Act to include 'unexplained wealth' laws that provide that, if the state can prove on the balance of probabilities that there is a reasonable suspicion that an individual has been involved in serious criminal activity or acquired serious crime derived property without providing sufficient consideration and any of the person's current or previous wealth was acquired unlawfully, then that individual must prove the legitimacy of all of their assets. The bill provides that, with respect to both serious drug offender confiscation orders and unexplained wealth orders, the Supreme Court has a discretion to refuse to make the order if it is satisfied it is not in the public interest to do so. Further, the Supreme Court has a discretion to exclude assets from the operation of a serious drug offender confiscation order or reduce the amount that would be payable under an unexplained wealth order if the court is satisfied it is in the public interest to do so.

Under the bill, innocent dependants of persons against whom serious drug offender confiscation orders and unexplained wealth orders are made can make applications for hardship orders with respect to certain property. Currently, dependants of persons against whom proceeds assessment orders are made do not have the ability to apply to the Supreme Court for an order seeking relief from hardship. The bill provides that these dependants will have the same ability to make an application for hardship order as the dependants of persons against whom unexplained wealth orders and serious drug offender confiscation orders are made.

The bill updates the provisions of the Criminal Proceeds Confiscation Act with respect to the issuing of notices to financial institutions. This will allow investigators to obtain the information necessary to allow them to identify and protect property from dissipation in a timely manner. The level of information provided to investigators and the increased penalty for noncompliance more closely aligns the position in the Criminal Proceeds Confiscation Act with other Australian jurisdictions.

The bill provides an explicit mechanism in the Criminal Proceeds Confiscation Act that will enable Queensland to participate in equitable sharing programs with other jurisdictions. The Commonwealth Parliamentary Joint Committee on Law Enforcement report encouraged the facilitation of equitable sharing programs in order to make cross jurisdictional work on proceeds of crime matters easier.

The bill provides for other minor amendments in order to assist the Criminal Proceeds Confiscation Act to enhance its operation. The Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Bill 2012 ensures that Queensland will not become a safe haven for those wishing to hide their ill-gotten gains. The bill is consistent with the Queensland government's unapologetic commitment to being tough on crime. I commend the bill to the House.

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First Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.40 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Dr Robinson): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

DIRECTORS' LIABILITY REFORM AMENDMENT BILL

Introduction

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.41 pm): I present a bill for an act to amend particular acts for matters relating to the liability of executive officers of corporations. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Directors' Liability Reform Amendment Bill.

Tabled paper: Directors' Liability Reform Amendment Bill, Explanatory Notes.

I am pleased to introduce the Directors' Liability Reform Amendment Bill 2012. The bill substantially reduces, across the Queensland statute book, the number of provisions that impose personal and criminal liability on directors for offences committed by corporations—directors liability provisions. There has been a tendency in the past to provide for blanket directors liability to apply to offences under acts without adequate justification.

The bill responds to concerns expressed by the business community and the legal profession about the number and complexity of provisions that impose personal liability on directors for corporate fault. Business groups have also suggested that laws of this nature impact on entrepreneurialism and economic growth as directors adopt an overly cautious approach, in turn curtailing competitiveness, innovation and profitability.

The reforms proposed in the bill are consistent with a national commitment to improving the consistency of approach to directors liability across Australian jurisdictions. The government will apply these principles and guidelines in developing future legislation.

The bill has been prepared following an audit of Queensland's directors liability provisions against nationally agreed principles and guidelines. Under the principles, the imposition of personal liability on a director for the misconduct of a corporation should be confined to situations where: there are compelling public policy reasons for doing so, for example in terms of the potential for significant public harm that might be caused by the particular corporate offending; liability of the corporation is not likely on its own to sufficiently promote compliance; and it is reasonable in all the circumstances for the director to be liable having regard to factors including:

- the obligation on the corporation, and in turn the director, is clear;
- the director has the capacity to influence the conduct of the corporation in relation to the offending; and
- there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.

As I said, the bill has been prepared following the audit of Queensland's directors liability provisions against nationally agreed principles and guidelines, a copy of which I now table for the information of the House.

Tabled paper: Document titled 'Personal Liability for Corporate Fault—Guidelines for applying the COAG Principles'.

Under the agreed principles, where the imposition of directors liability can be justified directors should generally only be held liable for corporate offences if they have encouraged or assisted in the commission of an offence or have been otherwise negligent or reckless. However, the principles recognise that in some instances it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

The guidelines provide a practical guide to how the principles are to be applied. Under the guidelines, for a directors liability provision to be retained stated criteria must be satisfied. For example, one criteria is that the underlying offence has the potential for significant public harm such as death or disabling injury to individuals, serious damage to the environment, serious risk to public health and safety, undermining of confidence in financial markets, or otherwise highly morally reprehensible conduct, for example serious offences under child protection or animal welfare legislation. Other considerations include the size and nature of the penalty applying to the conduct, whether the underlying offence is central to the regulatory regime, and the effectiveness of enforcement against the corporation alone.

If a directors liability provision is justified, the guidelines provide for three levels of liability, provided for in the bill as follows. Type 1 liability, the least onerous, places the onus on the prosecution to prove that the director failed to take all reasonable steps to ensure the corporation did not engage in conduct constituting the offence. Type 2 liability makes the director liable for the corporation's criminal conduct; provides that directors bear the onus of bringing evidence to show that they did not know and could not reasonably have been expected to have known of the corporation's conduct constituting the offence or that they took all reasonable steps to ensure the corporation did not engage in conduct constituting the offence; and requires the prosecution to prove the contrary beyond reasonable doubt. Type 3 liability, the most onerous, deems a director criminally liable for a corporate breach and requires directors to prove in their defence that they did not know and could not reasonably have been expected to have known of the corporation's conduct constituting the offence or that they took all reasonable steps to prevent the commission of the offence by the corporation.

The audit of Queensland legislation according to the guidelines identified over 80 acts and over 3,800 provisions across the statute book for which directors or other corporate officers can be found to be automatically liable. The following legislation was not audited as it was not within the scope of the national review: the Work Health and Safety Act 2011, the Environmental Protection Act 1994, the Marine Parks Act 2004, the Nature Conservation Act 1992, the Recreation Areas Management Act 2006 and the Vegetation Management Act 1999. Two further acts have been excluded from implementation of the results of the Queensland audit: the Sustainable Planning Act 2009, which is currently the subject of a legislative comprehensive review, and the Child Care Act 2002, which is in the process of being replaced. The principles and guidelines will be applied in developing directors liability provisions in resulting amending or replacement legislation.

For the statutes amended by the bill, thousands of offences for which directors may be liable for corporate fault have been reduced or removed. The categories of offences for which directors liability is

retained include animal cruelty, child protection, fire and building safety, public health and safety in areas including nuclear facilities, water and energy production and supply, waste services and disposal, food safety, pest management and radiation sources, revenue protection, protection of identity of complainants and defendants in sexual offence proceedings, transport of dangerous goods, marine pollution, environmental and heritage protection and unauthorised mining activities.

Directors will remain liable for offences where they have personally committed an offence or are deemed to have committed an offence under the Criminal Code. For some amended acts, the bill provides for strengthened deemed liability where the executive officer authorised or permitted the corporation's conduct constituting the offence or was directly or indirectly knowingly concerned in the corporation's conduct.

Because the nationally agreed milestone was for legislation to implement these reforms to be introduced by the end of 2012, there has been limited opportunity for ministers to consult with the public or stakeholders in the preparation of the bill. Because of the short time frame for preparing the bill, the amendments for the removal and retention of directors liability have been prepared as an overlay on the existing offence framework under individual statutes. Ministers may also subsequently, in more fundamentally reviewing their portfolio legislation, consider opportunities for better targeting and streamlining offences to which liability of directors is appropriate and whether that liability should be imposed directly or indirectly as a result of corporate offending.

This bill represents a significant reduction in red tape and the regulatory burden placed on directors and other corporate officers. I would like to thank all of my ministerial colleagues for their cooperation in achieving this result. I am reliably informed that the number of offences under statute has gone from 3,800 to around 280. I thank all of my ministerial colleagues for getting on with the job and further reducing the red-tape burden across Queensland. I commend the bill to the House.

First Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.49 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Dr Robinson): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

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~~MINING AND OTHER LEGISLATION AMENDMENT BILL~~

~~Introduction~~

~~**Hon. AP CRIPPS** (Hinchinbrook—LNP) (Minister for Natural Resources and Mines) (3.49 pm): I present a bill for an act to amend the Environmental Protection Act 1994, the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012, the Fossicking Act 1994, the Geothermal Energy Act 2010, the Greenhouse Gas Storage Act 2009, the Mineral Resources Act 1989, the Mines Legislation (Streamlining) Amendment Act 2012, the Petroleum Act 1923, the Petroleum and Gas (Production and Safety) Act 2004 and the Wild Rivers Act 2005 for particular purposes. I table the bill and explanatory notes. I nominate the Agriculture, Resources and Environment Committee to consider the bill.~~

~~*Tabled paper:* Mining and Other Legislation Amendment Bill 2012.~~

~~*Tabled paper:* Mining and Other Legislation Amendment Bill, Explanatory Notes.~~

~~The Newman government continues to deliver on its commitment to reduce the regulatory and financial burden on Queensland's resources sector. Today I am introducing a package of proposed reforms to Queensland's mining legislation and the Environmental Protection Act 1994. These include a suite of amendments to reduce red tape and green tape for operators of small scale mining of opal and gemstones, fossicking and additional amendments to clarify and modernise mining legislation and measures to expand and improve the competitive tendering framework for coal and petroleum and gas exploration permits. Together these reforms support the government's commitment in its six-month action plan to review legislation and regulation for the resources sector to reduce red tape and give investment certainty to industry.~~