



Western Australia

Directors' Liability Reform Act 2023

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Directors' Liability Reform Act 2023

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Western Australia

Directors' Liability Reform Act 2023

No. 9 of 2023

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.

[Assented to 4 April 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Directors' Liability Reform Act 2023*.

2. 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 —
 - (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;

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- (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) section 146 —
 - (i) if the *Swan and Canning Rivers Management Amendment Act 2023* section 7 comes into operation on or before assent day — immediately after section 145 of this Act comes into operation; or

- (ii) otherwise — when the *Swan and Canning Rivers Management Amendment Act 2023* section 7 comes into operation;
- (j) the rest of the Act — on the day after assent day.

3. 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(j), 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(j), 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(j), 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(j), 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.

Part 2 — *The Criminal Code* amended

4. Act amended

This Part amends *The Criminal Code*.

5. Part I Chapter 6 inserted

At the end of Part I insert:

Chapter 6 — Criminal liability of officers of bodies corporate

37. Overview

- (1) This Chapter contains a set of standard provisions (sections 39, 40 and 41) that set out certain circumstances in which directors and other officers of a body corporate can incur criminal liability as a result of an offence by the body corporate.
- (2) Only one of sections 39, 40 and 41 can apply to an offence.

38. Term used: officer

In this Chapter —

officer, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

39. Officer liability for corporate offence: onus on prosecution to prove reasonable steps not taken

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

- (2) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.
- (3) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —
 - (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and
 - (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
 - (c) any other relevant matter.

40. Officer liability for corporate offence: onus on prosecution to prove reasonable steps not taken if evidence suggesting reasonable steps adduced

- (1) This section applies to an offence if a provision of this Code, or of another written law, expressly provides that it applies to the offence.
- (2) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence unless the officer took all reasonable steps to prevent the commission of the offence by the body corporate.
- (3) The prosecutor has the onus of proving that the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate if, and only if, evidence that suggests a reasonable

possibility that the officer took all reasonable steps is first adduced by or on behalf of the officer.

- (4) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —
 - (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and
 - (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
 - (c) any other relevant matter.

41. Officer liability for corporate offence: onus on officer to prove reasonable steps taken

- (1) This section applies to an offence if a provision of this Code, or of another written law, expressly provides that it applies to the offence.
- (2) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence unless the officer took all reasonable steps to prevent the commission of the offence by the body corporate.
- (3) The officer has the onus of proving that the officer took all reasonable steps to prevent the commission of the offence by the body corporate.
- (4) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —
 - (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and

- (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (c) any other relevant matter.

42. Further provisions relating to criminal liability of officers of bodies corporate

- (1) This Chapter does not affect the liability of a body corporate for any offence.
- (2) This Chapter does not affect the liability of an officer, or any other person, under Chapters II, LVII, LVIII and LIX.
- (3) An officer of a body corporate may be charged with, and convicted of, an offence in accordance with section 39, 40 or 41 whether or not the body corporate is charged with, or convicted of, the offence committed by the body corporate.
- (4) If an officer of a body corporate who is charged with an offence in accordance with section 39, 40 or 41 claims that the body corporate would have a defence if it were charged with the offence —
 - (a) the onus of proving the defence is on the officer; and
 - (b) the standard of proof required is the standard that would apply to the body corporate in relation to the defence.
- (5) Subsection (4) does not limit any other defence available to the officer.

43. Penalties

- (1) This section applies to an offence if —
 - (a) section 39, 40 or 41 applies to the offence; and

- (b) the specified penalty for the offence applies only to a body corporate.
- (2) The maximum penalty for the offence if committed by an officer of a body corporate is one-fifth of the maximum penalty that could be imposed on the body corporate.
- (3) This section does not limit the *Sentencing Act 1995*.

6. Section 740D inserted

Before section 740 insert:

740D. Review of amendments made by *Directors' Liability Reform Act 2023*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Code by the *Directors' Liability Reform Act 2023*, 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 2023* 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.

Part 3 — Amendments to other Acts

Division 1 — *Aboriginal Cultural Heritage Act 2021* amended

7. Act amended

This Division amends the *Aboriginal Cultural Heritage Act 2021*.

8. Sections 263 to 265 replaced

Delete sections 263 to 265 and insert:

263. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 52(1)	s. 56(1)	s. 57(1) and (4)
s. 61(1)	s. 64(1)	s. 67(1)
s. 68(1)	s. 88(1)	s. 92
s. 93(1)	s. 94	s. 95
s. 127(1)	s. 133	s. 171(4)
s. 173	s. 183(1) and (2)	s. 190(1) and (2)
s. 196(1) and (2)	s. 205(1) and (2)	s. 240(2)

s. 252	s. 256	s. 304(1)
s. 306(2)		

Division 2 — *Aboriginal Heritage Act 1972* amended

9. Act amended

This Division amends the *Aboriginal Heritage Act 1972*.

10. Section 57 amended

Delete section 57(2).

11. Section 58 inserted

After section 57 insert:

58. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 3 — *Animal Welfare Act 2002* amended

12. Act amended

This Division amends the *Animal Welfare Act 2002*.

13. Section 80 replaced

Delete section 80 and insert:

80. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 4 — *Anzac Day Act 1960* amended

14. Act amended

This Division amends the *Anzac Day Act 1960*.

15. Section 4 amended

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

held

16. Section 5 amended

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

club

17. Section 6 amended

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

held

18. Section 7 amended

In section 7(2) delete the passage that begins with “body, and” and ends with “approval.” and insert:

body commits an offence.

Division 5 — Aquatic Resources Management Act 2016 amended

19. Act amended

This Division amends the *Aquatic Resources Management Act 2016*.

20. Sections 191 and 192 replaced

Delete sections 191 and 192 and insert:

191. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 7(8)	s. 31(2) and (3)
s. 49(2) and (3)	s. 64(2) and (3)
s. 65(2) and (3)	s. 69(2)
s. 86	s. 94(2) and (3) (including arising under subsection (4), (5) or (6))
s. 104(2) and (3)	s. 106(1) and (2)
s. 107(1)	s. 109(2) and (4)
s. 110(2)	s. 112(3)
s. 114(4)	s. 125(4)

s. 129	s. 138(1)
s. 140(1)	s. 141(1)
s. 211(4)	s. 260(1) and (2)

Division 6 — *Architects Act 2004* amended

21. Act amended

This Division amends the *Architects Act 2004*.

22. Section 76 replaced

Delete section 76 and insert:

76. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 7 — Auction Sales Act 1973 amended

23. Act amended

This Division amends the *Auction Sales Act 1973*.

24. Section 35 amended

Delete section 35(4).

Division 8 — Betting Control Act 1954 amended

25. Act amended

This Division amends the *Betting Control Act 1954*.

26. Section 27G replaced

Delete section 27G and insert:

27G. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

s. 27A(2), (2B), (2C) and (3)	s. 27D(2A)
s. 28C	s. 28D

27. Section 27G amended

In section 27G in the Table delete “s. 27D(2A)”.

28. Section 27H amended

Delete section 27H(3).

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

Liability of individuals, partners, bodies corporate and licensed managers

Division 9 — Biodiversity Conservation Act 2016 amended

29. Act amended

This Division amends the *Biodiversity Conservation Act 2016*.

30. Sections 237 and 238 replaced

Delete sections 237 and 238 and insert:

237. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table A.

Table A

s. 48(1)	s. 65(1)
s. 150(1)	s. 158(3)
s. 172(1)	s. 173(1) and (2)

- (2) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table B if the offence involves a cetacean or threatened fauna.

Table B

s. 152(1)	s. 153(1)
s. 157(1)	s. 158(2)
s. 159	s. 160

- (3) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table C if the offence involves threatened flora.

Table C

s. 176(1)	s. 177(1)
s. 178(2)	s. 179

Division 10 — *Biosecurity and Agriculture Management Act 2007* amended

31. Act amended

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

32. Section 110 replaced

Delete section 110 and insert:

110. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 15(1), (2) and (3)	s. 17
s. 18	s. 19(2), (3) and (4)
s. 20(2)	s. 21(2), (3) and (4)
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)

Directors' Liability Reform Act 2023

Part 3 Amendments to other Acts

Division 11 Building and Construction Industry (Security of Payment) Act 2021 amended

s. 33

s. 60	s. 61(1)
s. 62(1)	s. 84(5)
s. 92	

Division 11 — *Building and Construction Industry (Security of Payment) Act 2021* amended

33. Act amended

This Division amends the *Building and Construction Industry (Security of Payment) Act 2021*.

34. Section 118 replaced

Delete section 118 and insert:

118. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 65 or 87 of this Act.

Division 12 — *Building Services (Complaint Resolution and Administration) Act 2011* amended

35. Act amended

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

36. Section 105 replaced

Delete section 105 and insert:

105. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 13 — *Building Services (Registration) Act 2011* amended

37. Act amended

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

38. Section 97 replaced

Delete section 97 and insert:

97. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 14 — Charitable Collections Act 1946 amended

39. Act amended

This Division amends the *Charitable Collections Act 1946*.

40. Section 15 amended

Delete section 15(4).

41. Section 15A inserted

After section 15 insert:

15A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 15(2) or (3A) of this Act.

Division 15 — Contaminated Sites Act 2003 amended

42. Act amended

This Division amends the *Contaminated Sites Act 2003*.

43. Section 92 amended

In section 92:

- (a) after “118,” insert:

118A,

- (b) delete the passage that begins with “as if” and ends with “Act.” and insert:

as if —

- (a) a reference in those sections to “this Act” were a reference to this Act; and
- (b) a reference in section 118A to “Tier 1 offences and Tier 2 offences” were a reference to an offence under a provision of this Act listed in the Table.

Table

s. 10(11)	s. 11(3) and (9)
s. 12(6)	s. 30(6)
s. 43(1)	s. 54(2) and (5)
s. 68(1)	s. 74(1)

Directors' Liability Reform Act 2023

Part 3 Amendments to other Acts

Division 16 Criminal Law (Unlawful Consorting and Prohibited Insignia)
Act 2021 amended

s. 44

s. 93(3)	s. 94
s. 95(1)	s. 96(3)

Division 16 — Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 amended

44. Act amended

This Division amends the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*.

45. Section 25 amended

Delete section 25(1) and (4) to (6).

46. Section 25A inserted

After section 25 insert:

25A. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 25(2) of this Act.

Division 17 — Criminal Procedure Act 2004 amended

47. Act amended

This Division amends the *Criminal Procedure Act 2004*.

48. Section 180 replaced

Delete section 180 and insert:

180. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 18 — *Dangerous Goods Safety Act 2004* amended

49. Act amended

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

50. Section 61 replaced

Delete section 61 and insert:

61. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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) for a contravention of s. 11(2), 12, 13, 14(1), 15(1) or 16 in aggravated circumstances as defined in s. 17(1)
s. 24	s. 47(7)
s. 55(1), (2) and (3)	s. 65(5)

Division 19 — *Debt Collectors Licensing Act 1964* amended

51. Act amended

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

52. Section 23 deleted

Delete section 23.

Division 20 — *Emergency Management Act 2005* amended

53. Act amended

This Division amends the *Emergency Management Act 2005*.

54. Section 77X amended

After section 77X(1)(f) insert:

- (fa) section 98(2) is to be read as if a reference to a direction given under section 47(1), 71(1) or 75(1) included a reference to a direction given under section 77O(1);

55. Section 98 replaced

Delete section 98 and insert:

98. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 95 of this Act.
- (2) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 85	s. 86(1) in relation to a direction given under s. 47(1), 71(1) or 75(1)
-------	--

s. 87	s. 89
s. 90	

Division 21 — *Employment Agents Act 1976* amended

56. Act amended

This Division amends the *Employment Agents Act 1976*.

57. Section 30 amended

Delete section 30(3).

Division 22 — *Energy Operators (Powers) Act 1979* amended

58. Act amended

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

59. Section 86 amended

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

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

Liability of bodies corporate

Division 23 — *Energy Safety Act 2006* amended

60. Act amended

This Division amends the *Energy Safety Act 2006*.

61. Section 35 deleted

Delete section 35.

Division 24 — *Environmental Protection Act 1986* amended

62. Act amended

This Division amends the *Environmental Protection Act 1986*.

63. Section 118 amended

Delete section 118(1) to (3).

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

Establishing state of mind of body corporate

64. Section 118A inserted

After section 118 insert:

118A. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to Tier 1 offences and Tier 2 offences.

Division 25 — *Exotic Diseases of Animals Act 1993* amended

65. Act amended

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

66. Section 58 replaced

Delete section 58 and insert:

58. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 26 — Fair Trading Act 2010 amended

67. Act amended

This Division amends the *Fair Trading Act 2010*.

68. Section 94A inserted

After section 94 insert:

94A. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 62(2) of this Act.
- (2) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of the *Australian Consumer Law (WA)* listed in Table A.

Table A

s. 157(1) and (2)	s. 159(1) and (2)
s. 161(1), (3) and (4)	s. 163(1) and (2)
s. 164(1)	s. 166(1)

s. 167(1)	s. 169(1)
s. 170(1)	s. 171(1)
s. 173(1)	s. 176(1)
s. 177(1)	s. 178(1)
s. 179(1)	s. 180(1)
s. 181(1) and (2)	s. 182(1) and (2)
s. 183(1)	s. 188(1)
s. 192(1)	s. 193(1)
s. 206(1)	

- (3) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of the *Australian Consumer Law (WA)* listed in Table B.

Table B

s. 151(1)	s. 152(1)
s. 153(1)	s. 155(1)
s. 156(1)	s. 158(1), (3), (5) and (7)
s. 162(1), (2) and (3)	s. 164(2)
s. 168(1)	s. 172(1) and (2)
s. 174(1) and (2)	s. 175(1)

s. 194(1), (2), (3) and (5)	s. 195(1) and (2)
s. 197(1), (2), (3) and (5)	s. 198(1) and (2)
s. 199(1) and (2)	s. 200(1)
s. 203(1), (2) and (3)	s. 204(1) and (2)

69. Section 95 amended

Delete section 95(1) to (3).

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

Vicarious liability of employers, principals and other persons

Division 27 — Firearms Act 1973 amended

70. Act amended

This Division amends the *Firearms Act 1973*.

71. Section 21B amended

- (1) In section 21B(1):
 - (a) delete paragraph (a);
 - (b) delete “each” and insert:

the person

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

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

Liability for certain offences

Division 28 — *Fish Resources Management Act 1994* amended

74. Act amended

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

75. Section 204 replaced

Delete section 204 and insert:

204. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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) and (2) (including arising under subsection (3), (4) or (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)
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Division 29 — Food Act 2008 amended

76. Act amended

This Division amends the *Food Act 2008*.

77. Section 128 replaced

Delete section 128 and insert:

128. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 22(1) of this Act.
- (2) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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)	

Division 30 — *Gaming and Wagering Commission Act 1987* amended

78. Act amended

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

79. Section 37 replaced

Delete section 37 and insert:

37. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 22(5)	s. 29(1) and (2)
s. 41(3)	s. 43A(2)
s. 44(1)	s. 45(1) and (2)
s. 57(3)	s. 85(4)
s. 89(2)	s. 93B(3)
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)
s. 109H(2)	

80. Section 37 amended

In section 37 in the Table delete “s. 109H(2)”.

81. Section 99 amended

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

who, if that body committed an offence of failing to pay those moneys on demand, would be criminally liable in accordance with section 37 of this Act.

Division 31 — *Gas Corporation (Business Disposal) Act 1999* amended

82. Act amended

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

83. Section 13 deleted

Delete section 13.

Division 32 — *Gold Corporation Act 1987* amended

84. Act amended

This Division amends the *Gold Corporation Act 1987*.

85. Section 76 deleted

Delete section 76.

Division 33 — *Heritage Act 2018* amended

86. Act amended

This Division amends the *Heritage Act 2018*.

87. Sections 143 and 144 replaced

Delete sections 143 and 144 and insert:

143. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 129(1), (2) and (3)	s. 130(1), (2) and (3)
s. 132(1)	s. 133(4)
s. 134(6)	

Division 34 — *Home Building Contracts Act 1991* amended

88. Act amended

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

89. Section 30 replaced

Delete section 30 and insert:

30. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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), (3) and (5)	s. 25L(1)
s. 28(3)	

Division 35 — *Hope Valley-Wattleup Redevelopment Act 2000* amended

90. Act amended

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

91. Section 30 deleted

Delete section 30.

Division 36 — *Liquor Control Act 1988* amended

92. Act amended

This Division amends the *Liquor Control Act 1988*.

93. Section 164 amended

In section 164(1):

- (a) delete paragraph (a);
- (b) delete “each” and insert:

the manager

Note: The heading to amended section 164 is to read:

Offences by bodies corporate and partnerships

94. Section 164A inserted

After section 164 insert:

164A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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)	

95. Section 167 amended

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

section 101, 164, 164A or 165

Division 37 — *Litter Act 1979* amended

96. Act amended

This Division amends the *Litter Act 1979*.

97. Section 24C deleted

Delete section 24C.

**Division 38 — *Major Events (Aerial Advertising)*
Act 2009 amended**

98. Act amended

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

99. Section 3 amended

In section 3 delete the definition of *officer*.

100. Section 16 replaced

Delete section 16 and insert:

16. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 11(1) of this Act.

Division 39 — Medicines and Poisons Act 2014 amended

101. Act amended

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

102. Section 118 replaced

Delete section 118 and insert:

118. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table A.

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)

- (2) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table B.

Table B

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

Division 40 — *Metropolitan Redevelopment Authority Act 2011* amended

103. Act amended

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

104. Section 129 deleted

Delete section 129.

Division 41 — *Mining Act 1978* amended

105. Act amended

This Division amends the *Mining Act 1978*.

106. Section 154A inserted

After section 154 insert:

154A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 155(1) of this Act.

Division 42 — Misuse of Drugs Act 1981 amended

107. Act amended

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

108. Section 35 replaced

Delete section 35 and insert:

35. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

**Division 43 — Nuclear Waste Storage and Transportation
(Prohibition) Act 1999 amended**

109. Act amended

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

110. Section 8 replaced

Delete section 8 and insert:

8. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 7(2) or 7A(2) of this Act.

**Division 44 — Pawnbrokers and Second-hand Dealers
Act 1994 amended**

111. Act amended

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

112. Section 89 amended

- (1) Delete section 89(3).
- (2) In section 89(4) delete “the licensee and the defence available to an officer under subsection (3) is not available to an officer who is also”.

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

Liability of partners and bodies corporate

Division 45 — *Pearling Act 1990* amended

113. Act amended

This Division amends the *Pearling Act 1990*.

114. Section 56 replaced

Delete section 56 and insert:

56. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 46 — *Perry Lakes Redevelopment Act 2005* amended

115. Act amended

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

116. Section 50 deleted

Delete section 50.

Division 47 — *Pharmacy Act 2010* amended

117. Act amended

This Division amends the *Pharmacy Act 2010*.

118. Section 71 replaced

Delete section 71 and insert:

71. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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)	

Division 48 — *Private Hospitals and Health Services Act 1927* amended

119. Act amended

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

120. Section 26M replaced

Delete section 26M and insert:

26M. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 49 — *Prostitution Act 2000* amended

121. Act amended

This Division amends the *Prostitution Act 2000*.

122. Section 59 replaced

Delete section 59 and insert:

59. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 7(1)	s. 16(1) and (2)
s. 17(1)	s. 18(1)
s. 21	

Division 50 — Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021 amended

123. Act amended

This Division amends the *Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021*.

124. Section 9 replaced

Delete section 9 and insert:

9. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 6(3)	s. 7
s. 8(2), (3) and (7)	

Division 51 — *Public Health Act 2016* amended

125. Act amended

This Division amends the *Public Health Act 2016*.

126. Section 4 amended

In section 4(1) delete the definition of *officer*.

127. Sections 282 and 283 replaced

Delete sections 282 and 283 and insert:

282. Liability of officers for offence by body corporate

The Criminal Code section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 37(1), (2) or (3) or 38(1), (2) or (3) of this Act.

Division 52 — *Radiation Safety Act 1975* amended

128. Act amended

This Division amends the *Radiation Safety Act 1975*.

129. Section 56 amended

Delete section 56(4).

130. Section 56A inserted

After section 56 insert:

56A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate)

applies to an offence under a provision of this Act listed in the Table.

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)

Division 53 — *Retail Trading Hours Act 1987* amended

131. Act amended

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

132. Section 34 deleted

Delete section 34.

Division 54 — *Retirement Villages Act 1992* amended

133. Act amended

This Division amends the *Retirement Villages Act 1992*.

134. Section 79 replaced

Delete section 79 and insert:

79. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

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)

Division 55 — Road Traffic (Vehicles) Act 2012 amended

135. Act amended

This Division amends the *Road Traffic (Vehicles) Act 2012*.

136. Section 108 replaced

Delete section 108 and insert:

108. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of a road law listed in the 2nd column of the Table.

Table

Road law	Provision to which <i>The Criminal Code</i> s. 41 applies
<i>Road Traffic (Administration) Act 2008</i>	s. 44 in relation to a direction given under s. 39(2), 40(2) or 41(2) s. 56(4) s. 57(3) and (4) s. 58(5) s. 71(5) and (7)
<i>Road Traffic (Vehicles) Act 2012</i>	s. 29(1) s. 31(1) s. 36(1) s. 39(1) and (3) s. 66 in relation to a direction given under s. 64(2) or (5) or 65(3) or (5) s. 80(1) s. 86(1) s. 87(1) and (2) s. 95 s. 96 s. 97 s. 98(2) s. 99 s. 100

Directors' Liability Reform Act 2023

Part 3 Amendments to other Acts

Division 56 Security and Related Activities (Control) Act 1996 amended
s. 137

Road law	Provision to which <i>The Criminal Code</i> s. 41 applies
	s. 105(2), (3) and (8) s. 106(2) s. 107(1) s. 127 s. 129

- (2) The matters set out in section 113(2) of this Act may be relevant matters for the purposes of *The Criminal Code* section 41(4)(c) as it applies under subsection (1).

**Division 56 — Security and Related Activities (Control)
Act 1996 amended**

137. Act amended

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

138. Section 88A amended

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

section 89

139. Section 89 amended

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

140. Section 90 deleted

Delete section 90.

Division 57 — *Surveillance Devices Act 1998* amended

141. Act amended

This Division amends the *Surveillance Devices Act 1998*.

142. Section 39 deleted

Delete section 39.

Division 58 — *Swan and Canning Rivers Management Act 2006* amended

143. Act amended

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

144. Section 121 amended

Delete section 121(1) to (3).

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

Establishing state of mind of body corporate

145. Section 121A inserted

At the end of Part 8 Division 1 insert:

121A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

146. Section 121A amended

In section 121A in the Table delete “s. 32(5)” and insert:

s. 32B(2)

Division 59 — Tobacco Products Control Act 2006 amended

147. Act amended

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

148. Section 109 replaced

Delete section 109 and insert:

109. Liability of officers for offence by body corporate

- (1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table A.

Table A

s. 16(1)	s. 17	s. 18
s. 19	s. 20(1)	s. 21
s. 21A	s. 21B	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(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. 103(1) and (2)	s. 106	s. 107F(2)

- (2) *The Criminal Code* section 41 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table B.

Table B

s. 31(1), (2), (3) and (4)	s. 33(1)
s. 35(2) and (3)	s. 104
s. 105	

Division 60 — *Transport Co-ordination Act 1966* amended

149. Act amended

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

150. Section 55A deleted

Delete section 55A.

Division 61 — *Transport (Road Passenger Services) Act 2018* amended

151. Act amended

This Division amends the *Transport (Road Passenger Services) Act 2018*.

152. Sections 218 and 219 replaced

Delete sections 218 and 219 and insert:

218. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 27(1)	s. 28
s. 56(1)	s. 57
s. 58	s. 91(1)
s. 93	s. 122(1) and (2)

s. 123	s. 151(1)
s. 174(2) and (3)	s. 175(2)
s. 191(2)	s. 211(1) and (2)
s. 288	

Division 62 — *Unauthorised Documents Act 1961* amended

153. Act amended

This Division amends the *Unauthorised Documents Act 1961*.

154. Section 6 deleted

Delete section 6.

**Division 63 — *Veterinary Chemical Control and Animal Feeding
Stuffs Act 1976* amended**

155. Act amended

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

156. Section 61 amended

Delete section 61(1).

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

Vicarious liability for sales

Division 64 — *Veterinary Practice Act 2021* amended

157. Act amended

This Division amends the *Veterinary Practice Act 2021*.

158. Sections 142 and 143 replaced

Delete sections 142 and 143 and insert:

142. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 57(1), (2), (3) and (4)	s. 58(2) and (3)
s. 60(1) and (3)	s. 65(2) and (4)

Division 65 — *Waste Avoidance and Resource Recovery Act 2007* amended

159. Act amended

This Division amends the *Waste Avoidance and Resource Recovery Act 2007*.

160. Section 47ZY amended

Delete section 47ZY(2).

161. Section 93 amended

In section 93:

- (a) after “118,” insert:

118A,

- (b) in paragraph (c) delete “Act.” and insert:

Act; and

- (c) after paragraph (c) insert:

- (d) a reference in section 118A to “Tier 1 offences and Tier 2 offences” were a reference to an offence under a provision of this Act listed in the Table.

Table

s. 47E(2)	s. 47F(4)
s. 47I(1)	s. 47M(3), (4) and (5)
s. 47N(4)	s. 47ZN(1), (3) and (4)
s. 47ZZF(1)	s. 78(1)

Division 66 — *Water Services Act 2012* amended

162. Act amended

This Division amends the *Water Services Act 2012*.

163. Section 196 replaced

Delete section 196 and insert:

196. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

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

Division 67 — *Waterways Conservation Act 1976* amended

164. Act amended

This Division amends the *Waterways Conservation Act 1976*.

165. Section 73 amended

Delete section 73(1).

Division 68 — *Western Australian Products Symbol Act 1972* amended

166. Act amended

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

167. Section 13 deleted

Delete section 13.

Division 69 — *Workers' Compensation and Injury Management Act 1981* amended

168. Act amended

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

169. Section 170 amended

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

amount.

- (2) Delete section 170(5).

- (3) Delete section 170(6) and insert:

- (6) In subsections (2b) and (2c) —
responsible officer, in relation to the commission of an offence by a body corporate, means a person who is convicted of that offence in accordance with section 170A.

Directors' Liability Reform Act 2023

Part 3 Amendments to other Acts

Division 69 Workers' Compensation and Injury Management Act 1981
amended

s. 170

170. Section 170A inserted

After section 170 insert:

170A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 170(1) of this Act.

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