Speech By

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Record of Proceedings, 16 October 2013

DIRECTORS' LIABILITY REFORM AMENDMENT BILL

Second Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (7.59 pm): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Community Safety Committee for its report on the Directors' Liability Reform Amendment Bill 2012 and for its consideration of the submissions received. I also thank the stakeholders who contributed to the committee process by providing their thoughtful submissions: the Australian Institute of Company Directors, Minter Ellison Lawyers and the Queensland Law Society. Directors liability offences are those for which executive officers of corporations, such as directors, can be liable as a result of offending by their corporations.

The bill, which I introduced on 28 November 2012, proposed a substantial reduction in the number of directors liability provisions from approximately 3,800 offences to approximately 260 offences across the acts amended. The bill provided various levels of liability for executive officers: type 1 liability where the prosecution has the onus of proving that the executive officer failed to take all reasonable steps to prevent the commission of the offence by the corporation; type 2 liability reverses the evidential onus of proof for executive officers; and type 3 liability reverses the legal onus of proof for executive officers. The bill also provides for 'deemed liability' where the officer has authorised or permitted the corporation's conduct constituting the offence or was, directly or indirectly, knowingly concerned in the corporation's conduct. This liability applies not just because of corporate offending but because of the executive officer's own actions in that offending.

The bill was introduced to comply with the Council of Australian Governments, that is, COAG, required time frame of introduction by the end of December 2012. In the time that has elapsed since the bill's introduction, a further whole-of-government review has been undertaken to determine if further reductions in the number of remaining directors liability provisions and the level of their liability are appropriate.

Significantly, as part of that review, the government has decided that directors liability provisions should generally not be included in state legislation and where included the case for the provision will need to be appropriately justified. Further, the government has decided that where an exception is agreed to and a directors liability provision is to be included in legislation, it will not reverse the onus of proof.

Under this policy, there are only two types of liability for executive officers, type 1 and deemed liability, rather than the four currently provided for in the bill. Type 2 liability and type 3 liability are removed. Type 1 liability will be retained for just over 100 offences. This means executive officers will only be liable for these offences where the corporation commits the offence and the prosecution

proves that the officer did not take all reasonable steps to ensure the corporation did not engage in conduct constituting the offence. There will be no reversal of the onus of proof.

Type 1 liability will be retained for offences in the areas of food safety; public safety, for example, public health, building safety, fire safety, water safety and reliability and explosives use; public and environmental safety in mining, gas, petroleum and nuclear activities; child protection; environmental and heritage protection; animal welfare; and revenue protection. The number of remaining directors liability offences compares favourably with reforms undertaken in other Australian jurisdictions.

Additionally, deemed liability will be retained where an officer has authorised or permitted the corporation's conduct constituting the offence, or was, directly or indirectly, knowingly concerned in the corporation's conduct. It will apply to approximately 30 acts but, in the interests of certainty and transparency, its application will also be confined to nominated offences. Deemed liability is in addition to the potential liability of executive officers as a party to an offence pursuant to the Criminal Code.

Deemed liability is proposed to be retained including for offences concerning child protection, public safety—for example, food safety, transport of dangerous goods and water reliability—animal welfare, revenue protection, environmental protection, publication of certain protected information concerning proceedings and petroleum and mining safety. General deemed liability provisions are only retained as a temporary measure for the Property Agents and Motor Dealers Act 2000 and the Health Act 1937 pending replacement legislation.

The committee in its report on the bill made reference to the need for an urgent review of five acts which were inadvertently omitted from the original review of Queensland's directors liability provisions. These acts have now been considered as part of the recent whole-of-government further review and the directors liability provisions in each of these acts is proposed for repeal.

During consideration in detail I will be moving a significant number of amendments to the bill to give effect to the outcomes of the further whole-of-government review. It is the government's expectation that the resulting amendments will ensure that the correct balance is achieved between reducing red tape and the regulatory burden placed on executive officers and maintaining appropriate accountability measures for serious offences committed by corporations.

The committee in its report also recommended that the Minister for Energy and Water Supply progress a review of the directors liability provision of the national electricity law through the Standing Council on Energy and Resources. As noted in the government response, the Standing Council on Energy and Resources is currently conducting a review of the enforcement regimes under the national energy legislation—the national electricity law, national gas law and national energy retail law. Section 85 of the national electricity law has been expressly identified for inclusion in this review process which is being led by the Commonwealth on behalf of all jurisdictions.

I would also like to update the House on some other legislation containing directors liability provisions which are not addressed in the bill. Broadly speaking, these acts were excluded from the COAG directors liability review due to the applicability of COAG exemptions or because they are the subject of other national or legislative reviews. Reform of the directors liability provisions in the Agricultural Chemicals Distribution Control Act 1966 and the Chemical Usage (Agricultural and Veterinary) Control Act 1988 is under consideration for inclusion in a suitable bill. The Child Care Act 2002 is proposed to be repealed by a bill currently before the Legislative Assembly. The Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999, which were excluded from the COAG directors liability review, are currently the subject of a public consultation regulatory impact statement. The directors liability provision in the Cooperatives Act 1997 will be removed by amendments during consideration in detail of the bill. A directors liability provision in the Electrical Safety Act 2002 is not amended by the bill because of its imminent repeal under amendments in 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 were excluded from the initial review on the basis that they relate to environmental protection which were exempted from COAG's review. Despite this, the government is currently considering its options for moving forward with regard to directors liability and environmental regulation. The Exotic Diseases in Animals Act 1981, the Plant Protection Act 1989, and the Stock Act 1915 are proposed for repeal in legislation expected to be progressed in the near future. The Fair Trading Act 1989, which has been part of a national review, will be considered for directors liability reform as a matter of priority for an upcoming bill. The Sustainable Planning Act 2009 is subject to substantial review and the resulting legislation will need to comply with current directors liability policy.

During consideration in detail I will also be moving unrelated amendments to the bill to make amendments to the Crime and Misconduct Act 2001. Existing section 346A of the Crime and Misconduct Act 2001, which provides protection to certain confidential Fitzgerald Commission of Inquiry documents that were or were potentially accessed between 1 February 2012 and 5 March 2013 following incorrect classification by the Crime and Misconduct Commission, will have no protective effect after 8 November 2013. The government in its response to recommendations 13 and 14 of the Parliamentary Crime and Misconduct Committee report No. 90, titled *Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents*, committed to amend section 346A subject to advice from the CMC about whether the section's protection needs to apply to all of the documents that were accessed during the relevant period being 1 February 2012 to 5 March 2013.

Following discussions with the CMC, the agreed approach is to amend section 346A of the Crime and Misconduct Act so that it only applies while the documents that were accessed or potentially accessed between 1 February 2012 and 5 March 2013 are subject to a restricted access period under the Public Records Act 2002. The amendments will also apply a statutory restricted access period, which can be varied in the future by the CMC, of 65 years to Fitzgerald inquiry records held at Queensland State Archives and validate past archival action in respect of these records. I commend the bill to the House.