



Protecting your Position

New South Wales laws imposing
personal liability on directors
and officers



MinterEllison

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

New South Wales laws imposing personal liability on directors and officers

Introduction	2	3 Summary of Types of Provisions	6
Overview	4	3.1 Type 1 Provision	6
1 Definitions	4	3.2 Type 2 Provision	6
2 How to Read this Publication	5	3.3 Type 3 Provision	8
2.1 Provisions	5	3.4 Type 4 Provision	8
2.2 Who is liable?	5	New South Wales laws imposing personal liability on directors and officers	10
2.3 Is the liability automatic?	5		
2.4 Defence of 'Due Diligence'	5		
2.5 Defence of 'Unable to Influence'	5		
2.6 Additional Defences	5		
2.7 Onus of Proof for Defence	5		
2.8 Type of Offence	5		



Introduction

Welcome to the third edition of *Protecting your Position* in relation to the laws of New South Wales.

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 New South Wales, the New South Wales Government passed the *Miscellaneous Acts Amendment (Directors' Liability) Act No. 2 2011* (NSW). In broad terms, the Act:

- amended some 35 statutes that imposed personal liability on directors and officers;
- removed all of the provisions imposing liability on directors and officers completely in some statutes while in others the number of statutory provisions to which the offence related was reduced; and
- amended other provisions such that directors and officers could only be liable if it could be shown that they were knowingly involved in or permitted a contravention of the statute by the company they manage.

The New South Wales Government subsequently passed the *Miscellaneous Acts Amendment (Directors' Liability) Act 2012* (NSW). In broad terms, the Act, adopted two new types of provisions which apply to directors and those in key management roles, namely the 'executive liability provision' (Type 2 Provisions using our categorisation below) and the 'corporate liability provision' (Type 3 Provisions using our categorisation below). Between the two amending Acts, more than half of the statutes imposing personal liability on directors and officers were amended and of the 60 or so statutes which were not amended by either the amending Acts, less than ten statutes still retain a reversal of the usual onus of proof.

That being said, there are still in excess of 140 New South Wales 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.

Introduction (cont'd)

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.

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 New South Wales, liability most commonly attaches to those who fall within the definition of 'Director' and those concerned with or who take part in management. Caught within this latter 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);
- (b) any other body incorporated under any other Act or law.

chairperson of directors means chairperson of the board of directors.

company means a company within the meaning of the *Corporations Act 2001* (Cth).

corporation means:

- (a) a company; or
- (b) any body corporate (whether incorporated in this jurisdiction or elsewhere); or
- (c) a corporation sole.

director means:

- (a) in relation to the Corporation, a member of the Board of the Corporation; and

- (b) in relation to a subsidiary of the Corporation, a member of the board of the subsidiary.

employee means any person engaged in employment by a corporation.

executive officer of a corporation has the same meaning as in the *Corporations Act 2001* (Cth).

manager of a corporation means a person who is charged with the management or direction of a corporation.

managing director any person appointed to perform the duties of managing director of the company and includes an acting managing director.

officer of a corporation means person who is concerned in, or takes part in, the management of the corporation (regardless of the person's designation and 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

The summary of provisions is set out as a table with the following columns.

2.1 Provisions

This column lists the NSW 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 to 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 provisions 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 in New South Wales.

3.1 Type 1 Provision

Type 1 provisions provide that directors and those who are concerned in the management of the corporation will be deemed liable where the corporation contravenes, whether by act or omission, any provision of the Act or regulation in question, if the person knowingly authorised or permitted the contravention.

An example of this type of provision is section 249A of the *Aboriginal Land Rights Act 1983*, which provides that:

249A Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

It must be noted that whilst the wording of Type 1 provisions may vary as may the persons to whom the provision applies, the effect remains the same.

3.2 Type 2 Provision

Type 2 provisions provide that directors or individuals who are involved in the management of the corporation and who are in a position to influence the conduct of the corporation in relation to the commission of the offence, are deemed liable if that person:

- (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and
- (b) fails to take all reasonable steps to prevent or stop the commission of that offence.

An example of this type of provision is section 63 of the *Building and Construction Industry Long Service Payments Act 1986*, which provides that:

63 Liability of directors etc for offences by corporation — offences attracting executive liability

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:
 - (a) section 16A,
 - (b) section 39.

3 Summary of Types of Provisions (cont'd)

- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person:
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.
- Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the

corporation is prosecuted for, or convicted of, the executive liability offence.

- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

- (7) In this section:

director has the same meaning it has in the Corporations Act 2001 of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them



3 Summary of Types of Provisions (cont'd)

to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

- (c) action towards ensuring that:
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

3.3 Type 3 Provision

Type 3 provisions provide directors or individuals who are involved in the management of the corporation and who are in a position to influence the conduct of the corporation in relation to the commission of the offence, if that person:

- (a) aids, abets, counsels or procures the commission of the offence;
- (b) induces, whether by threats or promises or otherwise, the commission of the offence;
- (c) conspires with others to effect the commission of the offence; or
- (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.

An example of this type of provision is section 62 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*, which provides that:

62 Liability of directors etc for offences by corporation – accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or

3 Summary of Types of Provisions (cont'd)

(iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

3.4 Type 4 Provision

All other provisions are described as Type 4 provisions which impose liability on individuals in corporations in a variety of circumstances.

New South Wales laws
imposing personal liability
on directors and officers

New South Wales 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
Aboriginal Land Rights Act 1983 s 249A: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Agricultural Industry Services Act 1998 s 50: Directors and Managers liable for offences committed by Corporations. This section does not apply to contraventions of sections 33(1) (Investment) and 48 (Disclosure and misuse of information).	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Agricultural Livestock (Disease Control Funding) Act 1998 s 31A: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991 s 73: Offences by Officers of Corporations. This provision does not apply to contraventions of section 24(4) (Permits).	Officers of the Corporation if the Officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Animal Research Act 1985 s 58:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 46(1) (Unlawfully carrying on the business of animal research);</p> <p>(b) section 47A(1) (Keeping animals with intention of using them for animal research); or</p> <p>(c) section 48(1) or (2) (Unlawfully supplying animals for use in connection with animal research).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 58A:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Apiaries Act 1985 s 43: Offences by Officers of Corporations. Applies to offences against the following provisions: (a) section 21 (Infected bees etc not to be kept or sold); (b) section 22(3) (Beekeepers to notify disease); (c) section 23(6) or (10) (Declaration of infected areas); (d) section 24(7) (Powers of inspectors with respect to infected bees etc); (e) section 24A(3) (Power to order tests); (f) section 26(5) or (6) (Prohibition of importation of bees etc); or (g) section 27(5) (Establishment of quarantine areas).	Officers of the Corporation if the Officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Architects Act 2003 s 83: Liability of Directors and Managers of Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Assisted Reproductive Technology Act 2007 s 65: Offences by Corporations.	Officers of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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 2009 s 91: Offences by committee members.	Each committee member of the association if he or she knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Biosecurity Act 2015 s 305: Liability of Directors etc for offences by Corporation. Applies to special executive liability offences, being: (a) a category 1 offence against section 32 (Offence of failing to discharge biosecurity duty to notify presence of prohibited matter);or (b) a category 1 offence against section 58 (58 Offence of contravening emergency order). An offence is a category 1 offence if the contravention or failure is intentional or reckless.	Directors and those concerned in the management of the Corporation.	Yes, if a corporate breach is established.	If the person was in a position to influence the conduct of the Corporation in relation to the offence, the person used all due diligence to prevent the contravention by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the commission of the offence	<i>Defence of lawful excuse</i> If the person charged with the offence proves: (a) that the conduct of the person was authorised or required by or under this Act, or (b) that the conduct of the person was authorised by or under a law of the Commonwealth. <i>Other defences</i> The Act prescribes additional defences that apply to specific special executive liability offences.	Onus on the accused to establish a defence	Type 4

New South Wales 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>s 306: Liability of Directors etc for offences by Corporation. Applies to executive liability offences, being:</p> <p>(a) an offence against section 23 (Offence of failing to discharge biosecurity duty);</p> <p>(b) an offence against section 25 (Offence of failure to comply with mandatory measures);</p> <p>(c) an offence against section 28 (Dealings with prohibited matter);</p> <p>(d) an offence against section 37 (Offence of failing to discharge biosecurity duty).</p> <p>(e) a category 2 offence against section 32 (Offence of failing to discharge biosecurity duty to notify presence of prohibited matter);</p> <p>(f) a category 2 offence against section 58 (Offence of contravening emergency order);</p> <p>(g) an offence against section 75 (Offence of contravening control order);</p> <p>(h) an offence against section 87 (Offence of contravening biosecurity zone regulation);</p> <p>(i) an offence against section 138 (Offence not to comply with biosecurity direction);</p>	<p>Directors or individuals who are concerned in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the executive liability offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	<p><i>Other defences</i> The Act prescribes additional defences that apply to specific executive liability offences.</p>	Onus on the accused to establish a defence	Type 2

New South Wales 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
(j) an offence against section 145 (Contravention of biosecurity undertaking);							
(k) an offence against section 152 (Offence of engaging in prohibited dealing);							
(l) an offence against section 154 (Offence of engaging in registrable dealing without biosecurity registration);							
(m) an offence against section 179 (Offence of contravening condition of biosecurity registration);							
(n) an offence against section 187 (Provision of false or misleading information to biosecurity certifier);							
(o) an offence against section 188 (False biosecurity certificates);							
(p) an offence against section 189 (False representations); or							
(q) an offence against section 190 (Issue or alteration of biosecurity certificate by unauthorised person).							

New South Wales 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><i>Building and Construction Industry Long Service Payments Act 1986</i> s 63: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions:</p> <p>(a) section 16A (Employer to notify Corporation of employment of workers); or</p> <p>(b) section 39 (Offence for failure to pay long service levy).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 63A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Building Professionals Act 2005</i> s 93A: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Casino Control Act 1992</i> s 167: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Charitable Fundraising Act 1991</i> s 51: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Child Protection (Working with Children) Act 2012</i> s 50: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention. This section applies only to offences against Part 2 of the Act (Restrictions on child-related work).	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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><i>Children and Young Persons (Care and Protection) Act 1998</i> s 258: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions:</p> <p>(a) section 105(2) (Publication of names and identifying information);</p> <p>(b) section 136(2) (Restriction on who may provide statutory out-of-home care);</p> <p>(c) section 138(2) (Persons who may arrange for provision of statutory or supported out-of-home care);</p> <p>(d) section 154(3) (Restriction on who may provide supported out-of-home care);</p> <p>(e) section 156B (Restrictions on who may provide or arrange voluntary out-of-home care);</p> <p>(f) section 173(2) (Medical examination of children in need of care and protection);</p> <p>(g) section 175(1) (Special medical treatment);</p> <p>(h) section 185(2A) (Provision and exchange of information);</p> <p>(i) section 222 (Endangering children in employment);</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
(j) section 223(1) - (4) (Certain employers of children to be authorised);							
(k) section 228 (Neglect of children and young persons);							
(l) section 230(2) (Tattooing of children and young persons);							
(m) section 230A(2) (Body piercing of children);							
(n) section 241(2) (Powers exercisable on entry and inspection); or							
(o) section 254(1) (Disclosure of information).							
s 258AA: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; or (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Children (Education and Care Services) National Law (NSW)</i> s 285: Offences by Bodies Corporate.	Any person with management or control of the Body Corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
<i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i> s 62: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Combat Sports Act 2013</i> s 103 Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Commercial Agents and Private Inquiry Agents Act 2004</i> s 29: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Contaminated Land Management Act 1997</p> <p>s 98:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 14(6) (Management orders);</p> <p>(b) section 28(4) (Ongoing maintenance orders); or</p> <p>(c) section 60(1) or (2) (Duty to report contamination).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 98A:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 s 104: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Conveyancers Licensing Act 2003 s 160: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Co-operatives Housing and Starr-Bowkett Societies Act 1998 s 205: Defaults by co-operative housing bodies.	Any officer of the co-operative housing body who is in default.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4
s 206: Restrictions on powers.	Any officer of the body who is in default.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4

New South Wales 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
Co-operatives (Adoption of National Law) Act 2012 Appendix, s 119: Carrying on business with too few members.	A person who is a director of a co-operative who knowingly allows the co-operative to continue to carry on business with fewer than the minimum number of members allowed.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 158: Failure to cancel membership – offence by director.	If the board of a co-operative fails to cancel the membership of a member as required by this Part, a director of the co-operative who did not use all due diligence to prevent the failure commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 191: Responsibility of secretary.	The secretary of a co-operative.	Yes, if a corporate breach is established.	The person took all reasonable steps to ensure that the co-operative complied with the section.	N/A	N/A	Onus on the accused to establish a defence.	Type 4
Appendix, s 201: Application of Corporations Act – offences by officers of co-operatives.	The provisions imposing personal liability on directors and officers under Part 5.8 of the <i>Corporations Act 2001</i> (Cth) (Offences (relating to external administration)) apply to officers of co-operatives.	See Part 5.8 of the <i>Corporations Act 2001</i> (Cth).					Type 4
Appendix, s 223: Name to appear on seals, publications and business documents.	A director of a co-operative if the director knowingly authorises or permits a contravention of this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

New South Wales 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
Appendix, s 243: Registration of special resolution.	An officer of the co-operative who knowingly fails to file the required copies under this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 328: Contravention by Directors of provisions of this Part.	<p>A director of a co-operative, if they contravene the Act and the contravention is dishonest.</p> <p>A director contravenes the Act if they fail to take all reasonable steps to comply with or to secure compliance with:</p> <ul style="list-style-type: none"> (a) section 272 (Small co-operative – direction by Registrar (cf Corporations Act section 294)); (b) section 284(1) or (2) (Annual financial reporting to members); (c) section 289 (Lodgment of annual reports by large co-operatives with Registrar (cf Corporations Act section 319)); (d) section 290 (Lodgment of half-year reports with Registrar (cf Corporations Act section 320)); (e) section 291 (Registrar's power to require lodgment (cf Corporations Act section 321)); (f) section 292 (Relodgment if financial statements or directors' reports amended after lodgment (cf Corporations Act section 322)); (g) section 293 (Lodgment by small co-operatives of annual returns with Registrar); 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

New South Wales 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>(h) section 315(1) of the Corporations Act (Deadline for reporting to members) as applying under section 285(2) of this Co-operatives National Law (Deadline for reporting to members); or</p> <p>(i) section 318 of the Corporations Act (Additional reporting by debenture issuers) as applying under section 288 of this Co-operatives National Law (Application of Corporations Act – additional reporting by debenture issuers).</p>						
Appendix, s 359: Acquisition and disposal of assets.	Each person who is a member of the board of the co-operative if the co-operative contravenes this section.	No, the onus is on the prosecution to prove the required elements.	If the person was in a position to influence the conduct of the co-operative in relation to the offence, the person used all due diligence to prevent the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Type 4
Appendix, s 401: Transfer of engagements by direction of Registrar.	An officer of a co-operative who fails to take all reasonable steps to secure compliance by the co-operative with a direction given or by a wilful act or omission causes the failure by the co-operative to comply with a direction given.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

New South Wales 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
Appendix, s 422: Directors to arrange for reports.	Each director of the co-operative.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 429: Contravention of this Division – offence by co-operative.	If a provision of this Division 2 of Part 4.4 (Explanatory statements) is contravened, the co-operative concerned and any other person involved in the contravention commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The contravention was because of the failure of a person (other than the defendant), who is a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the explanatory statement particulars of the person's interests.	Onus on the accused to establish a defence.	Type 4
Appendix, s 469: Name and place of origin to appear on business and other documents.	A director of a participating co-operative, if they knowingly authorise or permit a contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 484: Falsification of books.	An officer, former officer, employee, former employee, member or former member of a co-operative who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities, books or records.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Appendix, s 546: Enforcement orders after contravention of undertaking.	Each officer of the co-operative or other Corporation if the officer knowingly authorised or permitted the breach.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Coroners Act 2009</i> s 107: Offence by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Crown Land Management Act 2016</i> s 11.5: Offences by Corporations.	Directors and those concerned in the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Crown Lands Act 1989</i> s 176: Offence by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Dams Safety Act 2015</i> s 45: Offences by Corporations.	Directors and those concerned in the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Dangerous Goods (Road and Rail Transport) Act 2008</i> s 12: Offences by Corporations – liability of Directors and Managers.	Directors and those who are concerned with the management of the Corporation.	Yes, if a corporate breach is established.	If the person was in a position to influence the conduct of the Corporation in relation to the offence, the person used all due diligence to prevent the contravention by the Corporation	The person 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 4

New South Wales 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>Deer Act 2006</i> s 31: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>District Court Act 1973</i> s 154: Offences by Corporations.	Officers who knowingly and wilfully authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Drug Misuse and Trafficking Act 1985</i> s 43A Liability of Directors etc for offences by Corporation – offences attracting executive liability.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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 43B Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Duties Act 1997</p> <p>Section 121 of the <i>Taxation Administration Act 1996</i> (Liability of Directors etc for offences by Corporation - offences attracting executive liability).</p> <p>Applies to offences against the following sections of the Duties Act 1997:</p> <p>(a) section 25(6) (Aggregation of dutiable transactions);</p> <p>(b) section 218C(1) (Multi-jurisdictional statement);</p> <p>(c) section 248 (Insurers must be registered);</p> <p>(d) section 251(1) (Cessation of business and cancellation of registration by the insurer);</p> <p>(e) section 262 (Lodgement of statement of dutiable value);</p> <p>(f) section 270(4) (Exemptions for motor dealers);</p> <p>(g) section 286(1) (Limitation on use of designated stamps);</p> <p>(h) section 296(1) (Stamping of instruments after execution); or</p> <p>(i) section 301(1) (Registration of transactions and instruments).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>Electricity (Consumer Safety) Act 2004 s 45:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 16(1) (Electrical articles must meet certain standards before they can be sold);</p> <p>(b) section 20(1) (Person must not give false acquisition guarantee);</p> <p>(c) section 24(1)–(3) (Persons must comply with notices issued under this Division);</p> <p>(d) section 27(4) (Prohibition of the sale of certain electrical articles and the labelling of such articles); or</p> <p>(e) section 31(1) (Electrical installation work to comply with regulations).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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 45A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<i>Electricity Generator Assets (Authorised Transactions) Act 2012</i> Schedule 5, s 22: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Electricity Network Assets (Authorised Transactions) Act 2015</i> Schedule 6, clause 22: Offences by Corporations.	Directors and those concerned in the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Electricity Retained Interest Corporations Act 2015 s 26(5): Duty and liability of Officers	If a person contravenes section 26 (Duty and liability of officers imposed on Officers of a Corporation), the State may recover from the person as a debt due to the Crown: (a) if the person or another person made a profit because of the contravention – an amount equal to the profit, and (b) if the Corporation or the State suffered loss or damage because of the contravention – an amount equal to the loss or damage.	Yes	N/A	N/A	N/A	N/A	Type 4
Electricity Supply Act 1995 s 184: Directors and Managers liable for offences committed by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Employment Protection Act 1982 s 22: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation.	Yes, if a corporate breach is established.	If the person was in a position to influence the conduct of the Corporation in relation to the offence, the person used all due diligence to prevent the contravention by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the offence.	The Corporation contravened the provision without the knowledge of the person.	Onus on the accused to establish a defence.	Type 4

New South Wales 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>Energy and Utilities Administration Act 1987</i> s 47A: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Entertainment Industry Act 2013</i> s 38: Liability of Directors and Managers of Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Environmentally Hazardous Chemicals Act 1985</i> s 53: Liability of Directors etc for offences by Corporation - offences attracting executive liability. Applies to offences against the following provisions: (a) section 26 (Orders to be observed); or (b) section 32(2) (Licence conditions).	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>s 53A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p><i>Exhibited Animals Protection Act 1986</i> s 47: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Explosives Act 2003 s 33:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability for contravention of section 6(1) (Licences required for handling explosives and explosive precursors).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 33A:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Farm Debt Mediation Act 1994</i> s 28: Offences by Corporations.	Officers, Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Firearms Act 1996</i> s 83: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Fisheries Act 1935</i> s 119C: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Fisheries Management Act 1994</i> s 279: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Fitness Services (Pre-Paid Fees) Act 2000</i> s 14: Offences by Corporations: Liability of Directors and Managers.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Food Act 2003 s 122:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 13 (Handling of food in unsafe manner);</p> <p>(b) section 14 (Sale of unsafe food);</p> <p>(c) section 15 (False description of food);</p> <p>(d) section 16 (Handling and sale of unsafe food);</p> <p>(e) section 17(1) or (2) (Handling and sale of unsuitable food);</p> <p>(f) section 18(1)–(3) (Misleading conduct relating to sale of food);</p> <p>(g) section 19(1) (Sale of food not complying with purchaser' section demand);</p> <p>(h) section 20 (Sale of unfit equipment or packaging or labelling material);</p> <p>(i) section 21(1)–(4) (Compliance with Food Standards Code);</p> <p>(j) section 35 (Failure to comply with emergency order);</p> <p>(k) section 64 (Contravention of prohibition order); or</p> <p>(l) section 104(1)–(4) (Offences relating to food safety schemes).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>s 122A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Funeral Funds Act 1979 s 90: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Gaming and Liquor Administration Act 2007 s 44: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Gaming Machines Act 2001 s 199A:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>s 200:</p> <p>Offences by corporate hoteliers.</p>	Each person who occupies a position of authority in the Corporation, if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>s 201:</p> <p>Liability of secretary of club and members of governing body.</p>	The secretary and member of the governing body of the club, if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>s 202:</p> <p>Liability of management and Directors of corporate holders of gaming-related licences.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Gas Supply Act 1996 s 80:</p> <p>Directors and Managers liable for offences committed by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Gene Technology (GM Crop Moratorium) Act 2003 s 37:</p> <p>Offences by Corporation.</p>	Executive Officers of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Health Insurance Levies Act 1982</p> <p>Section 121 of the Taxation Administration Act 1996 (Liability of Directors etc for offences by Corporation – offences attracting executive liability).</p> <p>Applies to an offence against the section 11 (Requirement to furnish a monthly return).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
Heavy Vehicle National Law (NSW) s 636: Liability of executive officers of Corporation.	Executive officers of the Corporation who: (a) knowingly authorised or permitted the conduct; or (b) knew or ought reasonably to have known of the conduct; or (c) knew or ought reasonably to have known that there was a substantial risk that the offence would be committed.	No, the prosecution must prove the elements of the offence.	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.	The officer was acting on a voluntary basis.	Onus on the accused to establish a defence.	Type 1
Hemp Industry Act 2008 s 43: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Heritage Act 1977 s 159: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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><i>Holiday Parks (Long-term Casual Occupation) Act 2002</i> s 44: Offences by Corporations. This provision does not apply to contraventions of section 9 (Prospective occupants have a right to certain information) or section 10 (Prospective occupants have a right to be provided with the park rules for casual occupants).</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p><i>Home Building Act 1989 s 137:</i> Offences by Body Corporate – Liability of Directors etc. This provision does not apply to contraventions of Division 3 of Part 6A (Miscellaneous).</p>	Directors and those who are concerned with the management of the Body Corporate if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p><i>Homebush Motor Racing (Sydney 400) Act 2008</i> s 41: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p><i>Human Tissue Act 1983</i> s 21B: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Industrial Relations Act 1996 s 400: Offences by Corporations. This provision does not apply to contraventions of section 361 (Exhibition of industrial instruments in workplace).	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005 s 67: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Jury Act 1977 s 70: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Landlord and Tenant (Amendment) Act 1948 s 95A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Legal Profession Act 2004 s 719: Liability of principals.</p>	Each principal of the law practice.	Yes, if breaches by the law practice is established.	The principal, if in that position, used all due diligence to prevent the contravention by the practice.	The principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision.	The practice contravened the provision without the knowledge actual, imputed or constructive of the principal.	Onus on the accused to establish a defence.	Type 4

New South Wales 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><i>Liquor Act 2007</i> s 71:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Loan Fund Companies Act 1976 s 67: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Lobbying of Government Officials Act 2011 s 23: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Long Service Leave Act 1955 s 10A:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 4 (Long Service Leave); or</p> <p>(b) section 8 (Records to be kept by employers).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
<p>s 10B:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Long Service Leave (Metalliferous Mining Industry) Act 1963</p> <p>s 10A:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 4 (Long Service Leave); or</p> <p>(b) section 8 (Records to be kept by employers).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 10B:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Lotteries and Art Unions Act 1901 s 22C: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Major Events Act 2009 s 74: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Marine Estate Management Act 2014 s 73 Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Marine Pollution Act 2012 s 235: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Marine Safety Act 1998 s 130: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Mining Act 1992 s 378F:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 240C (Breach of direction); or</p> <p>(b) section 378D(1) (Contravention of condition of authorisation - offence by holder).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 378FA:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Motor Accidents Act 1988 s 134: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Motor Accidents Compensation Act 1999 s 226: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Motor Dealers and Repairers Act 2013 s 107: Liability of Directors etc for offences by Corporation - offences attracting executive liability. Applies to offences against the following provisions: (a) section 12 (Unlicensed motor vehicle repairers); or (b) section 15(1) (Repair work must be done by licensed motor vehicle repairers).	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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 96: Liability of Directors etc for offences by Corporation - accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Motor Sports (World Rally Championship) Act 2009 s 21: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
National Electricity (NSW) Law s 85: Offences and breaches by Corporations.	Each Officer of the Corporation if the Officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
National Energy Retail Law (NSW) s 304: Offences and breaches by Corporations.	Each Officer of the Corporation if the Officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
National Gas (NSW) Law s 288: Offences and breaches by Corporations.	Each Officer of the Corporation if the Officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
National Parks and Wildlife Act 1974 s 175B: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions: (a) section 86(1), (2) or (4) (Harming or desecrating Aboriginal objects and Aboriginal places); (b) section 90J(1) or (2) (Failure to comply with conditions); (c) section 91AA(6) (Director-General may make stop work order); (d) section 91G (Failure to comply with interim protection order); (e) section 91Q(1) (Failure to comply with remediation direction); (f) section 91R (Delay or obstruction of remediation direction); (g) section 99(1) (Harming threatened interstate fauna); (h) section 118A(1) or (2) (Harming or picking threatened species, endangered populations or endangered ecological communities);	Directors of the Corporation, or an individual who is involved in the management of the Corporation and who is in a position to influence the conduct of the Corporation in relation to the commission of the executive liability offence, and the person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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) section 118B(1) (Buying, selling or possessing threatened species or endangered population);							
(j) section 118C(1) (Damage to critical habitat);							
(k) section 118D(1) (Damage to habitat of threatened species, endangered populations or endangered ecological communities);							
(l) section 133(4) (Conditions and restrictions attaching to licences and certificates and variation of licences and certificates); or							
(m) section 156A(1) (Offence of damaging reserved land).							
s 176C: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Native Vegetation Act 2003 s 45:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 12 (Clearing requiring approval);</p> <p>(b) section 37(5) (Director-General may make “stop work” order); or</p> <p>(c) section 38(4) (Directions for remedial work).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 45A:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Noxious Weeds Act 1993 s 62: Offences by Corporations. This provision does not apply to contraventions of section 54:</p> <p>(a) section 54(1) (Obstructing an inspector or authorised officer); and (b) section 54(2) (Obstructing a person authorised by a local control authority).</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Ozone Protection Act 1989 s 22: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Parramatta Park Trust Act 2001 s 33: Offences by Corporations. This provision does not apply to contraventions of section 28(1) (Requirement for owner of vehicle and others to give information).</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Passenger Transport Act 1990 s 58: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Passenger Transport Act 2014 s 165: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Pawnbrokers and Second-hand Dealers Act 1996 s 40A: Offences by Corporations.	Executive Officers if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Payroll Tax Act 2007 Section 121 of the <i>Taxation Administration Act 1996</i> (Liability of Directors etc for offences by Corporation – offences attracting executive liability). Applies to offences against section 18 (Inclusion of grant of shares and options as wages) of the <i>Payroll Tax Act 2007</i> .	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>Pesticides Act 1999 s 112:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 7(1) (Injury to persons or damage to property resulting from pesticide use);</p> <p>(b) section 8(1) (Harm to animals or plants resulting from pesticide use);</p> <p>(c) section 9(1) (Material harm to endangered, vulnerable or protected animals);</p> <p>(d) section 10(1) (Injury to persons or damage to property resulting from pesticide use);</p> <p>(e) section 11(1) (Harm to animals or plants resulting from pesticide use);</p> <p>(f) section 12 (Possession of unregistered pesticide);</p> <p>(g) section 13 (Use of unregistered pesticide);</p> <p>(h) section 14(2) (Requirement to read approved label and permit);</p> <p>(i) section 15(1) (Using pesticide contrary to approved label);</p> <p>(j) section 17 (Use or possession of restricted pesticides);</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
(k) section 19(4) (Environment Protection Authority may direct clean-up action);							
(l) section 25 (Offence);							
(m) section 39(4) (Operation of pesticide control order);							
(n) section 41(2) (Destruction of pesticides); and							
(o) section 42(4) (Defective equipment);							
(p) section 59 (Contravention of conditions); or							
(q) section 65(5) (Prohibited residue orders).							
s 112A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Point to Point Transport (Taxis and Hire Vehicles) Act 2016</p> <p>s 133:</p> <p>Liability of directors etc for offences by Body Corporate – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 27 (Provider of taxi service or booking service must be authorised) or section 28 (Aggravated provision of unauthorised services);</p> <p>(b) section 47 (Taxis must be licensed) or section 48 (Holder of taxi licence must comply with licence conditions);</p> <p>(c) section 76 (5) (Fares orders), section 78 (Overcharging for non-cash payment surcharge) or section 79 (4) (Estimate of fares to be provided for booked services),</p> <p>(d) section 85 (Compliance with improvement notice), section 89 (Compliance with prohibition notice) or section 102 (Compliance with undertaking); or</p> <p>(e) section 126 (Offences relating to inspections).</p>	<p>Directors or individuals who are involved in the management of the Body Corporate and who are in a position to influence the conduct of the Body Corporate in relation to the commission of the executive liability offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>Poisons and Therapeutic Goods Act 1966 s 36D: Offences by Bodies Corporate.</p>	Directors and those who are concerned with the management of the Body Corporate if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Poppy Industry Act 2016 s 31: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against section 6 (Requirement for licence or permit).</p>	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the executive liability offence, if that person: <ul style="list-style-type: none"> (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and (b) fails to take all reasonable steps to prevent or stop the commission of that offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>s 32: Liability of Directors etc for offences by Corporation –accessory to the commission of the offences that are corporate offences (an offence against the Act or the regulations that is capable of being committed by a Corporation, whether or not it is an executive liability offence).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the corporate offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the corporate offence, or (b) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or (c) conspires with others to effect the commission of the corporate offence, or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Ports and Maritime Administration Act 1995 s 104: Offence by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Prevention of Cruelty to Animals Act 1979 s 33A: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Prices Regulation Act 1948 s 59(4): Offences and penalties.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Private Health Facilities Act 2007 s 62: Offences by Corporations. (Except in respect of a contravention of section 16 (1), 17 (7) or 40).	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Property, Stock and Business Agents Act 2002 s 218: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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><i>Protection of the Environment Operations Act 1997</i> s 169:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting special executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 49(2) (Licensing requirement - scheduled activities (not premises-based));</p> <p>(b) section 64(1) (Failure to comply with condition);</p> <p>(c) section 66(2) or (4) (Conditions requiring monitoring, certification or provision of information, and related offences);</p> <p>(d) section 102 (Offence);</p> <p>(e) section 113 (False or misleading statements in reports);</p> <p>(f) section 115(1) (Disposal of waste – harm to environment);</p> <p>(g) section 116(1) or (2) (Leaks, spillages and other escapes);</p> <p>(h) section 117(1) (Emission of ozone depleting substances);</p>	Directors and those who are concerned with the management of the Corporation.	Yes, if a corporate breach is established.	If the person was in a position to influence the conduct of the Corporation in relation to the offence, the person used all due diligence to prevent the contravention by the Corporation.	The person 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 4

New South Wales 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)	section 120(1) (Prohibition of pollution of waters);						
(j)	section 124 (Operation of plant (other than domestic plant));						
(k)	section 125 (Maintenance work on plant (other than domestic plant));						
(l)	section 126 (Dealing with materials);						
(m)	section 128 (Standards of air impurities not to be exceeded);						
(n)	section 142A(1) (Pollution of land);						
(o)	section 143(1) (Unlawful transporting or depositing of waste);						
(p)	section 144(1) (Use of land as waste facility without lawful authority); or						
(q)	section 152 (Offence).						

New South Wales 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>s 169A: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions:</p> <p>(a) section 47(1) (Licensing requirement – scheduled development work);</p> <p>(b) section 48(2) (Licensing requirement – scheduled activities (premises-based));</p> <p>(c) section 86(3) (Notice for breach of licensing requirements);</p> <p>(d) section 91(5) (Clean-up by occupiers or polluters);</p> <p>(e) section 97 (Offence);</p> <p>(f) section 112 (Obstruction of persons);</p> <p>(g) section 129 (Emission of odours from premises licensed for scheduled activities);</p> <p>(h) section 136 (Sale of articles emitting more than prescribed noise);</p> <p>(i) section 137 (Sale of articles required to be fitted with noise control equipment);</p> <p>(j) section 139 (Operation of plant);</p> <p>(k) section 140 (Dealing with materials);</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
(l) section 144AA(1) (False or misleading information about waste);							
(m) section 153A (Duty of licence holder to prepare pollution incident response management plan);							
(n) section 153B(2) (EPA may direct other persons to prepare pollution incident response management plan);							
(o) section 153D (Keeping of plan);							
(p) section 153E (Testing of plan);							
(q) section 153F (Implementation of plan);							
(r) section 155 (Sale of motor vehicles);							
(s) section 156 (Sale of motor vehicles without anti-pollution devices); or							
(t) section 167 (4) (Control equipment).							

New South Wales 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 169B: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Public Health Act 2010 s 119: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Public Health (Tobacco) Act 2008 No 94 s 53: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Public Lotteries Act 1996 s 78: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Racing Administration Act 1998 s 36B: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Radiation Control Act 1990 s 23: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Rail Safety National Law (NSW) s 55: Duty of officers to exercise due diligence.	If a person has a duty or obligation under the 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 4

New South Wales 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>Residential (Land Lease) Communities Act 2013</p> <p>s 178: Accessories to the commission of offences.</p>	<p>Directors or those who are concerned with the management of the corporation and are in a position to influence the conduct of the corporation and who:</p> <p>(a) aids, abets, counsels or procures the commission of an offence;</p> <p>(b) induces by threats, promises or otherwise, the commission of an offence;</p> <p>(c) conspires with others to effect the commission of an offence;</p> <p>(d) is in any way knowingly concerned in or a party to the commission of an offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Residential Parks Act 1998</p> <p>s 150: Offences by Corporations. This provision does not apply to contraventions of the following sections:</p> <p>(a) section 12(2) (Costs of preparation of residential tenancy agreement and other costs);</p> <p>(b) section 29(2) (Locks and other security devices);</p> <p>(c) section 33(1), (2) or (4) (Change of name or address);</p> <p>(d) section 63(3) (Park rules from part of residential tenancy agreements);</p> <p>(e) section 66(6) (Park Liaison Committee);</p>	<p>Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
(f) section 67(2) (Residents' rights to membership of organisations);							
(g) section 68(1) or (2) (Notice boards);							
(h) section 72 (Prospective residents have a right to seek independent advice);							
(i) section 74(2) or (3) (Park owner must inform residents of certain arrangements and future restrictions);							
(j) section 75(2) or (3) (Installation of individual mail facilities); or							
(k) section 81(5) (Provisions relating to on-site sale of moveable dwellings).							
Residential Tenancies Act 2010 s 204: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Retail Leases Act 1994 s 16R: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Retirement Villages Act 1999 s 186: Offences by Corporations. This provision does not apply to contraventions of section 110(1) or (2) (Receipts for recurrent charges).</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Rice Marketing Act 1983 s 157: Offences by Corporations for contravention of section 52(2) of the Act (Board may act as a marketing agent).</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p>Road Transport Act 2013 s 182: Liability of Directors etc for offences by Corporation – accessory to commission of offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Roads Act 1993 s 245: Directors and Managers etc. liable for offences committed by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Rural Workers Accommodation Act 1969 s 22: Liability of Directors etc for offences by Corporation accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
Security Industry Act 1997 s 44: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Snowy Hydro Corporatisation Act 1997 s 50: Offences by Directors and other Managers of Corporation.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Stock Diseases Act 1923 s 20N: Offences by Officers of Corporations.	Officers of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Superannuation Administration Corporation (Pillar) (Authorised Transaction) Act 2016 Schedule 5, Item 22: Offences by Corporations.	Directors and those concerned in the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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
Surveillance Devices Act 2007 s 57: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Taxation Administration Act 1996 s 121: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions: (a) section 10(1) (Requirement for full and true disclosure of relevant facts and circumstances); (b) section 41(1) or (2) (Effect of approval); (c) section 42(2) (Stamping of instruments); (d) section 49(2) (Additional records); (e) section 50 (Inclusion of false or misleading information); (f) section 54 (Wilfully destroying records); (g) section 55 (Knowingly giving false or misleading information); (h) section 56 (Deliberately omitting information); (i) section 57 (Failure to lodge documents); (j) section 58 (Falsifying or concealing identity);	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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
(k) section 72(8) (Power to require information, instruments and records, and attendance); or (l) section 113 (Notice of liquidators' section appointment).							
s 121A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.	Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person: (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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><i>Threatened Species Conservation Act 1995</i> s 152: Liability of Directors etc for offences by Corporation – offences attracting executive liability. Applies to offences against the following provisions:</p> <p>(a) section 114(6) (Director-General may make stop work order); or (b) section 141O (Offence).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 152A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Totalizator Act 1997 s 103: Offences by Corporations. (Except in respect of a contravention of section 26(1).)	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Tow Truck Industry Act 1998 s 88: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Unauthorised Documents Act 1922 s 5: Penalties etc in case of bodies corporate.	Every Director Manager secretary or Officer of any such company and every member of the managing body or any such body corporate who commits or knowingly authorises or permits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Unclaimed Money Act 1995 s 46: Liability of Officers for offences by enterprises.	Officers who knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Unlawful Gambling Act 1998 s 53:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 s 11:</p> <p>Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Valuers Act 2003 s 44:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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>Veterinary Practice Act 2003 s 99:</p> <p>Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Water Industry Competition Act 2006 s 97:</p> <p>Liability of Directors etc for offences by Corporation – offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 5 (Prohibition of unlicensed network operation and water supply); or (b) section 71 (Offence to discharge into drains and sewers). 	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and (b) fails to take all reasonable steps to prevent or stop the commission of that offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

New South Wales 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>s 97A: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Water Management Act 2000 s 363: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

New South Wales 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>Water NSW Act 2014 s 95:</p> <p>Liability of Directors etc for offences by Corporation - offences attracting executive liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 77(5) (Corrective action by occupiers or persons carrying on certain activities);</p> <p>(b) section 81(6) (Preventive action); or</p> <p>(c) section 94(1) (Offence to discharge into works).</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed; and</p> <p>(b) fails to take all reasonable steps to prevent or stop the commission of that offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>s 96:</p> <p>Liability of Directors etc for offences by Corporation - accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <p>(a) aids, abets, counsels or procures the commission of the offence;</p> <p>(b) induces, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(c) conspires with others to effect the commission of the offence; or</p> <p>(d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

New South Wales 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
Weapons Prohibition Act 1998 s 46: Offences by Corporations.	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Wool, Hide and Skin Dealers Act 2004 s 41: Offences by Corporations.	Executive Officers if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
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 4
Workers Compensation Act 1987 s 145A: Recovery from Directors of Corporations liable to reimburse Insurance Fund.	If a Corporation is liable to reimburse the Insurance Fund an amount for a payment made in respect of a claim under the Division 6 (Uninsured liabilities) and the amount is not recoverable from a person who was a culpable Director of the Corporation at the relevant time.	No, the onus is on the prosecution to prove the required elements.	The person used all due diligence to prevent the contravention by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the offence.	The Corporation contravened the provision without the knowledge of the person.	Onus on the accused to establish a defence.	Type 4

New South Wales 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 156B: Recovery from Directors of Corporation – insurance requirements.	If the Authority is entitled to recover an amount from a Corporation under section 156 (even if the Corporation has ceased to exist) and the amount is not recoverable from the Corporation, the Authority is entitled to recover the amount from a person who was a culpable Director of the Corporation at the relevant time.	No, the onus is on the prosecution to prove the required elements.	The person used all due diligence to prevent the contravention by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the offence.	The Corporation contravened the provision without the knowledge of the person.	Onus on the accused to establish a defence.	Type 4
s 175A: Recovery from Directors of Corporation evading payment of correct premium.	If the Authority is entitled to recover an amount from a Corporation under section 175 (4) or (4AA) (even if the Corporation has ceased to exist) and the amount is not recoverable from the Corporation, the Authority is entitled to recover the amount from a person who was a culpable Director of the Corporation at the relevant time.	No, the onus is on the prosecution to prove the required elements.	The person was in a position to influence the conduct of the Corporation in relation to the offence, and used all due diligence to prevent the provision by the Corporation of false or misleading information.	The person was not in a position to influence the conduct of the Corporation in relation to the offence.	The person did not know that the information provided by the Corporation was false or misleading in a material particular.	Onus on the accused to establish a defence.	Type 4

New South Wales 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>Workplace Injury Management and Workers Compensation Act 1998 s 244: Liability of Directors etc for offences by Corporation – accessory to the commission of the offences.</p>	<p>Directors or individuals who are involved in the management of the Corporation and who are in a position to influence the conduct of the Corporation in relation to the commission of the offence, if that person:</p> <ul style="list-style-type: none"> (a) aids, abets, counsels or procures the commission of the offence; (b) induces, whether by threats or promises or otherwise, the commission of the offence; (c) conspires with others to effect the commission of the offence; or (d) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the offence. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Workplace Surveillance Act 2005 s 43: Offences by Corporations.</p>	Directors and those who are concerned with the management of the Corporation if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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.

