 254K**

Add:

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 254L(3). Section 79 defines *involved*.

**8 Subsection 254Q(13)**

Omit “and any officer of the company who is involved in the contravention are each”, substitute “is”.

**9 At the end of subsection 256B(1)**

Add:

Note 4: For the criminal liability of a person dishonestly involved in a contravention of subsection 256D(1) based on this subsection, see subsection 256D(4). Section 79 defines *involved*.

**10 Subsection 256D(4)**

Omit “section 256B”, substitute “subsection (1)”.

**11 At the end of section 259A**

Add:

Note: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 259F(3). Section 79 defines *involved*.

**12 At the end of subsection 259B(1)**

Add:

Note: For the criminal liability of a person dishonestly involved in a contravention of this subsection, see subsection 259F(3). Section 79 defines *involved*.

**13 At the end of subsection 260A(1)**

Add:

Note: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 260D(3). Section 79 defines *involved*.

**14 Subsection 319(5A)**

Repeal the subsection (including the note).

**15 At the end of subsection 328A(4)**

Add:

Note: An officer of a company, or of a responsible entity, is in default if the officer is involved in the contravention of subsection (1) by the company, the company’s directors or the entity (see section 83). Section 79 defines *involved*.

**16 At the end of subsection 328B(2)**

Add:

Note: An officer of a company is in default if the officer is involved in the company's contravention of subsection (1) (see section 83).  
Section 79 defines *involved*.

**17 Subsection 601FC(6)**

Repeal the subsection.

**18 After paragraph 1317E(1)(a)**

Insert:

(aa) subsection 188(1) or (2) (responsibilities of secretaries etc. for certain corporate contraventions);

**19 After subsection 1317G(1B)**

Insert:

*Responsibilities of secretaries etc. for certain corporate contraventions*

(1BA) Without limiting subsection (1), if a declaration of contravention by a person of subsection 188(1) or (2) has been made under section 1317E, a Court may order the person to pay the Commonwealth a pecuniary penalty of up to \$3,000.

**20 Schedule 3 (cells at table items 9, 12, 13, 29A and 29B, column headed "Penalty")**

Repeal the cells, substitute:  
60 penalty units.

**21 Schedule 3 (table item 31)**

Repeal the item.

**22 Schedule 3 (cell at table item 44, column headed "Penalty")**

Repeal the cell, substitute:  
60 penalty units or imprisonment for 1 year, or both.

**23 Schedule 3 (cell at table item 84, column headed "Penalty")**

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Repeal the cell, substitute:  
60 penalty units.

**24 Schedule 3 (cells at table items 112 and 112A, column headed “Penalty”)**

Repeal the cells, substitute:  
60 penalty units or imprisonment for 1 year, or both.

**25 Schedule 3 (cells at table items 118, 119B and 119C, column headed “Penalty”)**

Repeal the cells, substitute:  
60 penalty units.

**26 Schedule 3 (table item 163A)**

Repeal the item.

## **Schedule 2—Foreign Acquisitions and Takeovers Act 1975**

### **Part 1—Main amendments**

#### **1 Section 30 (heading)**

Repeal the heading, substitute:

#### **30 Offences—orders under Part II**

#### **2 Subsection 31(1)**

Omit “(1)”.

#### **3 Subsection 31(1)**

Omit “an officer of the corporation who is in default”, substitute “an officer of the corporation who authorised or permitted the commission of the offence”.

#### **4 Subsection 31(2)**

Repeal the subsection.

## **Part 2—Signalling personal liability**

### **5 Multiple amendments**

The provisions of the *Foreign Acquisitions and Takeovers Act 1975* listed in this Part are amended by adding at the end:

Note: For the criminal liability of an officer of a corporation if the corporation contravenes or fails to comply with an order under this subsection, see sections 30 and 31.

### **6 Subsections 18(2), (3) and (4)**

### **7 Subsections 19(2), (3) and (4)**

### **8 Subsections 20(2) and (3)**

### **9 Subsections 21(2) and (3)**

### **10 Subsections 21A(2), (3) and (4)**

### **11 Subsection 22(1)**

## **Part 3—Signalling personal liability: further amendments**

### **12 Multiple amendments**

The provisions of the *Foreign Acquisitions and Takeovers Act 1975* listed in this Part are amended by adding at the end:

Note: For the liability of an officer of a corporation, see section 31.

### **13 Subsection 25(1C)**

### **14 Subsection 26(2)**

### **15 Subsection 26A(2)**

### **16 Subsection 30(1)**

### **17 Subsection 36(2)**

## **Schedule 3—Health Insurance Act 1973**

### **Part 1—Main amendments**

#### **1 Subsections 129AA(2) and (3)**

Repeal the subsections.

#### **2 Subsection 129AA(6) (definition of *officer*)**

Repeal the definition.

## **Part 2—Signalling personal liability**

### **3 Multiple amendments**

The provisions of the *Health Insurance Act 1973* listed in this Part are amended by adding at the end:

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

### **4 Subsections 23DZZIQ(1), (2), (4) and (5)**

### **5 Subsections 23DZZIR(1) and (3)**

### **6 Subsections 23DZZIS(1) and (3)**

## **Part 3—Other amendments**

### **7 Section 23DZZIO**

Omit:

- An executive officer of a body corporate might commit an offence under this Part if the body corporate commits an offence under this Part.

substitute:

- An executive officer of a body corporate might commit an offence if the body corporate commits an offence against this Division.

## Schedule 4—National Vocational Education and Training Regulator Act 2011

### Part 1—Main amendments

#### 1 Section 133 (heading)

Repeal the heading, substitute:

#### 133 Personal liability of an executive officer of a registered training organisation—general

#### 2 Paragraph 133(1)(a)

After “offence”, insert “covered by section 133A”.

#### 3 After section 133

Insert:

#### 133A Personal liability of an executive officer of a registered training organisation—offences covered

For the purposes of paragraph 133(1)(a), this section covers offences against the provisions of this Act listed in the following table:

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<b>Corporate offences for which executive officers may be personally liable</b>	
<b>Item</b>	<b>Provisions of this Act</b>
1	Section 93
2	Section 95
3	Section 97
4	Section 99
5	Subsections 101(1) and (2)
6	Subsections 103(1) and (2)
7	Subsections 105(1) and (2)
8	Section 107
9	Section 109

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**Corporate offences for which executive officers may be personally liable**

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**Item    Provisions of this Act**

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10    Section 114

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11    Subsections 116(1) and (2)

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12    Section 122

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13    Section 124

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14    Section 126

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15    Section 128

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16    Subsection 140(5)

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## **Part 2—Signalling personal liability**

### **4 Multiple amendments**

The provisions of the *National Vocational Education and Training Regulator Act 2011* listed in this Part are amended by adding at the end:

Note: For the liability of an executive officer of a registered training organisation, see sections 133 and 133A.

#### **5 Section 93**

#### **6 Section 95**

#### **7 Section 97**

#### **8 Section 99**

#### **9 Subsections 101(1) and (2)**

#### **10 Subsections 103(1) and (2)**

#### **11 Subsections 105(1) and (2)**

#### **12 Section 107**

#### **13 Section 109**

#### **14 Section 114**

#### **15 Subsection 116(1)**

#### **16 Section 122**

#### **17 Section 124**

#### **18 Section 126**

#### **19 Section 128**

#### **20 Subsection 140(5)**

## **Part 3—Other amendments**

### **21 Subsection 116(2)**

Omit “Note”, substitute “Note 1”.

### **22 At the end of subsection 116(2)**

Add:

Note 2: For the liability of an executive officer of a body corporate, see sections 133 and 133A.

## Schedule 5—Therapeutic Goods Act 1989

### Part 1—Main amendments

#### 1 Section 54B (heading)

Repeal the heading, substitute:

#### **54B Personal liability of an executive officer of a body corporate— general**

#### 2 Paragraph 54B(1)(a)

After “Act”, insert “covered by section 54BA”.

#### 3 After section 54B

Insert:

#### **54BA Personal liability of an executive officer of a body corporate— offences covered**

For the purposes of paragraph 54B(1)(a), this section covers offences against:

- (a) the provisions of this Act listed in the following table; and
- (b) a provision of a regulation prescribed for the purpose of this paragraph; and
- (c) section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence mentioned in paragraph (a) or (b) of this subsection; and
- (d) section 136.1, 137.1 or 137.2 of the *Criminal Code* in relation to this Act or a regulation.

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#### **Corporate offences for which executive officers may be personally liable**

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<b>Item</b>	<b>Provisions of this Act</b>
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1	Subsection 14(1), (2), (6), (7), (10) or (11)
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2	Subsection 15(2) or (3)
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3	Subsection 19B(1) or (2)
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4	Subsection 21A(1), (2), (5) or (6)
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**Corporate offences for which executive officers may be personally liable**

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<b>Item</b>	<b>Provisions of this Act</b>
5	Subsection 22(7AB)
6	Subsection 22A(1) or (2)
7	Subsection 29A(1)
8	Subsection 29B(3) or (4)
9	Subsection 30EC(1) or (2)
10	Subsection 30F(4B) or (4C)
11	Subsection 31(5A) or (5B)
12	Subsection 31D(1)
13	Subsection 31E(1)
14	Subsection 32BA(1) or (2)
15	Subsection 32BB(1) or (2)
16	Subsection 32BC(1) or (2)
17	Subsection 32BD(1) or (2)
18	Subsection 32CH(1)
19	Subsection 32CJ(6) or (7)
20	Subsection 32DO(1) or (2)
21	Subsection 32DQ(1)
22	Subsection 32DR(3) or (4)
23	Subsection 32EF(1) or (2)
24	Subsection 32HC(1) or (2)
25	Subsection 32JB(2) or (3)
26	Subsection 32JI(2)
27	Subsection 35(1), (2), (5) or (7)
28	Subsection 41EI(1) or (2)
29	Subsection 41FE(1) or (2)
30	Subsection 41JB(4) or (5)
31	Section 41JH
32	Subsection 41JI(1)
33	Subsection 41KC(1) or (2)
34	Subsection 41MA(1), (2), (5), (6), (9) or (10)
35	Subsection 41MC(2) or (3)
36	Subsection 41ME(1), (2), (5) or (6)

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**Schedule 5** Therapeutic Goods Act 1989  
**Part 1** Main amendments

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**Corporate offences for which executive officers may be personally liable**

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<b>Item</b>	<b>Provisions of this Act</b>
37	Subsection 41MF(1) or (3)
38	Section 41MH
39	Subsection 41MI(1) or (2)
40	Subsection 41MN(1) or (2)
41	Subsection 41MNB(1)
42	Subsection 41MP(1)
43	Subsection 41MQ(3) or (4)
44	Subsection 42E(1)
45	Subsection 42T(1) or (2)
46	Subsection 42V(6) or (6A)
47	Subsection 42W(1) or (2)
48	Subsection 54AB(1)

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## **Part 2—Signalling personal liability**

### **4 Multiple amendments**

The provisions of the *Therapeutic Goods Act 1989* listed in this Part are amended by adding at the end:

Note: For the liability of an executive officer of a body corporate, see sections 54B and 54BA.

### **5 Subsections 14(2), (7) and (11)**

### **6 Subsection 15(3)**

### **7 Subsections 21A(2) and (6)**

### **8 Subsection 22A(2)**

### **9 Subsection 29A(1)**

### **10 Subsections 29B(3) and (4)**

### **11 Subsection 30EC(2)**

### **12 Subsection 30F(4C)**

### **13 Subsection 31(5B)**

### **14 Subsection 31D(1)**

### **15 Subsection 31E(1)**

### **16 Subsection 32BA(2)**

### **17 Subsection 32BB(2)**

### **18 Subsection 32BC(2)**

### **19 Subsection 32BD(2)**

### **20 Subsection 32CH(1)**

- 21 Subsections 32CJ(6) and (7)**
  - 22 Subsection 32DO(2)**
  - 23 Subsection 32DQ(1)**
  - 24 Subsections 32DR(3) and (4)**
  - 25 Subsection 32EF(2)**
  - 26 Subsection 32HC(2)**
  - 27 Subsection 32JB(3)**
  - 28 Subsection 32JI(2)**
  - 29 Subsections 35(2) and (7)**
  - 30 Subsection 41EI(2)**
  - 31 Subsection 41FE(2)**
  - 32 Subsection 41JB(5)**
  - 33 Section 41JH**
  - 34 Subsection 41JI(1)**
  - 35 Subsection 41KC(2)**
  - 36 Subsections 41MA(2), (6) and (10)**
  - 37 Subsection 41MC(3)**
  - 38 Subsections 41ME(2) and (6)**
  - 39 Section 41MH**
  - 40 Subsection 41MI(2)**
  - 41 Subsection 41MN(2)**
  - 42 Subsection 41MNB(1)**
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- 43 Subsection 41MP(1)**
- 44 Subsections 41MQ(3) and (4)**
- 45 Subsection 42E(1)**
- 46 Subsections 42T(1) and (2)**
- 47 Subsection 42V(6A)**
- 48 Subsections 42W(1) and (2)**
- 49 Subsection 54AB(1)**

## **Part 3—Signalling personal liability: further amendments**

### **50 Multiple amendments**

The provisions of the *Therapeutic Goods Act 1989* listed in this Part are amended by:

- (a) omitting “Note” and substituting “Note 1”; and
- (b) adding at the end:

Note 2: For the liability of an executive officer of a body corporate, see sections 54B and 54BA.

### **51 Subsections 14(1), (6) and (10)**

### **52 Subsection 15(2)**

### **53 Subsection 19B(2)**

### **54 Subsections 21A(1) and (5)**

### **55 Subsection 22A(1)**

### **56 Subsection 30EC(1)**

### **57 Subsection 30F(4B)**

### **58 Subsection 31(5A)**

### **59 Subsection 32BA(1)**

### **60 Subsection 32BB(1)**

### **61 Subsection 32BC(1)**

### **62 Subsection 32BD(1)**

### **63 Subsection 32DO(1)**

### **64 Subsection 32EF(1)**

- 65 Subsection 32HC(1)**
- 66 Subsection 32JB(2)**
- 67 Subsections 35(1) and (5)**
- 68 Subsection 41EI(1)**
- 69 Subsection 41FE(1)**
- 70 Subsection 41JB(4)**
- 71 Subsection 41KC(1)**
- 72 Subsections 41MA(1), (5) and (9)**
- 73 Subsection 41MC(2)**
- 74 Subsections 41ME(1) and (5)**
- 75 Subsections 41MF(1) and (3)**
- 76 Subsection 41MI(1)**
- 77 Subsection 41MN(1)**
- 78 Subsection 42V(6)**

## **Part 4—Other amendments**

### **79 At the end of subsection 19B(1)**

Add:

Note 3: For the liability of an executive officer of a body corporate, see sections 54B and 54BA.

### **80 At the end of subsection 22(7AB)**

Add:

Note 3: For the liability of an executive officer of a body corporate, see sections 54B and 54BA.

## **Schedule 6—Other Acts amended**

### ***Child Support (Registration and Collection) Act 1988***

#### **1 At the end of subsection 62(2)**

Add:

Note: See section 62A for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

#### **2 Subsection 62(7)**

Repeal the subsection.

#### **3 After section 62**

Insert:

#### **62A Notifying and serving companies**

For the purposes of this Act, if the Registrar thinks fit, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

- (a) a director, the secretary or another officer of the company; or
- (b) an attorney or agent of the company.

Note: See subsection 62(2) for alternative ways to serve a document or requisition on a company (through its public officer or someone else acting or appearing to act for the company).

### ***Classification (Publications, Films and Computer Games) Act 1995***

#### **4 At the end of sections 101 and 102**

Add:

Note: For the liability of a body corporate manager, or a State/Territory body corporate manager, see section 104.

#### **5 At the end of subsections 103(1) and (2)**

Add:

Note: For the liability of a body corporate manager, or a State/Territory body corporate manager, see section 104.

## **6 Section 104**

Repeal the section, substitute:

### **104 Liability of body corporate managers**

#### *Body corporate managers generally*

- (1) A body corporate manager commits an offence if:
  - (a) the body corporate commits an offence against this Part; and
  - (b) the manager knew that the offence would be committed; and
  - (c) the manager was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
  - (d) the manager failed to take all reasonable steps to prevent the commission of the offence.

#### *State/Territory body corporate managers*

- (2) A State/Territory body corporate manager for a State or Territory commits an offence if:
  - (a) the body corporate commits an offence against this Part within the State or Territory; and
  - (b) the manager knew that the offence would be committed; and
  - (c) the manager was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
  - (d) the manager failed to take all reasonable steps to prevent the commission of the offence.

#### *Maximum penalties*

- (3) The maximum penalty for an offence against subsection (1) or (2) is one-fifth of the maximum penalty that could be imposed for the offence committed by the body corporate, subject to subsection (4).
- (4) An offence against subsection (1) or (2) that relates to an offence committed by a body corporate against subsection 103(2) (supplying 5 or more items in or to a prescribed area) is punishable by either or both of the following:

- (a) a pecuniary penalty not exceeding 200 penalty units;
- (b) imprisonment for a term not exceeding 2 years.

## ***Corporations (Aboriginal and Torres Strait Islander) Act 2006***

### **7 Section 69-20 (note)**

Repeal the note, substitute:

Note: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of subsection (1) or (2). See sections 265-40 and 386-10.

### **8 Subsection 88-1(2) (note)**

Repeal the note, substitute:

Note: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of this section. See sections 265-40 and 386-10.

### **9 Section 112-5 (note 2)**

Repeal the note, substitute:

Note 2: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of subsection (5), (6) or (7). See sections 265-40 and 386-10.

### **10 Section 180-35 (note 2)**

Repeal the note, substitute:

Note 2: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of this section. See sections 265-40 and 386-10.

### **11 Section 265-40**

Repeal the section, substitute:

#### **265-40 Responsibility of secretaries for certain contraventions**

##### *Responsibilities of secretaries*

- (1) A secretary of an Aboriginal and Torres Strait Islander corporation contravenes this subsection if the corporation contravenes any of the following provisions:

- (a) subsection 69-20(1) or (2) (requirement to lodge copy of constitutional changes);
- (b) section 88-1 (requirement to lodge material about change of name);
- (c) subsection 112-5(5), (6) or (7) (requirements about registered office);
- (d) section 180-35 (requirement to give copy of register of members or register of former members);
- (e) subsection 304-5(1), (3), (5) or (6) (requirement to lodge details of directors and secretaries);
- (f) section 330-10 (requirement to lodge general report);
- (g) section 348-1 (requirement to lodge annual report).

Note: This subsection is a civil penalty provision (see section 386-1).

*Defence of reasonable steps*

- (2) A person does not contravene subsection (1) in relation to a corporation's contravention of a provision mentioned in that subsection if the person shows that he or she took reasonable steps to ensure that the corporation complied with the provision.

**12 Section 304-5 (note 2)**

Repeal the note, substitute:

Note 2: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of subsection (1), (3), (5) or (6). See sections 265-40 and 386-10.

**13 Subsection 330-10(1) (note)**

Repeal the note, substitute:

Note: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of this section. See sections 265-40 and 386-10.

**14 Subsection 348-1(1) (note)**

Repeal the note, substitute:

Note: A secretary of an Aboriginal and Torres Strait Islander corporation may be liable for a civil penalty for a contravention of this section. See sections 265-40 and 386-10.

**15 After paragraph 386-1(1)(a)**

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Insert:

(aa) subsection 265-40(1) (secretaries' responsibilities);

**16 After subsection 386-10(1)**

Insert:

*Responsibilities of secretaries for certain corporate contraventions*

(1A) Without limiting subsection (1), if a declaration of contravention by a person of subsection 265-40(1) has been made under section 386-1, a Court may order the person to pay the Commonwealth a pecuniary penalty of up to \$3,000.

***Income Tax Assessment Act 1936***

**17 At the end of paragraph 252(1)(e)**

Add:

Note: See section 253 for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

**18 Paragraph 252(1)(j)**

Repeal the paragraph.

**19 After section 252A**

Insert:

**253 Notifying and serving companies**

For the purposes of this Act, or a regulation under this Act, if the Commissioner thinks fit, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

- (a) a director, the secretary or another officer of the company; or
- (b) an attorney or agent of the company.

Note: See paragraph 252(1)(e) for alternative ways to serve documents on a company (through its public officer or someone else acting or appearing to act for the company).

## ***Insurance Contracts Act 1984***

### **20 At the end of subsections 11C(2) and 11D(2) and (3)**

Add:

Note: For the liability of a director, employee or agent of an insurer, see section 11DA.

### **21 After section 11D**

Insert:

#### **11DA Supervisory powers—liability of directors, employees and agents of insurers**

- (1) A person commits an offence if:
- (a) the person is:
    - (i) a director of a company that is an insurer; or
    - (ii) an employee or agent of an insurer; and
  - (b) the person permits or authorises the insurer to engage in conduct; and
  - (c) the conduct constitutes an offence (the *insurer offence*) against subsection 11C(2) or 11D(2) or (3); and
  - (d) the insurer commits the insurer offence.

Penalty: 150 penalty units.

- (2) There is no fault element for the physical element described in paragraph (1)(d) other than the fault elements (if any) for the physical elements of the insurer offence.
- (3) To avoid doubt:
- (a) an insurer does not commit the insurer offence, for the purposes of subsection (1), if the insurer has a defence to the insurer offence; and
  - (b) a person may be convicted of an offence against subsection (1) even if the insurer concerned has not been prosecuted for, or convicted of, the insurer offence.

- (4) In this section:

***conduct*** means:

- (a) an act; or

(b) an omission to perform an act.

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**22 Section 76A**

Repeal the section.

***National Measurement Act 1960***

**23 Section 19G**

Repeal the section.

***Pooled Development Funds Act 1992***

**24 Section 50**

Repeal the section.

**25 Section 51 (heading)**

Repeal the heading, substitute:

**51 Offences—failure to comply with directions or requirements**

**26 Subsection 51(2)**

Omit “, not being a PDF,”.

***Superannuation Guarantee (Administration) Act 1992***

**27 At the end of subsection 57(2)**

Add:

Note: See section 57A for alternative ways to give a notice to, or serve another document on, a company (through its officers, attorneys or agents).

**28 Subsection 57(7)**

Repeal the subsection.

**29 After section 57**

Insert:

### **57A Notifying and serving companies**

For the purposes of this Act, if the Commissioner thinks fit, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

- (a) a director, the secretary or another officer of the company; or
- (b) an attorney or agent of the company.

Note: See subsection 57(2) for alternative ways to serve a notice or another document on a company (through its public officer or someone else acting or appearing to act for the company).

## ***Taxation Administration Act 1953***

### **30 At the end of subsection 444-10(5) in Schedule 1**

Add:

Note: See section 444-15 for alternative ways to give a notice to, or serve a process on, a company (through its officers, attorneys or agents).

### **31 Section 444-15 in Schedule 1**

Repeal the section, substitute:

### **444-15 Notifying and serving companies**

For the purposes of an \*indirect tax law or the \*MRRT law, if the Commissioner considers it appropriate, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

- (a) a director, the secretary or another officer of the company; or
- (b) an attorney or agent of the company.

Note: See subsection 444-10(5) for alternative ways to serve a notice or another document on a company (through its public officer or someone else acting or appearing to act for the company).

## ***Veterans' Entitlements Act 1986***

### **32 Subsection 93D(6)**

Omit “an officer of the corporation who is in default”, substitute “an officer of the corporation who intentionally authorised or permitted the commission of the offence”.

**33 Subsection 93D(7)**

Repeal the subsection.

**34 Subsection 93E(6)**

Omit “an officer of the corporation who is in default”, substitute “an officer of the corporation who intentionally authorised or permitted the commission of the offence”.

**35 Subsection 93E(7)**

Repeal the subsection.

## Schedule 7—Application of amendments

### 1 Application of amendments made by this Act

The amendments made by this Act apply in relation to an act or omission by a body corporate occurring on or after the day this Act commences.

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*[Minister's second reading speech made in—  
House of Representatives on 19 September 2012  
Senate on 1 November 2012]*