

# EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

**EXPOSURE DRAFT NO.2 (MAY 2012)**

This draft covers legislation administered by Commonwealth Departments other than the Treasury. A third exposure draft covering additional remaining Commonwealth legislation will, if required, be released later in 2012.

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

**No.     , 2012**

*(Treasury)*

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



# EXPOSURE-DRAFT

---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
<b>Schedule 1—Classification (Publications, Films and Computer Games) Act 1995</b>		3
<b>Schedule 2—Corporations (Aboriginal and Torres Strait Islander) Act 2006</b>		5
<b>Schedule 3—Health Insurance Act 1973</b>		8
Part 1—Main amendments		8
Part 2—Signalling personal fault		9
Part 3—Other amendment		10
<b>Schedule 4—National Measurement Act 1960</b>		11
<b>Schedule 5—National Vocational Education and Training Regulator Act 2011</b>		12
Part 1—Signalling personal fault		12
Part 2—Other amendments		14
<b>Schedule 6—Therapeutic Goods Act 1989</b>		15
Part 1—Main amendments		15
Part 2—Signalling personal fault		18
Part 3—Signalling personal fault: further amendments		21
Part 4—Other amendments		23
<b>Schedule 7—Veterans’ Entitlements Act 1986</b>		24



# EXPOSURE-DRAFT

1     **A Bill for an Act to amend the law relating to**  
2     **personal liability for offences committed by**  
3     **corporations, and for related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

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

8     **2 Commencement**

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

# EXPOSURE-DRAFT

---

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or  
3 repealed as set out in the applicable items in the Schedule  
4 concerned, and any other item in a Schedule to this Act has effect  
5 according to its terms.  
6

# EXPOSURE-DRAFT

Classification (Publications, Films and Computer Games) Act 1995 **Schedule 1**

---

1  
2 **Schedule 1—Classification (Publications,**  
3 **Films and Computer Games) Act 1995**  
4

5 **1 At the end of sections 101 and 102**

6 Add:

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

9 **2 At the end of subsections 103(1) and (2)**

10 Add:

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

13 **3 Section 104**

14 Repeal the section, substitute:

15 **104 Liability of body corporate managers**

16 *Body corporate managers generally*

17 (1) A body corporate manager commits an offence if:

- 18 (a) the body corporate commits an offence against this Part; and  
19 (b) the manager knew that the offence would be committed; and  
20 (c) the manager was in a position to influence the conduct of the  
21 body corporate in relation to the commission of the offence;  
22 and  
23 (d) the manager failed to take all reasonable steps to prevent the  
24 commission of the offence.

25 *State/Territory body corporate managers*

26 (2) A State/Territory body corporate manager for a State or Territory  
27 commits an offence if:

- 28 (a) the body corporate commits an offence against this Part  
29 within the State or Territory; and  
30 (b) the manager knew that the offence would be committed; and

# EXPOSURE-DRAFT

Schedule 1 Classification (Publications, Films and Computer Games) Act 1995

---

- 1 (c) the manager was in a position to influence the conduct of the  
2 body corporate in relation to the commission of the offence;  
3 and  
4 (d) the manager failed to take all reasonable steps to prevent the  
5 commission of the offence.

6 *Maximum penalties*

- 7 (3) The maximum penalty for an offence against subsection (1) or (2)  
8 is one-fifth of the maximum penalty that could be imposed for the  
9 offence committed by the body corporate, subject to subsection (4).  
10 (4) An offence against subsection (1) or (2) that relates to an offence  
11 committed by a body corporate against subsection 103(2)  
12 (supplying 5 or more items in or to a prescribed area) is punishable  
13 by either or both of the following:  
14 (a) a pecuniary penalty not exceeding 200 penalty units;  
15 (b) imprisonment for a term not exceeding 2 years.  
16



# EXPOSURE-DRAFT

Corporations (Aboriginal and Torres Strait Islander) Act 2006 **Schedule 2**

---

1  
2  
3  
4

## **Schedule 2—Corporations (Aboriginal and Torres Strait Islander) Act 2006**

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

5  
6 Repeal the note, substitute:

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

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

10  
11 Repeal the note, substitute:

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

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

15  
16 Repeal the note, substitute:

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

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

20  
21 Repeal the note, substitute:

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

### **5 Section 265-40**

25  
26 Repeal the section, substitute:

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

27  
28 (1) A secretary of an Aboriginal and Torres Strait Islander corporation  
29 contravenes this subsection if the corporation contravenes any of  
30 the following provisions:

31 (a) subsection 69-20(1) or (2) (requirement to lodge copy of  
32 constitutional changes);

# EXPOSURE-DRAFT

Schedule 2 Corporations (Aboriginal and Torres Strait Islander) Act 2006

---

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

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

## 12 *Defence of reasonable steps*

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

## 17 **6 Section 304-5 (note 2)**

18 Repeal the note, substitute:

19 Note 2: A secretary of an Aboriginal and Torres Strait Islander corporation  
20 may be liable for a civil penalty for a contravention of subsection (1),  
21 (3), (5) or (6). See sections 265-40 and 386-10.

## 22 **7 Subsection 330-10(1) (note)**

23 Repeal the note, substitute:

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

## 27 **8 Subsection 348-1(1) (note)**

28 Repeal the note, substitute:

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

## 32 **9 After paragraph 386-1(1)(a)**

33 Insert:

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

# EXPOSURE-DRAFT

Corporations (Aboriginal and Torres Strait Islander) Act 2006 **Schedule 2**

---

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

2           Insert:

3                           *Responsibilities of secretaries for certain corporate contraventions*

4           (1A) Without limiting subsection (1), if a declaration of contravention  
5           by a person of subsection 265-40(1) has been made under  
6           section 386-1, a Court may order the person to pay the  
7           Commonwealth a pecuniary penalty of up to \$3,000.  
8

# EXPOSURE-DRAFT

Schedule 3 Health Insurance Act 1973

Part 1 Main amendments

---

1

2

## Schedule 3—Health Insurance Act 1973

3

### Part 1—Main amendments

4

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

5

Repeal the subsections.

6

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

7

Repeal the definition.

8

# EXPOSURE-DRAFT

Health Insurance Act 1973 **Schedule 3**  
Signalling personal fault **Part 2**

---

1

2

## **Part 2—Signalling personal fault**

3

### **3 Multiple amendments**

4

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

5

6

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

7

8

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

9

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

10

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

11

# EXPOSURE-DRAFT

Schedule 3 Health Insurance Act 1973

Part 3 Other amendment

---

1

2

## Part 3—Other amendment

3

### 7 Section 23DZZIO

4

Omit:

5

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

6

7

8

substitute:

9

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

10

11

12

# EXPOSURE-DRAFT

National Measurement Act 1960 **Schedule 4**

---

1  
2  
3  
4  
5  
6

## **Schedule 4—National Measurement Act 1960**

### **1 Section 19G**

Repeal the section.

# EXPOSURE-DRAFT

Schedule 5 National Vocational Education and Training Regulator Act 2011

Part 1 Signalling personal fault

---

1

## Schedule 5—National Vocational Education and Training Regulator Act 2011

3

4

### Part 1—Signalling personal fault

5

#### 1 Multiple amendments

6

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

7

8

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

9

10

#### 2 Section 93

11

#### 3 Section 95

12

#### 4 Section 97

13

#### 5 Section 99

14

#### 6 Subsections 101(1) and (2)

15

#### 7 Subsections 103(1) and (2)

16

#### 8 Subsections 105(1) and (2)

17

#### 9 Section 107

18

#### 10 Section 109

19

#### 11 Section 114

20

#### 12 Subsection 116(1)

21

#### 13 Section 118

22

#### 14 Section 120

23

#### 15 Section 122

24

#### 16 Section 124

---



# EXPOSURE-DRAFT

National Vocational Education and Training Regulator Act 2011 **Schedule 5**  
Signalling personal fault **Part 1**

---

- 1 **17 Section 126**
- 2 **18 Section 128**
- 3 **19 Subsection 140(5)**
- 4

# EXPOSURE-DRAFT

Schedule 5 National Vocational Education and Training Regulator Act 2011

Part 2 Other amendments

---

1

2 **Part 2—Other amendments**

3 **20 Subsection 116(2)**

4 Omit “Note”, substitute “Note 1”.

5 **21 At the end of subsection 116(2) (after the note)**

6 Add:

7 Note 2: For the liability of an executive officer of a body corporate, see  
8 section 133.

9

# EXPOSURE-DRAFT

Therapeutic Goods Act 1989 **Schedule 6**  
Main amendments **Part 1**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## Schedule 6—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

##### 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: specific offences

- (1) For the purposes of paragraph 54B(1)(a), this section covers offences against:
  - (a) the provisions referred to in the table in subsection (2); and
  - (b) regulations 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 against a provision referred to in paragraph (a) of this subsection or a regulation referred to in paragraph (b) of this subsection; and
  - (d) section 136.1, 137.1 or 137.2 of the *Criminal Code* in relation to this Act or the regulations.
- (2) The table for the purposes of paragraph (1)(a) is as follows:

---

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

---

##### Provisions

---

Subsection 14(1), (2), (6), (7), (10) or (11)

Subsection 15(2) or (3)

Subsection 19B(1) or (2)

Subsection 21A(1), (2), (5) or (6)

---

# EXPOSURE-DRAFT

Schedule 6 Therapeutic Goods Act 1989

Part 1 Main amendments

---

---

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

---

### Provisions

---

Subsection 22(7AB)  
Subsection 22A(1) or (2)  
Subsection 29A(1)  
Subsection 29B(3) or (4)  
Subsection 30EC(1) or (2)  
Subsection 30F(4B) or (4C)  
Subsection 31(5A) or (5B)  
Subsection 31D(1)  
Subsection 31E(1)  
Subsection 32BA(1) or (2)  
Subsection 32BB(1) or (2)  
Subsection 32BC(1) or (2)  
Subsection 32BD(1) or (2)  
Subsection 32CH(1)  
Subsection 32CJ(6) or (7)  
Subsection 32DO(1) or (2)  
Subsection 32DQ(1)  
Subsection 32DR(3) or (4)  
Subsection 32EF(1) or (2)  
Subsection 32HC(1) or (2)  
Subsection 32JB(2) or (3)  
Subsection 32JI(2)  
Subsection 35(1), (2), (5) or (7)  
Subsection 41EI(1) or (2)  
Subsection 41FE(1) or (2)  
Subsection 41JB(4) or (5)  
Section 41JH  
Subsection 41JI(1)  
Subsection 41KC(1) or (2)  
Subsection 41MA(1), (2), (5), (6), (9) or (10)  
Subsection 41MC(2) or (3)  
Subsection 41ME(1), (2), (5) or (6)  
Subsection 41MF(1) or (3)

# EXPOSURE-DRAFT

Therapeutic Goods Act 1989 **Schedule 6**  
Main amendments **Part 1**

---

---

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

---

### **Provisions**

---

Section 41MH

Subsection 41MI(1) or (2)

Subsection 41MN(1) or (2)

Subsection 41MNB(1)

Subsection 41MP(1)

Subsection 41MQ(3) or (4)

Subsection 42E(1)

Subsection 42T(1) or (2)

Subsection 42V(6) or (6A)

Subsection 42W(1) or (2)

Subsection 54AB(1)

---

1

# EXPOSURE-DRAFT

Schedule 6 Therapeutic Goods Act 1989

Part 2 Signalling personal fault

---

1

2 **Part 2—Signalling personal fault**

3 **4 Multiple amendments**

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

6 Note: For the liability of an executive officer of a body corporate, see  
7 subsection 54B(1).

8 **5 Subsections 14(2), (7) and (11)**

9 **6 Subsection 15(3)**

10 **7 Subsections 21A(2) and (6)**

11 **8 Subsection 22A(2)**

12 **9 Subsection 29A(1)**

13 **10 Subsections 29B(3) and (4)**

14 **11 Subsection 30EC(2)**

15 **12 Subsection 30F(4C)**

16 **13 Subsection 31(5B)**

17 **14 Subsection 31D(1)**

18 **15 Subsection 31E(1)**

19 **16 Subsection 32BA(2)**

20 **17 Subsection 32BB(2)**

21 **18 Subsection 32BC(2)**

22 **19 Subsection 32BD(2)**

23 **20 Subsection 32CH(1)**

---

# EXPOSURE-DRAFT

Therapeutic Goods Act 1989 **Schedule 6**  
Signalling personal fault **Part 2**

---

- 1     **21 Subsections 32CJ(6) and (7)**
  - 2     **22 Subsection 32DO(2)**
  - 3     **23 Subsection 32DQ(1)**
  - 4     **24 Subsections 32DR(3) and (4)**
  - 5     **25 Subsection 32EF(2)**
  - 6     **26 Subsection 32HC(2)**
  - 7     **27 Subsection 32JB(3)**
  - 8     **28 Subsection 32JI(2)**
  - 9     **29 Subsections 35(2) and (7)**
  - 10    **30 Subsection 41EI(2)**
  - 11    **31 Subsection 41FE(2)**
  - 12    **32 Subsection 41JB(5)**
  - 13    **33 Section 41JH**
  - 14    **34 Subsection 41JI(1)**
  - 15    **35 Subsection 41KC(2)**
  - 16    **36 Subsections 41MA(2), (6) and (10)**
  - 17    **37 Subsection 41MC(3)**
  - 18    **38 Subsections 41ME(2) and (6)**
  - 19    **39 Section 41MH**
  - 20    **40 Subsection 41MI(2)**
  - 21    **41 Subsection 41MN(2)**
  - 22    **42 Subsection 41MNB(1)**
-

# EXPOSURE-DRAFT

Schedule 6 Therapeutic Goods Act 1989

Part 2 Signalling personal fault

---

- 1     **43 Subsection 41MP(1)**
- 2     **44 Subsections 41MQ(3) and (4)**
- 3     **45 Subsection 42E(1)**
- 4     **46 Subsections 42T(1) and (2)**
- 5     **47 Subsection 42V(6A)**
- 6     **48 Subsections 42W(1) and (2)**
- 7     **49 Subsection 54AB(1)**
- 8



# EXPOSURE-DRAFT

Therapeutic Goods Act 1989 **Schedule 6**  
Signalling personal fault: further amendments **Part 3**

---

1

2

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

3

4

### **50 Multiple amendments**

5

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

6

7

(a) omitting “Note” and substituting “Note 1”; and

8

(b) adding at the end (after the note):

9

Note 2: For the liability of an executive officer of a body corporate, see subsection 54B(1).

10

11

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

12

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

13

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

14

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

15

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

16

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

17

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

18

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

19

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

20

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

21

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

22

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

23

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

24

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

# EXPOSURE-DRAFT

Schedule 6 Therapeutic Goods Act 1989

Part 3 Signalling personal fault: further amendments

---

- 1     **65 Subsection 32HC(1)**
- 2     **66 Subsection 32JB(2)**
- 3     **67 Subsections 35(1) and (5)**
- 4     **68 Subsection 41EI(1)**
- 5     **69 Subsection 41FE(1)**
- 6     **70 Subsection 41JB(4)**
- 7     **71 Subsection 41KC(1)**
- 8     **72 Subsections 41MA(1), (5) and (9)**
- 9     **73 Subsection 41MC(2)**
- 10    **74 Subsections 41ME(1) and (5)**
- 11    **75 Subsections 41MF(1) and (3)**
- 12    **76 Subsection 41MI(1)**
- 13    **77 Subsection 41MN(1)**
- 14    **78 Subsection 42V(6)**
- 15

# EXPOSURE-DRAFT

Therapeutic Goods Act 1989 **Schedule 6**  
Other amendments **Part 4**

---

1

2 **Part 4—Other amendments**

3 **79 At the end of subsection 19B(1) (after the notes)**

4 Add:

5 Note 3: For the liability of an executive officer of a body corporate, see  
6 subsection 54B(1).

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

8 Add:

9 Note 3: For the liability of an executive officer of a body corporate, see  
10 subsection 54B(1).  
11

# EXPOSURE-DRAFT

Schedule 7 Veterans' Entitlements Act 1986

---

1

2

3

## Schedule 7—Veterans' Entitlements Act 1986

4

### 1 Subsection 93D(6)

5

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”.

6

7

8

### 2 Subsection 93D(7)

9

Repeal the subsection.

10

### 3 Subsection 93E(6)

11

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”.

12

13

14

### 4 Subsection 93E(7)

15

Repeal the subsection.