



Protecting your Position

Queensland 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 Queensland.

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 Queensland, the Queensland Government passed the *Directors' Liability Reform Amendment Act 2013* (Qld). In broad terms, the Act:

- amended some 87 statutes that imposed personal liability on directors and officers;
- substantially reduced the number of provisions imposing personal liability on directors and officers;
- removed nearly all provisions in existing Queensland legislation which contain a reversed onus of proof; and

- introduced two new types of provisions imposing personal liability on directors and officers (Type 2 and Type 3 provisions using our categorisation below).

That being said, there are still in excess of 60 Queensland 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 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

Introduction (cont'd)

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 Queensland, liability most commonly attaches to those who fall within the definition of 'Executive Officer'. Caught within this group can be a very wide range of personnel within a company extending well beyond senior management.

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

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

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

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

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

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



Overview

1 Definitions

The following definitions are provided as an aid to understanding this publication.

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.

agent of a corporation means a person acting on behalf of a corporation.

body corporate means:

- (a) a corporation as defined in the *Corporations Act 2001* (Cth);
- (b) an incorporated association as defined in the *Associations Incorporation Act 1981* (Qld); or
- (c) 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 means:

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

- (c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose; and
- (d) not an exempt public authority; or
- (e) a corporation sole.

director, in relation to a corporation, means a person who:

- (a) is appointed to the position of a director; or
 - (b) is appointed to the position of an alternate director and is acting in that capacity,
- regardless of the name that is given to their position.

employees of a corporation means a person who is employed by a corporation.

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.

1 Definitions (cont'd)

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

officer of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person;
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or

(f) a liquidator of the corporation; or

(g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

official of a company means a person who holds an office or is charged with some form of official duty in a company.

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.

representative, of a person means:

- (a) if the person is a corporation – an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual – an employee or agent of the individual.

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 Queensland 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 reasonable diligence to ensure the corporation complied with the provision.

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 defendant 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 Queensland.

3.1 Type 1 Provision

Type 1 provisions require executive officers of corporations to ensure that the corporation in question complies with the relevant Act. Where a corporation commits an offence against the relevant Act, the executive officers are deemed to have committed the offence of failing to ensure the corporation complies with the relevant Act. However, it is a defence for the executive officer to prove that:

- (a) where the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the Act; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

In the summary below, defence (a) has been described as a defence of 'due diligence' and defence (b) has been described as a defence of 'unable to influence'.

An example of this type of provision is section 262 of the *Coal Mining Safety and Health Act 1999*, which provides that:

262 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.



3 Summary of Types of Provisions (cont'd)

3.2 Type 2 Provision

Type 2 provisions impose personal liability on executive officers of a corporation if:

- (a) the corporation commits an offence against an executive liability provision (which are the provisions of the Act which impose personal liability on the corporation and on directors and officer through the application of the directors' liability provisions); and
- (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

There are no defences available and the prosecution need only prove beyond reasonable doubt that the director or officer failed to take all reasonable steps, which is indeed a very low bar for the prosecution. 'Reasonable steps' is defined in most provisions and requires the court to have regard to the following in considering whether an executive officer has taken 'reasonable steps':

- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision;
- (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
- (c) any other relevant matter.

An example of this type of provision is section 209 of the *Animal Care and Protection Act 2001*, which provides that:

209 Liability of executive officer – particular offences committed by corporation

- (1) An executive officer of a corporation commits an offence if –
 - (a) the corporation commits an offence against an executive liability provision; and
 - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty – the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1) (b), a court must have regard to –
 - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
 - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
 - (c) any other relevant matter.

3 Summary of Types of Provisions (cont'd)

- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect –
 - (a) the liability of the corporation for the offence against the executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the corporation's offence against the executive liability provision.
- (5) In this section –

executive liability provision means any of the following provisions –

 - section 17(2)
 - section 18(1)
 - section 51(1)
 - section 91
 - section 92
 - the Criminal Code, section 242
 - the Criminal Code, section 468.

3.3 Type 3 Provision

Type 3 provisions impose personal liability on executive officers of a corporation if the corporation commits an offence against a provision of the Act and:

- (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
- (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.

An example of this type of provision is section 123 of the *Casino Control Act 1982*, which provides that:

123 Executive officer may be taken to have committed offence against s 108(1)

- (1) If a body corporate commits an offence against section 108(1), each executive officer of the body corporate is taken to have also committed the offence if –
 - (a) the officer authorised or permitted the body corporate's conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the body corporate's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against section 108(1) whether or not the body corporate has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following –
 - (a) the liability of the body corporate for the offence against section 108(1);



3 Summary of Types of Provisions (cont'd)

- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the body corporate, for the offence against section 108(1).
- (4) In this section –
 - executive officer**, of a body corporate, means a person who is concerned with, or takes part in, the body corporate's management, whether or not the person is a director or the person's position is given the name of executive officer.

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.

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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 for Defence	Type of Provision
<p><i>Agricultural Chemicals Distribution Control Act 1966</i></p> <p>s 44:</p> <p>Liability of Executive Officer – offence committed by corporation against section 26(3) (Records to be kept).</p>	<p>An Executive Officer of a corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against section 26(3); and</p> <p>(b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the 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><i>Animal Care and Protection Act 2001</i></p> <p>s 209:</p> <p>Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means any of the following provisions:</p> <p>(a) section 17(2) (Breach of duty of care prohibited);</p> <p>(b) section 18(1) (Animal cruelty prohibited);</p> <p>(c) section 51(1) (Requirement for registration);</p> <p>(d) section 91 (Use for scientific purposes must comply with code);</p> <p>(e) section 92 (Use for certain scientific purposes unlawful);</p> <p>(f) the Criminal Code section 242 (Serious animal cruelty); or</p> <p>(g) the Criminal Code section 468 (Injuring animals).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 209A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 15(3) (Regulation may require compliance with code of practice);</p> <p>(b) section 19(1) (Unreasonable abandonment or release);</p> <p>(c) section 19(2) (Unreasonable abandonment or release);</p> <p>(d) section 21(1) (Participation in prohibited event);</p> <p>(e) section 30 (Causing captive animal to be injured or killed by dog);</p> <p>(f) section 31 (Releasing animal for injury or killing by dog);</p> <p>(g) section 32 (Keeping or using kill or lure for blooding or coursing);</p> <p>(h) section 35 (Use of prohibited trap or spur unlawful);</p> <p>(i) section 36(1) (Prohibitions);</p> <p>(j) section 36(3) (Prohibitions);</p> <p>(k) section 37(1) (Unlawfully allowing an animal to injure or kill another animal);</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
(l) section 161 (Failure to comply with animal welfare direction); or (m) section 187 (Contravention of prohibition order unlawful).							
Biodiscovery Act 2004 s 115: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means any of the following provisions: (a) section 29(1) (Identifying native biological material); (b) section 29(3) (Identifying native biological material); (c) section 32(1) (Giving material disposal report to DSDI chief executive); (d) section 50(1) (Offence to take without a collection authority); (e) section 51 (Contravening a condition of a collection authority); (f) section 52(1) (False or misleading information given by applicant); or (g) section 53(1) (False or misleading documents given by applicant).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<i>Biosecurity Act 2014</i> § 359: Responsibility for acts or omissions of representative.	An Executive Officer, employee or agent of the Corporation.	Yes, if a corporate breach is established.	The person could not, by the exercise of reasonable diligence, have prevented the act or omission.	N/A	N/A	Onus on the accused to establish a defence.	
<i>Building Act 1975</i> § 257: Liability of Executive Officer - particular offences committed by Corporation. Executive liability provision means any of the following provisions: (a) section 114A(2) (Owner's obligation to comply with certificate of classification); (b) section 115(1) (Compliance with relevant BCA and QDC provisions for occupation and use of building); (c) section 231AL(6) (Approval of later day for obtaining fire safety (RCB) compliance certificate or certificate of classification); (d) section 232(1) (Compliance with pool safety standard—regulated pool); (e) section 245B(4) (Decision on application); or (f) section 245L (Requirement to comply with approved pool safety management plan).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>Casino Control Act 1982 s 123:</p> <p>Executive Officer may be taken to have committed offence against section 108(1) (Offences relating to unauthorised games).</p>	<p>Each Executive Officer of the Body Corporate is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Body Corporate's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Body Corporate's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Charitable and Non-Profit Gaming Act 1999 s 170:</p> <p>Executive Officer may be taken to have committed offence against section 20 (Category 3 games).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<i>Chemical Usage (Agricultural and Veterinary) Control Act 1988</i> s 30A: Liability of executive Officer - particular offences committed by Corporation. Executive liability provision means: (a) section 9 (Proscribed chemical); (b) section 12(4) (Misuse of on chemical); (c) section 12E(4) (Unregistered chemical); (d) section 12V(2) (Withholding period); (e) section 13(1) (Misuse of on chemical); (f) section 13A(1) (Misuse of on chemical); (g) section 16(6) (Failure to comply with notice); (h) section 17(5) (Non-approved land); and (i) section 18(2) (Failure to comply with notice).	An Executive Officer commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 31:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 12(5) (Use of compounded veterinary chemical products);</p> <p>(b) section 13E(1) (Use etc. of registered agricultural ERA products for agricultural ERAs); or</p> <p>(c) section 14(3) (Recall of chemicals – contravening notice).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct .</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

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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 for Defence	Type of Provision
<p>Child Employment Act 2006</p> <p>§ 33:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 8A(1) (Prohibition on nudity and sexually provocative clothing);</p> <p>(b) section 8B(1) (Prohibition on work as social escort);</p> <p>(c) section 8C(1) (Prohibition on inappropriate roles and situations);</p> <p>(d) section 9(1), (2), (3), (4) (Other restrictions on work performed by children);</p> <p>(e) section 10(1) (Authority needed before school-aged or young children can work);</p> <p>(f) section 11(1) (School-aged children must not work during school hours);</p> <p>(g) section 12(7) (Chief executive may authorise a child to do particular work); or</p> <p>(h) section 13(10) (Chief executive may prohibit a child doing particular work or limit the work the child may do).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Coal Mining Safety and Health Act 1999</p> <p>s 262:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the officer to establish a defence.	Type 1
<p>Cooperatives Act 1997</p> <p>s 215:</p> <p>Officers must act honestly.</p>	An officer who fails to act honestly, at all times, in the exercise of his or her powers and the discharge of the duties of his or her office.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	If in a proceeding for negligence, default or breach of duty against an officer of a cooperative it appears to the court that the person is or may be liable for the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case, the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on the terms the court considers appropriate.	Onus on the officer to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>s 216: Standard of care and diligence required.</p>	<p>An officer of a cooperative who fails to exercise the degree of care and diligence a reasonable person in a like position in a cooperative would exercise in the cooperative's circumstances.</p>	<p>Yes, if a corporate breach is established.</p>	<p>N/A</p>	<p>N/A</p>	<p>It is a defence if the cooperative has resolved by ordinary resolution to forgive the contravention.</p> <p>If in a proceeding for negligence, default or breach of duty against an Officer of a cooperative it appears to the court that the person is or may be liable for the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case, the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on the terms the court considers appropriate.</p>	<p>Onus on the officer to establish a defence.</p>	<p>Type 4</p>

Queensland 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 for Defence	Type of Provision
s 217: Improper use of information or position.	<p>An officer of a cooperative who makes improper use of information, acquired because of his or her position as an officer, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the cooperative.</p> <p>An officer of a cooperative must not make improper use of his or her position as an officer to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the cooperative.</p>	Yes, if a corporate breach is established.	N/A	N/A	If in a proceeding for negligence, default or breach of duty against an Officer of a cooperative it appears to the court that the person is or may be liable for the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case, the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on the terms the court considers appropriate.	Onus on the officer to establish a defence.	Type 4
s 221: Application of Corporations Act provisions concerning Officers of cooperatives	The personal liability provisions 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.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4

Queensland 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 for Defence	Type of Provision
<p><i>Criminal Law (Sexual Offences) Act 1978</i> s 12:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 6(3), (4) (Publication at large of complainant's identity prohibited);</p> <p>(b) section 7(3), (4) (Publication prematurely of defendant's identity prohibited); or</p> <p>(c) section 10(1) (When other publication of complainant's or defendant's identity is prohibited).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p><i>Criminal Proceeds Confiscation Act 2002</i> s 253:</p> <p>Responsibility for acts or omissions of representatives.</p>	Executive Officer, Employee or Agent of the Corporation.	Yes, if a corporate breach is established.	The person could not, by the exercise of reasonable diligence, have prevented the act or omission.	N/A	N/A	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>Education and Care Services Act 2013 s 232:</p> <p>Liability of Executive Officer – particular offences committed by Corporation.</p> <p>Executive liability provision means any of the following provisions:</p> <p>(a) section 19 (Offence for approved provider not to comply with conditions of approval); or</p> <p>(b) section 53(1) (Offence for approved provider not to comply with conditions of Queensland service approval).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the 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 233:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 53(2) (Offence for approved provider not to comply with conditions of Queensland service approval);</p> <p>(b) section 121 (Children must be adequately supervised); or</p> <p>(c) section 122 (Children must be protected from harm and hazards).</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Education (Queensland College of Teachers) Act 2005</p> <p>s 228:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 76(2) (Requirement for employing authority to notify college about particular investigations);</p> <p>(b) section 77(2) (Requirement for employing authority to notify college);</p> <p>(c) about outcome of particular investigations);</p> <p>(d) section 78(2) (Requirement for employing authority to notify college about certain dismissals); or</p> <p>(e) section 82(1), (2) (Only approved teachers may be employed as teachers).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Electricity Act 1994 s 240A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 87(1) (Connection of generating plant to transmission grid or supply network only if authorised);</p> <p>(b) section 88(1) (Prohibition on operating transmission grid unless authorised);</p> <p>(c) section 88A(1) (Prohibition on operating supply network unless authorised); or</p> <p>(d) section 89(1) (Restriction on sale of electricity).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Environmental Protection Act 1994 s 493: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	N/A	The officer was not in a position to influence the conduct of the corporation in relation to the offence.	If the officer was in a position to influence the conduct of the Corporation in relation to the offence, the officer took all reasonable steps to ensure the Corporation complied with the provision.	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>Explosives Act 1999 s 117:</p> <p>Liability of Executive Officer – offence committed by Corporation against section 32(1) (General duty of care).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against section 32(1) (General duty of care); and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the 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>Fair Trading Act 1989 s 52:</p> <p>Miscellaneous supporting provision for proceedings for recovery of pecuniary penalties.</p>	Executive Officers.	Yes, if a corporate breach is established and the Company does not have the resources to pay a pecuniary penalty.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus is on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>Fire and Emergency Services Act 1990 s 150J:</p> <p>Liability of Executive Officer – particular offences committed by Corporation.</p> <p>Executive liability provision means any of the following provisions:</p> <p>(a) section 69(3) (Requisition by commissioner to reduce fire risk);</p> <p>(b) section 104C (Occupier of building to maintain means of escape from building); or</p> <p>(c) section 104D(1) (Occupier of building to maintain prescribed fire safety installations).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	<p>It is a defence to a charge made under section 104D(1) of the Act that an occupier of a building has failed to maintain in the building a prescribed fire safety installation for the defendant to prove:</p> <p>(a) that the prescribed fire safety installation would not be required to be maintained in the building if the building were constructed at the time of the alleged offence and was unnecessary for the purposes of fire safety; or</p> <p>(b) that in lieu of the prescribed fire safety installation there is maintained a fire safety installation of equivalent or greater effectiveness.</p>	Onus is on the accused to establish a defence.	Type 2

Queensland 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 for Defence	Type of Provision
Food Act 2006 s 260: Liability of Executive Officer – offence committed by Corporation against executive liability provision. Executive liability provision means any of the following provisions: (a) section 32 (Handling of food in unsafe way); (b) section 33 (Sale of unsafe food); (c) section 34(1), (2) (False description of food); (d) section 35(1), (2) (Handling and sale of unsafe food); (e) section 36(1), (2) (Handling and sale of unsuitable food); (f) section 37(1), (2), (3) (Misleading conduct relating to sale of food); (g) section 38(1), (2) (Sale of unfit equipment or packaging or labelling material); (h) section 39(1), (2), (3), (4) (Compliance with food standards code); (i) section 49 (Licence required to carry on licensable food business);	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
(j)	section 99(1) (Who must have accredited food safety program);						
(k)	section 123 (Obligation to comply with accredited food safety program);						
(l)	section 271B(2) (Reporting suspected intentional contamination of food);						
(m)	section 271C(2) (Potentially contaminated food must not be disposed of); or						
(n)	section 271D(6) (Chief executive may give direction).						

Queensland 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 for Defence	Type of Provision
s 260A Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:	If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
(a) section 50(1) (Where licensee may carry on licensable food business);	(a) the officer authorised or permitted the Corporation's conduct constituting the offence;						
(b) section 51(1) (Licensee to comply with conditions of licence);	or						
(c) section 86(1), (2) (Licensee to have food safety supervisor);	(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.						
(d) section 114(5) (Local government may direct holder to amend accredited food safety program);							
(e) section 124 (Keeping copy of accredited food safety program);							
(f) section 125 (Inspection of accredited food safety program);							
(g) section 126 (Offence about advertising);							
(h) section 157(1) (First compliance audit of accredited food safety program);							
(i) section 158(2) (Particular licensee to have compliance audits conducted);							

Queensland 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 for Defence	Type of Provision
(j) section 207 (Failure to comply with authorised person's directions in emergency);							
(k) section 209(7) (Improvement notice);							
(l) section 214(1) (Obstructing authorised person);							
(m) section 221 (Failure to comply with order);							
(n) section 270(2) (Notice of isolation of prescribed contaminant); or							
(o) section 271 (6) (Chief executive may give direction).							
Gaming Machine Act 1991 s 352: Executive Officer may be taken to have committed offence against section 325 (Offences relating to revenue).	If a Body Corporate commits an offence against section 325 (Offences relating to revenue), each executive officer of the Body Corporate is taken to have also committed the offence if: (a) the officer authorised or permitted the Body Corporate's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Body Corporate's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
Geothermal Energy Act 2010 s 333: Liability of Executive Officer – offence committed by Corporation against section 327 (Restriction on carrying out geothermal activities).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against section 327 (Restriction on carrying out geothermal activities); and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
s 333A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions: (a) section 198 (Requirements for drilling geothermal well); (b) section 200(1) (Obligation to decommission); (c) section 242(5) (Conditions public land authority may impose); (d) section 329 (Geothermal tenure holder's measurement obligations); (e) section 330 (Duty to avoid interference in carrying out geothermal activities);	Each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
(f) section 331(1) (Obstruction of geothermal tenure holder); or (g) section 332(1), (2) (False or misleading information).							
Greenhouse Gas Storage Act 2009 s 393: Liability of Executive Officer – offence committed by Corporation against section 386(1) (Restriction on GHG storage activities).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against section 386(1) (Restriction on GHG storage activities); and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
s 393A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions: (a) section 264 (Requirements for drilling GHG well); (b) section 334(3) (Obligation to remove equipment and improvements); or (c) section 392(1), (2) (False or misleading information).	If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Health Act 1937 s 153ZN: Executive Officer may be taken to have committed offence.</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Heavy Vehicle National Law Act 2012 Schedule, s 636(1): Liability of Executive Officers of Corporation.</p>	<p>If a Corporation commits an offence against a provision of the Act specified in column 2 (Provision specified for the purposes of section 636(1)) of Schedule 4 (Provisions specified for liability of Executive Officers for offences by Corporations), each Executive Officer of the Corporation who knowingly authorised or permitted the conduct constituting the offence also commits an offence against the provision.</p>	No, the onus is on the prosecution to prove the required elements.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 3

Queensland 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 for Defence	Type of Provision
<p>Schedule, s 636(2): Liability of Executive Officers of Corporation.</p>	<p>If a Corporation commits an offence against a provision of the Act specified in column 3 (Provision specified for the purposes of section 636(2)) of Schedule 4 (Provisions specified for liability of Executive Officers for offences by Corporations), each Executive Officer of the Corporation who knew or ought reasonably to have known:</p> <p>(a) of the conduct constituting the offence; or</p> <p>(b) that there was a substantial risk that the offence would be committed,</p> <p>also commits an offence against the provision.</p>	No, the onus is on the prosecution to prove the required elements.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 4
<p>Interactive Gambling (Player Protection) Act 1998 s 247: Executive Officer may be taken to have committed offence against section 119(1) (Revenue offences).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<i>Invasion of Privacy Act 1971</i> s 49: Offences and penalty.	Director, Manager, Secretary or other Officer of the Corporation who knowingly authorises or permits an offence or is a party to the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 49A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions: (a) section 43(1), (5) (Prohibition on use of listening devices); (b) section 44(1) (Prohibition on communication or publication of private conversations unlawfully listened to); (c) section 45(1) (Prohibition on communication or publication of private conversations by parties thereto); or (d) section 46(4) (Inadmissibility of evidence of private conversations when unlawfully obtained).	Each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Justices Act 1886 s 102FA:</p> <p>Executive Officer may be taken to have committed offence against section 102F(1) (Publication prohibited).</p>	<p>Each Executive Officer of the Corporation if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Keno Act 1996 s 226:</p> <p>Executive Officer may be taken to have committed offence against section 116(1) (Revenue offences).</p>	<p>Each Executive Officer if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Land Act 1994 s 431J:</p> <p>Liability of Executive Officer – offence committed by Corporation against section 214D(1) (Failure to comply with remedial action notice).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against section 214D(1) (Failure to comply with remedial action notice); and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
Liquor Act 1992 s 128: Liability of licensees in certain cases.	If a licence is held, each of the Directors of the Corporation is subject to the same liabilities under the Act as a licensee.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 1
Lotteries Act 1997 s 212: Executive Officer may be taken to have committed offence against section 99(1) (Revenue offences).	If a Corporation commits an offence against section 99(1) (Revenue offences), each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Marine Parks Act 2004 s 136: Executive Officers are responsible for ensuring the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<i>Mineral Resources Act 1989</i> s 412A: Liability of Executive Officer – particular offences committed by Company. Executive liability provision means any of the following provisions: (a) section 326D(1) (Damaging records); (b) section 333B(1) (Failure to comply with information requirement); (c) section 333C(1) (False or misleading documents); (d) section 333D(1) (False or misleading information); (e) section 334C(1) (Other obligations about disclosure and use of confidential information); (f) section 402(1) (Offences with respect to unauthorised mining etc.); (g) section 403(1) (Offences regarding land subject to mining claim or mining lease); or (h) section 404D(1) (False or misleading document).	An Executive Officer of a Company commits an offence if: (a) the Company commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Company did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 412B: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 20(5) (Provisions about consents to enter land); (b) section 335C(1) (Failure to comply with compliance direction); (c) section 404 (Offence to resist bailiff etc.); (d) section 404D(1) (False or misleading document); or</p> <p>either of the following provisions of the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i>:</p> <p>(a) section 39(1) (Obligation to give entry notice to owners and occupiers); or (b) section 43(1) (Carrying out advanced activities on private land requires agreement).</p>	<p>If a Company commits an offence against a deemed executive liability provision, each Executive Officer of the Company is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Company's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Company's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p><i>Mining and Quarrying Safety and Health Act 1999</i> s 241:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p><i>Nature Conservation Act 1992</i> s 162:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if corporate breach is established.	The officer took all reasonable steps to ensure that the Corporation complied with this Act.	N/A	The Corporation's offence was committed without the officer's knowledge or consent.	Onus on the accused to establish a defence.	Type 1
<p><i>Nuclear Facilities Prohibition Act 2007</i> s 22:</p> <p>Liability of Executive Officer – particular offences committed by Corporation.</p> <p>Executive liability provision means either of the following provisions:</p> <p>(a) section 7(1) (Prohibition on constructing or operating particular nuclear facilities); or</p> <p>(b) section 13(4) (Effect of an order).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>Offshore Minerals Act 1998</p> <p>s 443:</p> <p>Liability of Executive Officer—offence committed by Corporation against section 38 (General prohibition on exploring and mining without appropriate authorization).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against section 38 (General prohibition on exploring and mining without appropriate authorisation); and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the 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 443A:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 44 (Tenure etc. does not authorise unnecessary interference with other activities in the tenure area);</p> <p>(b) section 123 (Work practices);</p> <p>(c) section 183 (Work practices);</p> <p>(d) section 259 (Work practices);</p> <p>(e) section 308 (Work practices);</p> <p>(f) section 385(1), (2) (Directions by Minister must be obeyed);</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
(g) section 391(1) (Holder to give notice of direction to associates); or (h) section 404(3) (Effect of declaration of safety zone).							
<i>Pest Management Act 2001</i> s 122: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means either of the following provisions: (a) section 50(1) (Holding out while unlicensed); or (b) section 51(2) (When pest management technician etc. must not permit or require another person to carry out a pest management activity).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<i>Petroleum and Gas (Production and Safety) Act 2004</i> s 814: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means any of the following provisions: (a) section 604F(1) (Wilfully damaging records); (b) section 605(1) (Failure to comply with information requirement or lodgement requirement); (c) section 606(1) (False or misleading documents); (d) section 607(1) (False or misleading information); (e) section 617C(1) (Other obligations about disclosure and use of confidential information); (f) section 696(2), (3) (Designers, importers, manufacturers and suppliers); (g) section 733(1) (Approval of gas devices and gas fittings for supply, installation and use); (h) section 800(1) (Restriction on petroleum tenure activities); or (i) section 813(1), (2) (False or misleading information).	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 814A:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 175C(1), (3) (Supply of gas from PGPLR land);</p> <p>(b) section 175H(2), (3) (Requirement to keep and give records);</p> <p>(c) section 198 (Restriction on carrying out authorised activities);</p> <p>(d) section 207 (Existing user's obligation to give information);</p> <p>(e) section 228(1) (Prohibition on actions preventing access);</p> <p>(f) section 281(1) (Requirements for drilling petroleum well);</p> <p>(g) section 282 (Restriction on who may drill water observation bore or water supply bore);</p> <p>(h) section 283 (Restriction on who may drill water observation bore or water supply bore);</p> <p>(i) section 292(2) (Obligation to decommission);</p> <p>(j) section 559(1) (Obligation to decommission pipelines);</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
(k)	section 560(3) (Obligation to remove equipment and improvements);						
(l)	section 621(2) (Restrictions on supplying gas not of prescribed quality);						
(m)	section 626(1) (Fuel gas supplied through pipeline);						
(n)	section 628(1) (Odour requirement);						
(o)	section 639(1) (When measurement scheme must be revised);						
(p)	section 640 (Meter installation or use must comply with scheme);						
(q)	section 642(1) (Controller responsible for compliance with measurement scheme);						
(r)	section 643(3) (Chief executive's powers if no measurement scheme);						
(s)	section 646(4) (Revision notice);						
(t)	section 648(1), (2) (Restrictions on use of meter);						
(u)	section 649 (Obligation to report if required);						
(v)	sections 697(1), (2), (3) (Installers);						
(w)	section 698 (Owner must ensure operator is competent);						

Queensland 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 for Defence	Type of Provision
(x)	section 708A(1) (Offence not to comply with safety requirement);						
(y)	section 721(1), (2) (False or misleading statements or document to board);						
(z)	section 727(1), (4) (Gas work for which authorisation is required);						
(aa)	section 729 (Offence not to comply with conditions);						
(bb)	section 733(2) (Approval of gas devices and gas fittings for supply, installation and use);						
(cc)	section 733A (False or misleading labels or records);						
(dd)	section 734(1), (3) (Requirements for gas system installation);						
(ee)	section 766 (Failure to comply with seizure requirement);						
(ff)	section 782(1) (Failure to comply with compliance direction);						
(gg)	section 785 (Failure to comply with dangerous situation direction);						
(hh)	section 802(1) (Restriction on pipeline construction or operation);						
(ii)	section 803 (Restriction on petroleum facility construction or operation);						

Queensland 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 for Defence	Type of Provision
(jj)	section 804 (Duty to avoid interference in carrying out authorised activities);						
(kk)	section 805(1) (Obstruction of petroleum authority holder);						
(ll)	section 806(1) (Interfering with water observation bore);						
(mm)	section 807(2) (Restriction on building on pipeline land);						
(nn)	section 808 (Restriction on changing surface of pipeline land for a pipeline licence);						
(oo)	section 809 (Unlawful taking of petroleum or fuel gas prohibited);						
(pp)	section 810 (Restriction on building on petroleum facility land);						
(qq)	section 813(1), (2) (False or misleading information); or the following sections of the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i> :						
(rr)	section 39(1) (Obligation to give entry notice to owners and occupiers); or						
(ss)	section 43(1) (Carrying out advanced activities on private land requires agreement).						

Queensland 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 for Defence	Type of Provision
<p>Pharmacy Business Ownership Act 2001 s 197:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 139B(b) (Restriction on who may own pharmacy business); or</p> <p>(b) section 139H(3), (4), (5) (Restriction on number of pharmacy businesses in which a person may have beneficial interest).</p>	<p>Each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Planning Act 2016 s 227:</p> <p>Executive Officer must ensure Corporation complies with Act.</p> <p>Executive liability provision means:</p> <p>(a) section 161 (Carrying out prohibited development);</p> <p>(b) section 162 (Carrying out assessable development without permit);</p> <p>(c) section 163 (Compliance with development approval);</p> <p>(d) section 164 (Unlawful use of premises);</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
(e) section 165(7) (Exemptions if emergency causing safety concern);							
(f) section 167(5) (Exemptions if emergency causing safety concern);							
(g) section 171 (Application in response to show cause or enforcement notice);							
(h) section 175(4) (Enforcement orders); or							
(i) section 179(8) (Enforcement orders).							
Private Health Facilities Act 1999 s 143: Executive Officers must ensure Corporation complies with Act.	If a Corporation commits an offence against a provision of the Act, each of the Corporation's Executive Officers also commits an offence, namely, the offence of failing to ensure that the Corporation complies with the provision.	Yes, if corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>Public Health Act 2005 s 448: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means either of the following provisions: (a) section 57E (Supply of unsafe drinking water); or (b) section 57F(2) (Supply of recycled water that is not fit for use).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the 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>Public Health (Medicinal Cannabis) Act 2016 s 207: Executive Officer may be taken to have committed offence Serious offence provision means: (a) section 92 (Offence to perform regulated activities for medicinal cannabis); (b) 93 (Misuse of lawful direction for medicinal cannabis); (c) 94 (Offence for false or misleading statements or documents); (d) 95 (Offence for failure to comply with approval conditions); (e) 96 (Offence for failure to comply with compliance notice); or (f) 97 (Offence for failure to comply with recall order).</p>	<p>If a Corporation commits an offence against a serious offence provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Queensland Building and Construction Commission Act 1991</p> <p>s 111B:</p> <p>Liability of Executive Officer – particular offences committed by Company.</p> <p>Executive liability provision means either of the following provisions:</p> <p>(a) section 42(9) (Unlawful carrying out of building work); or</p> <p>(b) section 42D (Licensed contractor must not engage or direct unauthorised person for fire protection work).</p>	<p>An Executive Officer of a Company commits an offence if:</p> <p>(a) the Company commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Company did not engage in the conduct constituting the 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>Queensland Heritage Act 1992</p> <p>s 160:</p> <p>Liability of Executive Officer – offence committed by Corporation against section 155 (Contravention of stop order).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against section 155 (Contravention of stop order); and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 160A: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 84(6) (Decision-maker may give notice about essential repair or maintenance work);</p> <p>(b) section 104(1) (Offence to destroy protected area);</p> <p>(c) section 164B(4) (Restoration orders); or</p> <p>(d) section 164C(8) (Non-development order).</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Racing Integrity Act 2016 s 263: Executive Officer may be taken to have committed offence</p>	<p>If a Corporation commits an offence against section 195 (Failure to comply with an animal welfare direction), each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Radiation Safety Act 1999 s 205: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means any of the following provisions, to the extent that the conduct constituting the offence relates to a security enhanced source:</p> <p>(a) section 25 (Person must not relocate a radiation source without approval);</p> <p>(b) section 26(1) (Disposal of radioactive material); or</p> <p>(c) section 27A(1) (Person must not abandon radiation source).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
<p>s 205A:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions, to the extent that the conduct constituting the offence relates to a radiation source other than a security enhanced source:</p> <p>(a) section 25 (Person must not relocate a radiation source without approval);</p> <p>(b) section 26(1) (Disposal of radioactive material); and</p> <p>(c) section 27A(1) (Person must not abandon radiation source).</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Recreation Areas Management Act 2006</p> <p>s 203:</p> <p>Executive Officers responsible for ensuring the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
<p>Residential Services (Accreditation) Act 2002</p> <p>s 172:</p> <p>Liability of Executive Officer – particular offences committed by Corporation.</p> <p>Executive liability provision means any of the following provisions:</p> <p>(a) section 75 (Requirement for plan); or</p> <p>(b) section 76(2), (4) (Maintenance, implementation and accessibility of plan).</p>	<p>An Executive Officer of a Corporation commits an offence if:</p> <p>(a) the Corporation commits an offence against an executive liability provision; and</p> <p>(b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the 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>Safety in Recreational Water Activities Act 2011</p> <p>s 17:</p> <p>Duty of Officers.</p>	Officer of a Corporation conducting a business or undertaking that has a duty or obligation under the Act.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4

Queensland 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 for Defence	Type of Provision
<p><i>State Development and Public Works Organisation Act 1971</i> s 157P: Executive Officer must ensure the Corporation does not commit particular offences. Applies to offences against:</p> <p>(a) section 84 (Use of land under approved development scheme); (b) section 157F (Offence to contravene enforcement notice); (c) section 157N (Offence to contravene enforcement order); or (d) section 157O (Giving Coordinator-General a false or misleading document).</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p><i>Sustainable Planning Act 2009</i> s 611: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Queensland 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 for Defence	Type of Provision
Taxation Administration Act 2001 s 140: Liability of Executive Officer – particular offences committed by Corporation. Executive liability provision means any of the following provisions: (a) section 112(1) (Other obligations about disclosure and use of confidential information); (b) section 119(1) (Wilfully damaging records); (c) section 122(1) (False or misleading documents); (d) section 123(1) (False or misleading information); (e) the <i>Duties Act 2001</i> , section 471G(1) (Prohibition on giving false or misleading documents to self assessor); (f) the <i>Duties Act 2001</i> , section 471H(1) (Prohibition on giving false or misleading information to self assessor); (g) the <i>Duties Act 2001</i> , section 480(1), (2) (Offences about self assessments - endorsements of instruments);	An Executive Officer of a Corporation commits an offence if: (a) the Corporation commits an offence against an executive liability provision; and (b) the officer did not take all reasonable steps to ensure the Corporation did not engage in the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Queensland 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 for Defence	Type of Provision
(h) the <i>Duties Act 2001</i> , sections 480A(1) and (2) (Endorse an ELN transfer document); the <i>Duties Act 2001</i> , section 481 (Offence for person other than self assessor to endorse instrument or ELN transfer document);							
(i) the <i>Duties Act 2001</i> , section 481A(2) (Offence to endorse instrument or ELN transfer document incorrectly or illegibly);							
(j) the <i>Payroll Tax Act 1971</i> , section 93 (Avoiding taxation).							
<i>Transport Operations (Marine Pollution) Act 1995</i> s 121: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions:	If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
(a) section 30(1) (Shipboard oil pollution emergency plan);	(a) the officer authorised or permitted the Corporation's conduct constituting the offence;						
(b) section 38(1) (Procedures and arrangements manual);	(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.						
(c) section 38A(1) (Shipboard marine pollution emergency plan for noxious liquid substances);							
(d) section 51(2), (3) (Shipboard sewage management plan);							

Queensland 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 for Defence	Type of Provision
(e) section 55A(2) (Shipboard waste management plan);							
(f) section 67A(2) (Ship's owner to have insurance); or							
(g) section 127(5) (Court may make orders about rehabilitation etc.).							
<i>Transport Operations (Road Use Management) Act 1995</i> s 57: Executive Officer may be taken to have committed offence. Deemed executive liability provision means any of the following provisions: (a) section 153A(1) (Contravention of condition of exemption); (b) section 154(3), (4), (6) (Failure to hold licence etc.); (c) section 156(2) (Duties when transporting dangerous goods); (d) section 160(3) (Exclusion orders prohibiting involvement in the transport of dangerous goods); or (e) section 161Q (Forfeiting dangerous goods).	If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Queensland 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 for Defence	Type of Provision
<p>Vegetation Management Act 1999 s 60A:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Wagering Act 1998 s 289:</p> <p>Executive Officer may be taken to have committed offence against section 172(1) (Revenue offences).</p>	<p>If a Corporation commits an offence against section 172(1) (Revenue offences), each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

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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 for Defence	Type of Provision
<p>Waste Reduction and Recycling Act 2011</p> <p>s 268:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means either of the following provisions:</p> <p>(a) section 104(1) (Illegal dumping of waste provision);</p> <p>(b) section 158 (compliance with end of waste code); or</p> <p>(c) section 173P (compliance with condition of end of waste approval).</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Water Act 2000</p> <p>s 828:</p> <p>Executive Officer may be taken to have committed offence.</p> <p>Deemed executive liability provision means any of the following provisions:</p> <p>(a) section 22(7) (Limiting or prohibiting taking, or interfering with, water during emergencies);</p> <p>(b) section 23(5) (Regulation may limit taking or interfering with water for 1 year);</p>	<p>If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if:</p> <p>(a) the officer authorised or permitted the Corporation's conduct constituting the offence; or</p> <p>(b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

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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 for Defence	Type of Provision
(c) section 452 (Offence to fail to comply with direction);	If a Corporation commits an offence against a deemed executive liability provision, each Executive Officer of the Corporation is taken to have also committed the offence if: (a) the officer authorised or permitted the Corporation's conduct constituting the offence; or (b) the officer was, directly or indirectly, knowingly concerned in the Corporation's conduct.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
(d) section 460(3) (Obtaining information about underground water from petroleum tenure holders); or							
(e) section 808(1), (2), (3) (Unauthorised taking, supplying or interfering with water).							
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

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.

