



Protecting your Position

Northern Territory laws imposing
personal liability on directors
and officers



MinterEllison

About the Authors



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

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

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Introduction

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

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

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

The Northern Territory and Western Australian Governments have not proposed any amendments to laws imposing personal liability on directors and officers. It follows that there are still in excess of 50 Northern Territory statutes, which impose personal liability on directors and officers.

This inaction together with the differences in approach taken by each State and Territory which has introduced amendments to these laws, means that three key policy issues remain.

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

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

Introduction (cont'd)

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

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

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

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

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

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

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

Overview

1 Definitions

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

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

body corporate means:

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

chairperson of directors means chairperson of the board of directors.

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

corporation includes a body politic or corporate, and means:

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

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

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

executive officer of a corporation means:

- (a) each of the chairperson, managing director or other principal executive officer of the body corporate and every member of any executive, governing or management body of the body corporate (by whatever name called); and
- (b) every person concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

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

managing director means a director of a company who is also its chief full-time executive employee.

officer of a corporation means:

- (a) a director, secretary or executive officer of the corporation; or
- (b) a person who can control or influence the conduct of the corporation's affairs including, for example, a person on whose directions, advice or instructions the corporation's directors usually act.

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

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

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

2 How to Read This Publication

This document is divided into the following columns.

2.1 Provisions

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

2.2 Who is liable?

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

2.3 Is the liability automatic?

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

2.4 Defence of ‘Due Diligence’

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

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

2.5 Defence of ‘Unable to Influence’

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

2.6 Additional Defences

This column details any additional defences for the relevant provision.

2.7 Onus of Proof for Defence

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

2.8 Type of Provision

In this column, the provisions are categorised in accordance with the ‘Summary of Types of Provisions’ set out below.



3 Summary of Types of Provisions

There are essentially two types of statutory provisions which impose personal liability on individuals in corporations in the Northern Territory.

3.1 Type 1 Provision

Type 1 provisions provide that executive officers of the corporation will be deemed liable where the corporation contravenes, whether by act or omission, the relevant provisions of the Act or regulation in question.

However a variety of defences may apply including:

- (a) the person was not in a position to influence the conduct of the corporation in relation to the contravention;
- (b) the person took reasonable steps to prevent the contravention; or
- (c) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.

In the summary below, defence (a) has been described as a defence of 'unable to influence' and defences (b) and (c) have been described as additional defences.

An example of this type of provision is section 111 of the *Agricultural and Veterinary Chemicals (Control of Use) Act*, which provides that:

111 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

3 Summary of Types of Provisions (cont'd)

- (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 13, 14(2), 20(1), 22(1), 26(1), 36(1), 38(1) or (3), 39(1), 53(4), 54(2), 55(5), 79(3) or 87(2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

3.2 Type 2 Provision

Type 2 provisions provide that executive officers of the corporation will be deemed liable where the corporation contravenes a provision of the Act and the officer:

- (a) was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (b) failed to take reasonable steps to prevent the contravention; and
- (c) was reckless about whether the contravention would happen.

An example of this type of provision is section 18 of the *Environment Protection (Beverage Containers and Plastic Bags) Act*, which provides that:

81 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence (a relevant offence) by contravening a declared provision; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention; and
 - (d) the officer was reckless about whether the contravention would happen.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:



3 Summary of Types of Provisions (cont'd)

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

It must be noted that variations of Type 2 provisions may include additional requirements in order for the person to be liable. Furthermore, the persons to whom the provision applies may also vary. An example of a variation of a Type 2 provision is section 158 of the *Criminal Property Forfeiture Act*, which provides that:

158 Proceedings against body corporate

- (1) If a body corporate commits an offence against this Act and it is proved that the offence occurred with the knowledge and consent of an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits the offence.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.
- (3) If, in proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that:

3 Summary of Types of Provisions (cont'd)

- (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the officer had that state of mind.
- (4) If an officer of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual authority, for the purposes of proceedings under this Act, the body corporate is taken also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

Northern Territory laws
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Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Agricultural and Veterinary Chemicals (Control of Use) Act s 111:</i> Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p><i>Building Act s 151:</i> Offences by Corporations.</p>	Directors and those concerned in the management of the Corporation.	Yes, if a corporate breach is established.	N/A	N/A	The person had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Classification of Publications, Films and Computer Games Act s 114:</p> <p>Liability of executive officers of Bodies Corporate.</p>	Executive Officers.	Yes, if a corporate breach is established.	The person exercised due diligence to prevent the commission of the offence.	N/A	The person did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed.	Onus on the accused to establish a defence.	Type 1
<p>Companies (Trustees and Personal Representatives) Act s 50:</p> <p>Directors and chief executive officer personally liable.</p>	<p>The directors and chief executive officer of the trustee company are individually and collectively responsible to the Court and shall be personally liable by process of attachment, commitment for contempt or by other process, to all courts having jurisdiction, for the proper discharge of their duties and for obedience to the rules, orders and decrees of those courts, in the same manner and to the same extent as if the directors and chief executive officer:</p> <p>(a) had personally obtained probate or letters of administration and had acted as executors and administrators; or</p> <p>(b) had personally been appointed as attorney, trustee, receiver, statutory Manager, liquidator or official liquidator, as the case may be, and had acted in that capacity.</p>	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Constitutional Convention (Election) Act s 175: Criminal liability of executive officer of Body Corporate – breaches of the following sections attract executive officer liability:</p> <p>(a) 146(1) or (3) (Offences relating to campaign material);</p> <p>(b) 147(2) (Offence relating to push-polling);</p> <p>(c) 148(2) (Heading of advertisements);</p> <p>(d) 149(1) or (4) (Electoral articles to be signed or state particulars of author); or</p> <p>(e) 153(1) (Publication of statements regarding candidates).</p>	<p>An executive officer of a Body Corporate commits an offence if:</p> <p>(a) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention;</p> <p>(b) the officer failed to take reasonable steps to prevent the contravention; and</p> <p>(c) the officer was reckless about whether the contravention would happen.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p>Consumer Affairs and Fair Trading Act s 330: Criminal Liability of executive officer of Body Corporate</p>	<p>Executive officers of a Body Corporate if:</p> <p>(a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen;</p> <p>(b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and</p> <p>(c) the officer failed to take reasonable steps to prevent the contravention.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Co-operatives (National Uniform Legislation) Act 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	Other
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	Other
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.	Other
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).					Other
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	Other

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
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	Other
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	Other

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	<p>(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.	Other
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	Other

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
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	Other
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.	Other
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	Other
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	Other
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	Other

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Criminal Code Act s 125D: Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p>Criminal Property Forfeiture Act s 158: Proceedings against Body Corporate.</p>	An officer of the Body Corporate, or a person purporting to act as an officer of the Body Corporate, if it is proved that the offence occurred with the knowledge and consent of that person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Dangerous Goods Act s 33(2):</i> Conduct of Directors of Bodies Corporate.	Directors or those concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable precautions and used due diligence to prevent the commission of the offence.	The person was not in a position to influence the conduct of the Body Corporate in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<i>Education and Care Services (National Uniform Legislation) Act 2011 s 285:</i> 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 2
<i>Electricity Networks (Third Party Access) Act s 46:</i> Offences and breaches of civil penalty provisions by Body Corporate.	Executive officers of a Body Corporate, if: (a) the Body Corporate contravenes an offence provision or is in breach of a civil penalty provision; and (b) the officer knowingly authorised or permitted the contravention or breach.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Electricity Reform Act s 105:</p> <p>Criminal liability of executive officer of Body Corporate.</p>	<p>Executive officers of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p>Emergency Management Act 2013 s 106:</p> <p>Criminal liability of executive officer of Body Corporate.</p>	<p>Executive officers of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the officer failed to take reasonable steps to prevent the commission of the offence; and (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the commission of the offence; and (c) the officer was reckless about whether the commission of the offence would happen. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	Onus is on the prosecution to prove each as elements of the offence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Energy Pipelines Act s 58G: Criminal liability of executive officer of Body Corporate</p>	<p>Executive officers of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements.	Type 2
<p>Environment Protection (Beverage Containers and Plastic Bags) Act s 81: Criminal liability of executive officer of Body Corporate.</p>	<p>An executive officer of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (b) the officer failed to take reasonable steps to prevent the contravention; and (c) the officer was reckless about whether the contravention would happen. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Fire and Emergency Act s 49:</p> <p>Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the offence; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p>Firearms Act s 106B:</p> <p>Criminal Liability of executive officers of Body Corporate.</p>	<p>Executive officers of a Body Corporate if:</p> <p>(a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen;</p> <p>(b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and</p> <p>(c) the officer failed to take reasonable steps to prevent the contravention.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 107: Criminal Liability of executive officer of Body Corporate – deemed liability if Body Corporate commits offence	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable steps to prevent the offence or did not know, and could not reasonably have been expected to know, that the contravention would happen.	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	The section does not apply if the Body Corporate would have a defence to a prosecution of the relevant offence.	Onus on the accused to establish a defence.	Type 1
Fisheries Act s 45: Liability of Directors, Managers and licensees.	Directors and those concerned in the management of the Body Corporate if it is proved that the act or omission that constituted the offence took place with the person's authority, permission, or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
Food Act s 114: Criminal Liability of executive officer of Body Corporate.	Executive officers of a Body Corporate if: (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 114A: Criminal Liability of executive officer of Body Corporate – deemed liability if Body Corporate commits offence	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable steps to prevent the contravention or did not know, and could not reasonably have been expected to know, that the contravention would happen.	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1
Gaming Control Act s 72: Criminal Liability of executive officer of Body Corporate.	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable steps to prevent the contravention or did not know, and could not reasonably have been expected to know, that the contravention would happen.	The person was not in a position to influence the conduct of the Body Corporate.	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1
Gaming Machine Act s 180: Criminal Liability of executive officer of Body Corporate.	Executive officers if: (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention.	No, the onus is on the prosecution to prove the relevant elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>s 180A: Criminal liability of executive officer of Body Corporate – deemed liability if Body Corporate commits offence.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p>Geothermal Energy Act s 101: Liability of executive officers of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person exercised due diligence to prevent the commission of the principal offence.	N/A	The officer did not know, and could not reasonably have been expected to know, the principal offence was to be or was being committed.	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Health Practitioners Act s 127:</p> <p>Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p>Heritage Act s 121:</p> <p>Criminal liability of executive officer of Body Corporate.</p>	<p>An executive officer of a Body Corporate if:</p> <p>(a) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and</p> <p>(b) the officer failed to take reasonable steps to prevent the contravention; and</p> <p>(c) the officer was reckless about whether the contravention would happen.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Kava Management Act</i> s 26: Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	Defences available if: (a) the person took reasonable steps to prevent the contravention; or (b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen. The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Liquor Act s 123B:</p> <p>Criminal Liability of executive officer of Body Corporate – evidential burden of proof on defence.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Livestock Act s 134:</p> <p>Criminal Liability of executive officers of Body Corporate – evidential burden of proof on defence.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1
<p>Meat Industries Act s 63:</p> <p>Liability of Directors, Managers and Corporations.</p>	Every Director and every person concerned in the management of the Corporation if it is proved that the act or omission that constituted the offence took place with the person's authority, permission, or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	Onus is on the prosecution to prove the required elements.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Medicines, Poisons and Therapeutic Goods Act 2012</i> s 215: Criminal liability of executive officer of Body Corporate.</p>	An executive officer if: <ol style="list-style-type: none"> the Body Corporate commits an offence and the officer was reckless about whether the contravention would happen; the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and the officer recklessly failed to take reasonable steps to prevent the contravention. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements	Type 2
<p><i>Mineral Titles Act</i> s 160: Criminal liability of executive officer of Body Corporate.</p>	An executive officer of a Body Corporate if: <ol style="list-style-type: none"> the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; the officer failed to take reasonable steps to prevent the contravention; and the officer was reckless about whether the contravention would happen. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Mining Management Act s 77A: Criminal liability of executive officer of Body Corporate.</p>	<p>An executive officer of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; (b) the officer failed to take reasonable steps to prevent the contravention; and (c) the officer was reckless about whether the contravention would happen. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus is on the prosecution to prove the required elements.	Type 2
<p>Misuse of Drugs Act s 39: Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable steps to prevent the contravention or did not know, and could not reasonably have been expected to know, that the contravention would happen.	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Northern Territory Products Symbol Act</i> s 14:</p> <p>Vicarious liability.</p>	Any Director, Manager, Secretary or other similar officer where the offence was committed with the consent or connivance of the person, or is attributable to the neglect of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The person must prove that neither he nor an agent or servant of his did, or knew of the doing of, an act that constituted that offence or can reasonably be regarded as having been the cause or amongst the causes of that offence, or omitted to do, or knew of an omission to do, an act the omission whereof constituted that offence or the doing whereof can reasonably be regarded as a precaution that would have prevented that offence.	Onus is on the prosecution to prove the required elements.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Nuclear Waste Transport, Storage and Disposal (Prohibition) Act</i> s 11: Liability of executive officers of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person exercised due diligence to prevent the commission of the offence.	N/A	Defences available if: (a) the Body Corporate would not have been found guilty of the offence because it would have been able to establish a defence; or (b) the person did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed.	Onus on the accused to establish a defence.	Type 1
<p><i>Petroleum Act</i> s 108: Offence by Body Corporate.</p>	An officer of the Body Corporate who was in any way, by act or omission, directly or indirectly, 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	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 117AAG: Director may be liable for offence of Body Corporate.	Director or person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person could not by the exercise of reasonable diligence have prevented the commission of the offence by the Body Corporate.	N/A	Defences available if: (a) the Body Corporate has a defence; (b) the act or omission that constituted the offence took place without the person's authority, permission or consent; or (c) the person did not know, and ought not reasonably be expected to have known, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence.	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Plant Health Act 2008 s 67: Criminal Liability of executive officers of Bodies Corporate.</p>	<p>Executive officers of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the Body Corporate commits an offence and the officer was reckless about whether the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer recklessly failed to take reasonable steps to prevent the contravention. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p>s 67A: Criminal Liability of executive officer of Body Corporate – evidential burden of proof on defence.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <ul style="list-style-type: none"> (a) the person took reasonable steps to prevent the contravention; or (b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen. <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Poppy Regulation Act s 42:</p> <p>Criminal liability of executive officer of Body Corporate.</p>	<p>An executive officer of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the Body Corporate commits an offence and the officer was reckless about whether the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer recklessly failed to take reasonable steps to prevent the contravention. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p>Price Exploitation Prevention Act s 59:</p> <p>Criminal liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <ul style="list-style-type: none"> (a) the person took reasonable steps to prevent the contravention; or (b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen. <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Printers and Newspapers Act s 10:</p> <p>Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Private Hospitals Act s 18(3): Manager of private hospital.	Directors and officers of a Body Corporate are taken to be the licensee for the purpose of this section (see section 7(2) of the Act (Body corporate as a licensee)) and are liable for offences committed by the Manager of a private hospital.	Yes, if an offence is committed against this Act by the Manager of a private hospital.	N/A	N/A	If the licensee proves that the licensee gave such directions to the Manager and had exercised such supervision over the Manager as was reasonably necessary to ensure that the Manager did not commit an offence against the Act.	Onus on the accused to establish a defence.	Type 1
Public and Environmental Health Act s 119: Criminal liability of executive officer of Body Corporate.	An executive officer of a Body Corporate if: (a) the Body Corporate commits an offence and the officer was reckless about whether the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer recklessly failed to take reasonable steps to prevent the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Radiation Protection Act s 83:</p> <p>Liability of executive officers of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	The person exercised due diligence to prevent the commission of the offence.	N/A	<p>Defences available if:</p> <p>(a) the Body Corporate would not have been found guilty of the offence because it would have been able to establish a defence; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed.</p>	Onus on the accused to establish a defence.	Type 1
<p>Rail Safety National Law (NT) s 55:</p> <p>Duty of officers to exercise due diligence.</p>	If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Other
<p>Retirement Villages Act s 45:</p> <p>Offences by Corporations.</p>	Each person who is a Director of the Corporation or who is 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 2

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p>Return to Work Act s 180: Offences by Bodies Corporate.</p>	An officer of the Body Corporate or person purporting to act as such an officer if an offence by a Body Corporate is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, the officer or person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<p>Sexual Offences (Evidence and Procedure) Act s 13: Criminal Liability of executive officer of Body Corporate.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <ul style="list-style-type: none"> (a) the person took reasonable steps to prevent the contravention; or (b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen. <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.</p>	Onus on the accused to establish a defence.	Type 1

Northern Territory laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><i>Surveillance Devices Act</i> s 72:</p> <p>Criminal Liability of executive officer of Body Corporate – evidential burden of proof on defence.</p>	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	<p>Defences available if:</p> <p>(a) the person took reasonable steps to prevent the contravention; or</p> <p>(b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen.</p> <p>The section does not apply if the Body Corporate would have a defence to a prosecution for the declared offence.</p>	Onus on the accused to establish a defence.	Type 1

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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
Taxation Administration Act s 61: Recovery from Directors.	Directors of the Company if the Commissioner serves a notice on the Director informing them that they will become jointly and severally liable with the Company for the payment of the tax unless the Company remedies its tax default within 28 days from the date of the notice.	Yes, if a corporate breach is established.	N/A	N/A	Defences available if: (a) the Director took all reasonable steps that were possible in the circumstances to get the Company to remedy its default; or (b) the Director was unable because of illness or for some other proper reason to take steps to get the Company to remedy its default.	Onus on the accused to establish a defence.	Type 1
s 137: Criminal liability of executive officer of Body Corporate.	Executive officers of a Body Corporate if: (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

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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>Totalisator Licensing and Regulation Act</i></p> <p>s 106: Criminal liability of executive officer of Body Corporate or club.</p>	<p>Executive officers of a Body Corporate or club if:</p> <p>(a) the Body Corporate or club commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen;</p> <p>(b) the officer was in a position to influence the conduct of the Body Corporate or club in relation to the contravention; and</p> <p>(c) the officer failed to take reasonable steps to prevent the contravention.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate or club would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p><i>Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act</i></p> <p>s 126(1): Criminal liability of executive officer of Body Corporate.</p>	<p>An executive officer of a Body Corporate if:</p> <p>(a) the Body Corporate commits an offence and the officer was reckless about whether the contravention would happen;</p> <p>(b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and</p> <p>(c) the officer recklessly failed to take reasonable steps to prevent the contravention.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate has a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2

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Unlawful Betting Act s 56: Offences by Bodies Corporate.	An officer of the Body Corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or a 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
Waste Management and Pollution Control Act s 91: Criminal liability of executive officer of Body Corporate.	Executive officers of a Body Corporate.	Yes, if a corporate breach is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to the contravention.	Defences available if: (a) the person took reasonable steps to prevent the contravention; or (b) the person did not know, and could not reasonably have been expected to know, that the contravention would happen. The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 1

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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 Supply and Sewerage Services Act s 112: Criminal liability of executive officer of Body Corporate.</p>	<p>Executive officers of a Body Corporate if:</p> <ul style="list-style-type: none"> (a) the Body Corporate commits an offence and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; (b) the officer was in a position to influence the conduct of the Body Corporate in relation to the contravention; and (c) the officer failed to take reasonable steps to prevent the contravention. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The section does not apply if the Body Corporate would have a defence to a prosecution for the relevant offence.	Onus on the accused to establish a defence.	Type 2
<p>Work Health and Safety (National Uniform Legislation) Act s 27: Duty of officers.</p>	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	Other

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.

