



Protecting your Position

Australian Capital Territory laws
imposing personal liability on
directors and officers



MinterEllison

About the Authors



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He is a member of the Takeovers Panel, the Deputy Chair of the Australian Institute of Company Directors' Law Committee, a member of the Regional Liaison Committee of the Australian Securities and Investments Commission and, until recently, was the Chair of the Law Council of Australia's Corporations Law Committee. All of which have played a leading role in the public debate on corporate governance.



Steven Grant is a senior associate in the M&A team based in Brisbane. He has a broad range of experience in corporate law spanning mergers and acquisitions, international investment, structuring advice, fundraising, corporate governance and legislative drafting.

Steven has strong research skills which he has put to good use in the corporate governance context in preparing the *Protecting your Position* series with Bruce Cowley where he has undertaken a complete review of all laws imposing personal liability on directors and officers in Australia. Through that process he has gained a thorough understanding of different models of corporate governance used in Australia and in other jurisdictions.

Steven's practice involves advising both domestic and foreign investors on establishing businesses in Australia and undertaking acquisitions in Australia.

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Introduction

Welcome to the third edition of *Protecting your Position* in relation to the laws of the Australian Capital Territory.

In recent years, there has been a growing concern by company directors and officers regarding the seeming explosion of legislation at Commonwealth, State and Territory level that imposes personal liability on directors and officers for failing to ensure that the corporate vehicles they manage comply with the law. Prior to the Council of Australian Governments (COAG) reform process, there were well over 700 laws at Commonwealth, State and Territory level imposing personal liability on company directors and officers for the actions of their companies. These were in addition to duties imposed by the *Corporations Act 2001* (Cth).

In the last few years we have seen the Commonwealth and a number of States announce the repeal or modification of many laws imposing personal liability on company directors and officers in response to the COAG review. So far, reforms to director liability laws have been announced or introduced in Queensland, New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and at a Commonwealth level.

In the ACT, the ACT Government passed the *Directors Liability Legislation Amendment Act 2013* (ACT). In broad terms, the Act:

- amended some 13 statutes that imposed personal liability on directors and officers; and
- in most cases introduced new provisions which only imposed liability on officers if the corporation commits an offence, the officer was reckless about whether the offence would be committed, the officer was in a position to influence the conduct of the corporation in relation to the commission of the offence and the officer failed to take reasonable steps to prevent the commission of the offence.

That being said, there are still in excess of 20 ACT statutes, which impose personal liability on directors and officers.

In addition, the differences in approach taken by each State and Territory and the fact that Western Australia and the Northern Territory have not proposed any amendments to laws imposing personal liability on directors and officers, means that three key policy issues remain.

The first is the desirability of a system which imposes personal liability on directors and officers (which allows for the imposition of various sanctions on those found guilty, ranging from imposition of fines to lengthy jail terms) in an ad hoc and inconsistent way across Australian jurisdictions. The extent of the inconsistency is considerable. MinterEllison research shows that although reforms may have reduced the number of types of provisions imposing personal liability within each State and Territory, there is still a substantial variation between the States and Territories which each have their own unique way of drafting its laws. The consequence is that across Australia there are many hundreds of laws imposing personal liability on directors and officers, many of which are drafted in different terms, and with different defences available.

There is no doubt that this unnecessarily inconsistent legislative regime creates significant burdens for directors of companies carrying on businesses across a number of States or where their businesses are subject to significant regulation. Indeed, the Corporations and Markets Advisory Committee (CAMAC) in their Report entitled *Personal Liability for Corporate Fault*, released in September 2006, recommended substantial reform in the area, including that attempts be made to introduce a nationally uniform model provision which imposes personal liability on directors and officers.

Introduction (cont'd)

The second issue of concern is that the classes of persons who can be liable for corporate statutory breaches can differ between statutes, and between laws in different states. In the ACT, liability most commonly attaches to those who fall within the definition of executive officer. Caught within this group can be a very wide range of personnel within a company extending well beyond senior management.

The third significant area of concern for directors and officers is that some jurisdictions have retained provisions which impose strict liability on company directors and officers, thereby reversing the usual onus of proof in criminal proceedings by rendering directors and officers automatically liable if the corporation commits an offence, with the defendant having to prove that one of the statutory defences is available in order to escape from liability.

This means that although there has been significant reform in this area there is still some way to go in order for there to be a nationally consistent approach. The consequence of the current legislative approach is that, for the time being, in order to minimise liability, directors would be wise to:

- make an assessment of which Acts apply to the activities of their companies;
- understand what obligations the legislation imposes both upon the company and upon themselves;

- ensure adequate systems are in place so that the company does not contravene its obligations;
- take whatever steps they can to ensure that even if the company still breaches the law they can avail themselves of relevant defences (for example, setting up a robust due diligence process);
- identify which executives are likely to be exposed to personal liability under which Acts, ensure they are made aware of any potential risks and involve them in discussions about how to limit personal liability; and
- take appropriate steps to ensure that directors' and officers' insurance policies provide maximum protection for all those exposed to personal liability.

This publication is designed to assist directors in identifying those laws which may apply to their companies and which may expose them to personal liability, and to provide details of defences which might be available to them.

With the exception of environmental and occupational health and safety matters, regulators have not consistently prosecuted directors for corporate breaches. However, many laws allow them to do so and it is only likely to be a matter of time before we see an expansion in prosecutions of directors and other company officers.

Overview

1 Definitions

The following definitions are provided as an aid to understanding this publication and are merely a guide to each the meaning of each term as used in this jurisdiction. For the specific meaning of each term refer to the legislation in question.

Yes, if a corporate breach is established means liability is imposed on a person who is not the chief actor in respect of the offence but is nonetheless concerned with the perpetration of the offence by virtue of their position.

body corporate means:

- (a) a corporation as defined in the *Corporations Act 2001* (Cth); or
- (b) any other body incorporated under any other Act or law.

company means a company incorporated under the *Corporations Act 2001* (Cth).

corporation means:

- (a) a corporation as defined in the *Corporations Act 2001* (Cth); or
- (b) any other body incorporated under any other Act or law.

director, in relation to a corporation, means a person who is appointed to the position of a director.

employees of a corporation means a person who is employed by a corporation under a contract of service.

executive officer of a corporation means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

onus of proof means the legal obligation on a party who asserts a matter to adduce sufficient supporting evidence to satisfy the required standard of proof.

primary liability means liability is imposed directly on the person who is the chief actor in respect of the offence.

secretary, in relation to a corporation, includes any person performing the duties of secretary of the corporation.

2 How to Read This Publication

This document is divided into the following columns.

2.1 Provisions

This column lists the ACT Acts imposing personal liability on directors and officers in alphabetical order with references to the relevant sections within each Act and a brief overview of the content of each section.

2.2 Who is liable?

This column details the person or party within the corporation who is liable under the relevant provision.

2.3 Is the liability automatic?

This column details whether the liability imposed is automatic, such that the person or party within the corporation is deemed to be liable when the corporation contravenes the relevant Act, part of the Act or section of the Act, or the liability is not automatic and arises only in prescribed circumstances.

2.4 Defence of 'Due Diligence'

This column notes whether there is a defence of due diligence under the relevant provision. Whilst the wording of this defence may vary from Act to Act, the defence essentially applies where the relevant

party was in a position to influence the conduct of the corporation in relation to the offence and has exercised all due diligence to prevent the contravention.

2.5 Defence of 'Unable to Influence'

This column notes whether it is a defence for the relevant party to prove that they were not in a position to influence the conduct of the corporation in relation to the offence. Note that the wording of this defence varies from Act to Act.

2.6 Additional Defences

This column details any additional defences for the relevant provision.

2.7 Onus of Proof for Defence

The onus of proof refers to the legal obligation on a party who asserts a matter to adduce sufficient supporting evidence to satisfy the required standard of proof. In all of the provisions detailed in this publication, the onus of proof is on the accused to establish a defence.

2.8 Type of Provision

In this column, the offences are categorised in accordance with the 'Summary of Types of Provisions' set out below.



3 Summary of Types of Provisions

There are essentially three types of statutory provisions which impose personal liability on individuals in corporations.

3.1 Type 1 Provision

Type 1 provisions provide that executive officers will be deemed liable where the corporation contravenes a provision of the Act and the officer:

- (a) was reckless about whether the relevant offence would be committed;
- (b) was in a position to influence the conduct of the corporation in relation to the commission of the offence; and
- (c) failed to take reasonable steps to prevent the commission of the offence.

An example of this type of provision is section 74 of the *Guardianship and Management of Property Act 1991*, which provides that:

74 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if –
 - (a) the corporation commits a an offence against section 72; and
 - (b) the officer was reckless about whether the relevant offence would be committed; and

- (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the offence; and
- (d) the officer failed to take reasonable steps to prevent the commission of the offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the offence.

Note: The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the offence.
- (4) In this section:

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

3.2 Type 2 Provision

All other provisions are described as Type 2 provisions, which impose liability on individuals in corporations in a variety of circumstances.

Australian Capital Territory
laws imposing personal liability
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Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Associations Incorporation Act 1991 s 108: Offences by officers of associations etc.	A member of the committee of an incorporated association who knowingly fails to take all reasonable steps to ensure that the association has complied or is complying with the Act or with a condition imposed on the association under the Act.	No. the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
s 110: Liability of members.	A member or members of the committee of an incorporated association if the member commits an offence in relation to a failure of the association to comply with section 109 (Offence – trade or pecuniary gain).	No. the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Cooperatives Act 2002 s 447: Offences by officers of cooperatives.	Anyone who is a director of the cooperative or concerned in its management if the person knowingly authorised or permitted the contravention, and any other officer of the cooperative who by a wilful act or omission is the cause of the contravention.	No. the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Dangerous Goods (Road Transport) Act 2009 s 157: Criminal liability of Executive Officers of Corporations.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence by contravening a provision of the Act; (b) the officer was reckless about whether the contravention would happen; (c) the officer was in a position to influence the conduct of the Corporation in relation to the contravention; and (d) the officer failed to take reasonable steps to prevent the contravention.	No. the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>In deciding whether the Executive Officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:</p> <p>(a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):</p> <p>(i) that the Corporation arranged regular professional assessments of the Corporation's compliance with the contravened provision;</p> <p>(ii) that the Corporation implemented any appropriate recommendation arising from an assessment under subparagraph (i); or</p> <p>(iii) that the Corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and</p> <p>(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Dangerous Substances Act 2004</i> s 193: Criminal liability of Corporation officers.	An officer of a Corporation commits an offence if: (a) the Corporation contravenes: (i) a provision mentioned in section 41 (Meaning of safety duty for pt 3.2); (ii) a provision of Part 4.3 (Offences relating to licences); (iii) a provision of Chapter 5 (Other serious offences); (iv) section 107 (Contravention of improvement notices); (v) section 119 (Contravention of prohibition notices); or (vi) section 128 (Contravention of enforceable undertakings); (b) the contravention is an offence against the Act (the relevant offence); (c) the officer was reckless about whether the contravention would happen; (d) the officer was in a position to influence the conduct of the Corporation in relation to the contravention; and (e) the officer failed to take all reasonable steps to prevent the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>In deciding whether the officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:</p> <p>(a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(i) that the Corporation arranged regular professional assessments of the Corporation's compliance with the contravened provision;</p> <p>(ii) that the Corporation implemented any appropriate recommendation arising from such an assessment; or</p> <p>(iii) that the Corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and</p> <p>(b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Environment Protection Act 1997 s 147: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence against: (i) section 42 (Conducting prescribed classes of activities); (ii) section 44 (Conducting activities other than prescribed activities); (iii) section 45 (Compliance with authorisation); (iv) section 91D (Order to remediate land); (v) section 126 (Contravention of environment protection order); (vi) section 137 (Causing serious environmental harm); (vii) section 138 (Causing material environmental harm); (viii) section 139 (Causing environmental harm); (ix) section 141 (Causing environmental nuisance); (x) section 142 (Placing pollutant where it could cause harm); or (xi) section 159A (National pollutant inventory – provision of information); (b) the officer was reckless about whether the relevant offence would be committed; (c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the relevant offence; and	No, the onus is on the prosecution to prove the required elements.	If the person exercised due diligence to prevent the act or omission alleged to constitute the offence or an element of the offence. In deciding whether the person exercised due diligence, the court may have regard to: (a) whether the person was personally familiar with the requirements of the Act and any relevant environmental laws and standards relating to the prevention or minimisation of environmental harm; (b) whether the person had taken all reasonable steps to comply with those laws and standards; (c) the steps taken by the person to ensure other people for whom it was relevant were familiar with the Act and any relevant laws and standards, and compliance with those laws and standards by those people;	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>		<p>(d) the steps taken by the person to establish an environmental management system and to ensure familiarity and compliance with it by other people for whom it was relevant; or</p> <p>(e) whether the person reacted immediately and personally when the person became aware of any noncompliance with the environmental management system or other incident connected with the environmental harm that happened.</p>				
Firearms Act 1996 s 268: Offences by Corporations.	Each person who is an Executive Officer of the Corporation if the officer knowingly authorised or allowed the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Fisheries Act 2000</i> s 111: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence against: (i) section 45 (Sale of fish by commercial fishers); (ii) section 49 (Commercial fishers, priority species licence holders and fish dealers to supply information); (iii) section 76(2) (Importing or exporting live fish without authority); (iv) section 76A (Trafficking in commercial quantity of fish of priority species); (v) section 76B (Taking commercial quantity of fish of priority species); (vi) section 76C (Possessing commercial quantity of fish of a priority species); (vii) section 77 (Possessing fish obtained illegally); (viii) section 78 (Noxious fish); (ix) section 80(1) (Fishing closure offences); (x) section 81(1) (Prohibited size and weight offences); (xi) section 86(1) (Non-permitted fishing gear); or (xii) section 87(1) (Use and possession of commercial fishing gear); (b) the officer was reckless about whether the relevant offence would be committed;	No, the onus is on the prosecution to prove the required elements.	If the person exercised due diligence to prevent the act or omission alleged to constitute the offence or an element of the offence. In deciding whether the person exercised due diligence, the court may have regard to: (a) whether the person was personally familiar with the requirements of the Act and any relevant environmental laws and standards relating to the prevention or minimisation of environmental harm; (b) whether the person had taken all reasonable steps to comply with those laws and standards; (c) the steps taken by the person to ensure other people for whom it was relevant were familiar with the Act and any relevant laws and standards, and compliance with those laws and standards by those people;	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the relevant offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>		<p>(d) the steps taken by the person to establish an environmental management system and to ensure familiarity and compliance with it by other people for whom it was relevant; or</p> <p>(e) whether the person reacted immediately and personally when the person became aware of any noncompliance with the environmental management system or other incident connected with the environmental harm that happened.</p>				

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Food Act 2001 s 128: Offences by Corporations.	Each person who is an Executive Officer of the Corporation if the person knowingly authorised or allowed the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Guardianship and Management of Property Act 1991 s 74: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: <ul style="list-style-type: none"> (a) the Corporation commits an offence against section 72 (Injunctions to restrain dealings); (b) the officer was reckless about whether the relevant offence would be committed; (c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and (d) the officer failed to take reasonable steps to prevent the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1
Heavy Vehicle National Law (ACT) s 636(1): Liability of Executive Officers of Corporation.	If a Corporation commits an offence against a provision of the Act specified in column 2 (Provision specified for the purposes of section 636(1)) of Schedule 4 (Provisions specified for liability of executive officers for offences by corporations), each Executive Officer of the Corporation who knowingly authorised or permitted the conduct constituting the offence also commits an offence against the provision.	No, knowledge element must be proven.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 636(2): Liability of Executive Officers of Corporation.	<p>If a Corporation commits an offence against a provision of the Act specified in column 3 (Provision specified for the purposes of section 636(2)) of Schedule 4 (Provisions specified for liability of executive officers for offences by corporations), each Executive Officer of the Corporation who knew or ought reasonably to have known:</p> <p>(a) of the conduct constituting the offence; or</p> <p>(b) that there was a substantial risk that the offence would be committed,</p> <p>also commits an offence against the provision.</p>	No, knowledge element must be proven	The officer exercised reasonable diligence to ensure the corporation complied with the provision	The officer was not in a position to influence the conduct of the corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 2
Heritage Act 2004 s 116: Criminal liability of Executive Officers.	<p>An Executive Officer of the Corporation if:</p> <p>(a) the Corporation commits an offence against:</p> <p>(i) section 65 (Contravention of heritage direction – offence);</p> <p>(ii) section 74 (Diminishing heritage significance of place or object); or</p> <p>(iii) section 75 (Damaging Aboriginal place or object);</p> <p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <ul style="list-style-type: none"> (a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; (b) that the Corporation implements any appropriate recommendation arising from such an assessment; (c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed. 						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Medicines, Poisons and Therapeutic Goods Act 2008</i> s 172: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence against: (i) section 26 (1) (Supplying declared substances); (ii) section 28 (Supplying declared substances on invalid supply authorities – recklessness); (iii) section 29 (Supplying declared substances on invalid supply authorities – other offences); (iv) section 30 (Cancellation etc of invalid supply authorities for declared substances); (v) section 34 (1), (2) or (3) (Discarding declared etc substances); (vi) section 35 (1) (Obtaining certain declared substances); (vii) section 36 (Possessing certain declared substances); (viii) section 37 (1) or (3) (Administering certain declared substances); (ix) section 38 (1) (Issuing purchase orders for declared substances); (x) section 40 (1) or (3) (Prescribing medicines); (xi) section 41 (Issuing requisitions for medicines); (xii) section 42 (Issuing standing orders for medicines); (xiii) section 43(1) or (2) (Medicines for animals not to be prescribed etc for human use);	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	(xiv) section 44 (Contravening authorisation conditions for regulated substances);						
	(xv) section 45(1) (Pretending to be authorised to deal with regulated substance);						
	(xvi) section 55 (Registers – changes etc to entries);						
	(xvii) section 59(1) (Packaging of supplied regulated substances);						
	(xviii) section 60(1) (Labelling of supplied regulated substances);						
	(xix) section 61 (Storing declared substances);						
	(xx) section 64(2) (False statements to obtain certain regulated substances etc);						
	(xxi) section 65 (Falsely representing substance is regulated);						
	(xxii) section 68 (Vending machines – use for supply of regulated substances);						
	(xxiii) section 69 (Vending machines – use for supply of unscheduled medicines);						
	(xxiv) section 70 (Manufacture, supply and use of paints containing white lead);						
	(xxv) section 71(3) (Manufacture, supply and use of paints for certain purposes);						
	(xxvi) section 72 (Manufacture, supply and use of paints for toys);						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(xxvii) section 73 (Manufacture, supply and use of paints containing pesticides);</p> <p>(xxviii) section 74(1) (Supplying regulated therapeutic goods);</p> <p>(xxix) section 76 (Pretending to be authorised to deal with regulated therapeutic goods);</p> <p>(xxx) section 77 (Falsely representing thing is regulated); or</p> <p>(xxxi) section 96 (1) (Contravening licence conditions);</p> <p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>						
<p>Nature Conservation Act 1980 s 136: Criminal liability of Executive Officers.</p>	<p>An Executive Officer of the Corporation if:</p> <p>(a) the Corporation contravenes a provision of the Act;</p> <p>(b) the contravention is an offence against the Act;</p> <p>(c) the officer was reckless about whether the relevant offence would be committed;</p> <p>(d) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(e) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must have regard to the following:</p> <p>(a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	<p>N/A</p>	<p>N/A</p>	<p>There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.</p>	<p>Onus on the accused to establish a defence.</p>	<p>Type 1</p>

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<ul style="list-style-type: none"> (i) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; (ii) that the Corporation implements any appropriate recommendation arising from such an assessment; or (iii) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; and <p>(b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.</p>						
Racing Act 1999 s 61I: Criminal liability of Executive Officers.	<p>An Executive Officer of the Corporation if:</p> <ul style="list-style-type: none"> (a) the Corporation commits an offence against: <ul style="list-style-type: none"> (i) section 4 (Restriction on races for the purpose of betting); (ii) section 8 (Race meetings to be conducted in compliance with conditions); (iii) section 61F (Offence – use of race field information without approval); (iv) section 61G (Offence – failing to pay race field information charge); or (v) section 61H (Offence – failing to comply with condition on approval); 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Radiation Protection Act 2006 s 64: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence against: (i) section 42 (Prohibition on abandoning radiation source); (ii) section 53 (Failure to comply with safety duty – general offence); (iii) section 54 (Failure to comply with safety duty – exposing people to substantial risk of death or serious harm); (iv) section 55 (Failure to comply with safety duty – causing death or serious harm to people); (v) section 56 (Failure to comply with safety duty – exposing property or environment to substantial risk of substantial damage); (vi) section 58 (Failure to comply with condition of licence); (vii) section 59 (1) and (2) (Dealing with regulated radiation source without licence); (viii) section 61 (Failure to comply with condition of registration of radiation source); (ix) section 62 (Dealings with prohibited radiation source); or (x) section 63 (1) (Failure to notify council of dangerous event); (b) the officer was reckless about whether the relevant offence would be committed;	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Rail Safety National Law (ACT)</i> s 55: Duty of officers to exercise due diligence.	If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 2
<i>Road Transport (Safety and Traffic Management) Act 1999</i> s 13: Responsible person for vehicle loaded unsafely.	A Director of, or a person concerned in the management of, a Corporation that is the responsible person for a vehicle, if: (a) the vehicle is loaded unsafely and driven, or allowed to stand, on a road or road related area; (b) the person knows, or ought reasonably to know, the vehicle is loaded unsafely; and (c) while the vehicle is being so driven or allowed to stand, a person dies or is injured, or property (other than the vehicle or load) is damaged, because the vehicle is loaded unsafely.	No, the onus is on the prosecution to prove the required elements.	N/A	The person could not have prevented the vehicle being driven, or allowed to stand, on a road or road related area while loaded unsafely.	N/A	Onus on the accused to establish a defence.	Type 2
<i>Taxation Administration Act 1999</i> s 117: Public officer of Body Corporate.	Public officers of the body corporate.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 118: Liability of Directors or other officers.	Without limiting, altering or transferring the liability of the public officer of a Body Corporate, every notice, process or proceeding that, under a tax law, may respectively be given to, served on or taken against the public officer or the body may, if the commissioner considers appropriate, be given to, served on or taken against a Director, Secretary or other officer of the body, and the Director, Secretary or officer then has the same liability in relation to the notice, process or proceeding as the public officer or the Body Corporate would have if it had been given to, served on or taken against the public officer.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2
s 119: Offences by people involved in management of Bodies Corporate.	Each person who is concerned in, or takes part in, the management of the body, being: (a) a Director; (b) a Secretary; (c) a receiver and manager of property; (d) an official manager or deputy official manager; (e) a liquidator of the body corporate appointed in a voluntary winding up; or (f) a trustee or other person administering a compromise or arrangement made between the body and another person or other people.	Yes, if a corporate breach is established.	The person, if in a position to influence the conduct of the Body Corporate, used all due diligence to prevent the contravention by the body.	The person was not in a position to influence the conduct of the body in relation to its contravention of the provision.	The body corporate contravened the provision without the person's knowledge.	Onus on the accused to establish a defence.	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Tree Protection Act s 108: Criminal liability of Executive Officers.	<p>An Executive Officer of the Corporation if:</p> <p>(a) the Corporation commits an offence against:</p> <p>(i) section 15 (Damaging protected trees – general);</p> <p>(ii) section 16(2), (3) or (4) (Damaging protected trees – work done as part of a business);</p> <p>(iii) section 17(1) or (2) (Doing prohibited groundwork – general); or</p> <p>(iv) section 18(2) or (3) (Doing prohibited groundwork – work done as part of a business);</p> <p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<ul style="list-style-type: none"> (a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; (b) that the Corporation implements any appropriate recommendation arising from such an assessment; (c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed. 						
<i>Trustee Companies Act 1947</i> s 17(1): Manager and directors personally responsible to court.	The manager and directors individually and collectively in their own proper persons.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2
s 19(2): Trustee company to be subject to same duties as individual.	Managers and directors of a trustee company being a company appointed or acting as an executor, administrator, trustee, receiver or guardian – are liable for their own individual acts or in their own proper person.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 20(2): Company may be removed from office by court and provisions for relief against company or directors.	Directors and officers of a trustee company which was appointed or acted as an executor, administrator, trustee, receiver, guardian or attorney for any act done or assumed to be done, or in relation to any act omitted to be done, by the company, its directors or officers.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Unlawful Gambling Act s 34: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: (a) the Corporation commits an offence against: (i) section 23 (Cheating); (ii) section 24 (Arranging unlawful gambling); (iii) section 25 (Conducting unlawful gambling); (iv) section 26 (Owning etc place used for unlawful gambling); (v) section 27 (Advertising etc unlawful gambling or place where unlawful gambling conducted); (vi) section 30 (Receiving proceeds from unlawful gambling); or (vii) section 31 (Possessing instrument of gambling); (b) the officer was reckless about whether the relevant offence would be committed;	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p> <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <p>(a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates;</p> <p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>						

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Waste Management and Resource Recovery Act 2016 s 105:</p> <p>Criminal liability of Executive Officers.</p>	<p>An Executive Officer of a Corporation if:</p> <p>(a) the Corporation commits an offence against:</p> <p>(i) section 66 (Offence –fail to report to waste manager);</p> <p>(ii) section 72 (Offence –fail to comply with direction);</p> <p>(iii) section 107 (Unauthorised waste activity);</p> <p>(iv) section 108 (1) (Fail to comply with condition of licence or registration);</p> <p>(v) section 109 (Unlawful transporting or depositing of waste);</p> <p>(vi) section 110 (Use of place as waste facility without lawful authority);</p> <p>(vii) section 111 (Consent required for certain waste activities);</p> <p>(viii) section 112 (False or misleading information about waste); or</p> <p>(ix) section 113 (Taking prescribed waste to landfill or other facility);</p> <p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the relevant offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	<p>N/A</p>	<p>N/A</p>	<p>There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.</p> <p>The Act prescribes additional defences that apply to specific offences.</p>	<p>Onus on the accused to establish the defence.</p>	<p>Type 1</p>

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Waste Minimisation Act 2001 s 53: Criminal liability of executive officers.</p>	<p>An Executive Officer of the Corporation if:</p> <ul style="list-style-type: none"> (a) the Corporation commits an offence against: <ul style="list-style-type: none"> (i) section 11 (Industry members may be required to give background information); (ii) section 18 (Contravention of IWRP); or (iii) section 25 (Unlawful use of land as waste disposal facility); (b) the officer was reckless about whether the relevant offence would be committed; (c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and (d) the officer failed to take reasonable steps to prevent the commission of the offence. <p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <ul style="list-style-type: none"> (a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(b) that the Corporation implements any appropriate recommendation arising from such an assessment;</p> <p>(c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or</p> <p>(d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.</p>						
Water Resources Act 2007 s 104: Criminal liability of Executive Officers.	<p>An Executive Officer of the Corporation if:</p> <p>(a) the Corporation commits an offence against:</p> <p>(i) section 77C (Offence – do waterway work without licence);</p> <p>(ii) section 77H (Offence – contravene notice prohibiting or restricting taking of water); or</p> <p>(iii) section 77I (Offences – contravene directions);</p> <p>(b) the officer was reckless about whether the relevant offence would be committed;</p> <p>(c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and</p> <p>(d) the officer failed to take reasonable steps to prevent the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <ul style="list-style-type: none"> (a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; (b) that the Corporation implements any appropriate recommendation arising from such an assessment; (c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed. 						
Work Health and Safety Act 2011 s 27: Duty of officers.	If a person conducting a business or undertaking has a duty or obligation under the Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Workers Compensation Act 1951 s 201A: Civil liability of Executive Officers.	<p>An Executive Officer if:</p> <ul style="list-style-type: none"> (a) the director-general is entitled to recover an amount from a Corporation under section 149 (Failure to maintain compulsory insurance policy – director-general entitled to recovery amount) or section 162A (Avoiding payment of premium – director-general entitled to recovery amount); (b) the director-general is satisfied that the amount is unlikely to be recovered by reasonable recovery efforts because the Corporation is being wound up or is unable to pay its debts or otherwise; and (c) the officer was an Executive officer of the Corporation at any time during which the Corporation committed the offence to which the entitlement to recover relates. <p>However, an Executive Officer is culpable only if –</p> <ul style="list-style-type: none"> (a) the officer knew, or ought reasonably to have known, that the offence was committed; (b) the officer was in a position to influence the Corporation's conduct in relation to the offence; or (c) the officer, being in a position to influence the conduct of the Corporation, failed to exercise appropriate diligence to prevent the Corporation committing the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	If more than one Executive Officer of a Corporation is culpable, the culpable Executive Officers are jointly and severally liable for any amount the director-general may recover.						
s 203: Criminal liability of Executive Officers.	An Executive Officer of the Corporation if: <ul style="list-style-type: none"> (a) the Corporation commits an offence against: <ul style="list-style-type: none"> (i) section 152 (Compulsory insurance – insurers); (ii) section 155 (2) (Information for insurers on application for issue or renewal of policies); (iii) section 156 (2) (Information for insurers after renewal of policies); (iv) section 158 (2) (Information for new insurers after change of insurers); (v) section 162 (False information causing lower premium); or (vi) section 163 (Employment after 2nd offence); (b) the officer was reckless about whether the relevant offence would be committed; (c) the officer was in a position to influence the conduct of the Corporation in relation to the commission of the offence; and (d) the officer failed to take reasonable steps to prevent the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	There is no offence if the Corporation would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Australian Capital Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>In deciding whether the Executive Officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):</p> <ul style="list-style-type: none"> (a) that the Corporation arranges regular professional assessments of the Corporation's compliance with the provision to which the relevant offence relates; (b) that the Corporation implements any appropriate recommendation arising from such an assessment; (c) that the Corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates; or (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed. 						

The information contained in this publication is intended only to provide a summary and general overview and is not intended to be comprehensive nor does it constitute legal advice. You should seek legal or other professional advice before acting or relying on any of the information contained in this publication.

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