

### **What is the purpose of the *Personal Liability for Corporate Fault Reform Bill 2012* (the Bill)?**

The Bill is concerned with the specific form of derivative liability where a director or corporate officer is made criminally liable for the acts of the corporation which they serve. This distinguishes between where a person is liable for being directly involved in an offence, and where a person is liable simply because they are a director of a corporation that has committed an offence. These offences will continue to apply.

The reform of directors' liability is one of the reforms being progressed under the Council of Australian Governments' (COAG) National Partnership Agreement to deliver a Seamless National Economy. This reform process commits the Commonwealth, States and Territories to assess their legislation against a set of principles and guidelines endorsed by COAG, and for jurisdictions to commit to legislative reform, where appropriate, to give effect to those principles. This Bill represents the Commonwealth's implementation of this reform.

The COAG reform seeks to ensure that personal criminal liability for corporate fault is imposed in accordance with principles of good corporate governance and criminal justice.

### **What are the main reforms contained within this Bill?**

The Bill will amend a number of pieces of Commonwealth legislation across a range of portfolios, including the *Corporations Act 2001*, the *Foreign Acquisitions and Takeovers Act 1975*, the *Health Insurance Act 1973*, and the *Therapeutic Goods Act 1989*. These Acts are amended to remove the imposition of personal criminal liability for corporate fault except where:

- the director or officer knew of the offence, was involved in the offence, or failed to take reasonable steps to prevent the offence (such as putting appropriate procedures in place to prevent the offence);
- the harm that the offence aims to prevent is of a serious nature (such as serious harm to the national economy or public health and safety, protection of vulnerable persons such as children and the elderly); and
- corporate penalties alone would be ineffective in preventing the conduct in question.

In some cases, provisions have been repealed entirely; in other cases, provisions have been reformed to apply civil liability, to remove burdens of proof from defendants, or to require an increased level of knowledge or involvement by the director or officer before liability is imposed. To support these reforms, the Bill also includes amendments to:

- make clear the provisions that extend the liability of a corporation to an individual and the circumstances of that extension; and
- repeal or replace with civil liability, existing provisions which are not justified under the COAG Principles.

### **Who will be affected by this Bill?**

Company directors and corporate officers are currently subject to a number of obligations under Commonwealth, State and Territory legislation. A significant number of these existing provisions impose personal criminal liability upon these directors and officers for a fault by the corporation. This Bill will remove provisions from Commonwealth legislation that impose such liability in a manner that is contrary to the COAG principles and guidelines. This will reduce the regulatory burden and risk of personal criminal liability for company directors, as well as executive officers and managers of corporations.

### **The COAG principles and guidelines**

The COAG principles and guidelines, which guided the development of the reforms in this Bill, are available at <http://www.coag.gov.au/node/434>. These guidelines contain detailed explanation of the factors to be taken into account by the Commonwealth (and other Australian jurisdictions) in assessing whether the imposition of personal criminal liability for corporate fault is appropriate.

The guidelines provide greater clarity and consistency for jurisdictions as to the manner in which the COAG principles are to be applied when drafting legislation across Australia in the future. Jurisdictions have audited their laws against the COAG principles and guidelines, and have agreed to implement plans to introduce any necessary amendments to existing laws by the end of 2012.