



# Protecting your Position

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Tasmanian laws imposing  
personal liability on directors  
and officers

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## 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.

# Tasmanian laws imposing personal liability on directors and officers

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# Introduction

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

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 Tasmania, the Tasmanian Government introduced the *Directors' Liability (Miscellaneous Amendments) Bill 2012* but the Bill was not passed. Accordingly, this text does not incorporate the amendments that would be made if this Bill was passed.

There are in excess of 50 Tasmanian statutes, which impose personal liability on directors and officers.

In addition, the differences in approach taken by each State and Territory and the fact that Western Australia and the Northern Territory

have not proposed any amendments to laws imposing personal liability on directors and officers, means that three key policy issues remain.

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

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

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 Tasmania, liability most commonly

## Introduction (cont'd)

attaches to those who fall within the definition of persons concerned in the management of the Corporation. Caught within this group can be a very wide range of personnel within a company extending well beyond senior management.

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

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

- make an assessment of which Acts apply to the activities of their companies;
- understand what obligations the legislation imposes both upon the company and upon themselves;
- ensure adequate systems are in place so that the company does not contravene its obligations;

- take whatever steps they can to ensure that even if the company still breaches the law they can avail themselves of relevant defences (for example, setting up a robust due diligence process);
- identify which executives are likely to be exposed to personal liability under which Acts, ensure they are made aware of any potential risks and involve them in discussions about how to limit personal liability; and
- take appropriate steps to ensure that directors' and officers' insurance policies provide maximum protection for all those exposed to personal liability.

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

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

# Overview

## 1 Definitions

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

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

**body corporate** means:

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

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

**corporation** means:

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

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

**executive officer** of a corporation means a person who:

- (a) is a member of the governing body of the corporation; or
- (b) is concerned with, or takes part in, the corporation's management, whatever, the person's position is called and whether or not the person is a director of the corporation.

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

**officer** of a corporation means a director, secretary, executive officer or employee.

**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.

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

## 2 How to Read This Publication

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This document is divided into the following columns.

### 2.1 Provisions

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

### 2.2 Who is liable?

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

### 2.3 Is the liability automatic?

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

### 2.4 Defence of 'Due Diligence'

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

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

### 2.5 Defence of 'Unable to Influence'

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

### 2.6 Additional Defences

This column details any additional defences for the relevant provision.

### 2.7 Onus of Proof for Defence

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

### 2.8 Type of Provision

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



## 3 Summary of Types of Provisions

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

### 3.1 Type 1 Provision

Type 1 provisions generally provide that directors or other persons concerned in the management of the corporation will be deemed liable where the corporation contravenes, whether by act or omission, any provision of the Act or regulation in question, and the directors or other persons knowingly authorised or permitted the contravention. Under these provisions liability is not automatic, and the onus is on the prosecution to prove the required elements.

An example of this type of provision is section 26 of the *Animal Farming (Registration) Act 1994*, which provides that:

#### **26 Offence by body corporate**

If an offence under this Act is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of –

- (a) any director of a body corporate;
- (b) any other person concerned in the management of the body corporate; or
- (c) any person who was purporting to act in any such capacity – that director or person, as well as the body corporate, is guilty of the offence and is liable to a penalty not exceeding that prescribed for the offence.

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

### 3.2 Type 2 Provision

Type 2 provisions provide that directors, managers, members of the governing body or persons concerned in the management of the Corporation will be deemed automatically liable where the corporation contravenes, whether by act or omission, any provision of the Act or regulation in question.

However a variety of defences may apply including:

- (a) the corporation contravened the provision without the knowledge or consent of the person;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

In the summary below, defence (a) has been described as an additional defence, defence (b) has been described as a defence of ‘unable to influence’ and defence (c) has been described as a defence of ‘due diligence’.

It must be note that variations of Type 2 provisions will allow for a varying combination of defences (a), (b) and (c). Furthermore, the persons to whom the provision applies may also vary.



### 3 Summary of Types of Provisions (cont'd)

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An example of this type of provision is section 25 of the *Listening Devices Act 1991*, which provides that:

#### **25 Offences by Corporations**

- (1) Where a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision unless the person satisfies the court that –
  - (a) the corporation contravened the provision without the knowledge of the person;
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act on any corporation by which an offence against the provision is actually committed.

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## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<p><b><i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i></b>  <b>s 61:</b>                      Offences by Corporations and partnerships, etc.</p>	Directors and those concerned in the management of the Corporation.	Yes, if a corporate breach is established.	The person used all reasonable diligence to prevent the commission of the offence by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the commission of the offence.	The commission of the offence by the Corporation occurred without the knowledge of the person.  The Corporation would not have been found guilty of the offence because of a defence available under the Act.	Onus on the accused to establish a defence.	Type 2
<p><b><i>Animal (Brands and Movement) Act 1984</i></b>  <b>s 32:</b>                      Offences by Bodies Corporate.</p>	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<p><b><i>Animal Farming (Registration) Act 1994</i></b>  <b>s 26:</b>                      Offence by Body Corporate.</p>	Any director of a Body Corporate, any other person concerned in the management of the Body Corporate, and any person who was purporting to act in any such capacity where the offence has been committed with the consent or connivance of, or attributable to any neglect on the part of that person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<p><b><i>Animal Health Act 1995</i></b>  <b>s 95:</b>                      Liability of director.</p>	Directors and those concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	The person could not have prevented the commission of the offence by the exercise of reasonable diligence.	N/A	Onus on the accused to establish a defence.	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b><i>Animal Welfare Act 1993</i></b> <b>s 48A(2):</b> Liability of employer or Body Corporate.	Each person who is concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the act or omission by the Corporation.	N/A	The act or omission took place without the knowledge or consent of the person.	Onus on the accused to establish a defence.	Type 2
<b><i>Australian Consumer Law (Tasmania) Act 2010</i></b> <b>s 39(3):</b> Contravention of prescribed code of practice.	Directors and those concerned in the management of the Body Corporate insofar as an order can be made prohibiting the person from continuing to consent to or connive at, the contravention or an order can be made prohibiting the person from consenting to, or conniving at, a similar contravention by any other body corporate of which the person is a director or in the management of which the person is concerned.	No, the onus is on the prosecution to prove the elements.	N/A	N/A	Compliance with any regulations relating to a code of practice was effected by means other than those specified in the code of practice.	Onus on the accused to establish a defence.	Type 1
<b><i>Building Act 2016</i></b> <b>s 303</b> Offences by Bodies Corporate.	Each person who is concerned or takes part in the management of the Body Corporate.	Yes, if a corporate contravention is established.	N/A	The person was not in a position to influence the conduct of the Body Corporate in relation to its contravention of the provision.	The contravention constituting the offence took place without the person's knowledge.  The person attempted to prevent the contravention by the Body Corporate.	Onus on the accused to establish a defence.	Type 2
<b><i>Child Care Act 2001</i></b> <b>s 68:</b> Offences by Bodies Corporate.	Directors and those concerned in the management of the Body Corporate who knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Consumer Affairs Act 1988 s 20:</b> Offences.	Each person who is concerned or takes part in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b>Co-operatives National Law (Tasmania) Appendix, s 119:</b> Carrying on business with too few members.	A person who is a director of a co-operative who knowingly allows the co-operative to continue to carry on business with fewer than the minimum number of members allowed.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 158:</b> Failure to cancel membership – offence by director.	If the board of a co-operative fails to cancel the membership of a member as required by this Part, a director of the co-operative who did not use all due diligence to prevent the failure commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 191:</b> Responsibility of secretary.	The secretary of a co-operative.	Yes, if a corporate breach is established.	The person took all reasonable steps to ensure that the co-operative complied with the section.	N/A	N/A	Onus on the accused to establish a defence.	Other
<b>Appendix, s 201:</b> Application of Corporations Act – offences by officers of co-operatives.	The provisions imposing personal liability on directors and officers under Part 5.8 of the <i>Corporations Act 2001</i> (Cth) (Offences (relating to external administration)) apply to officers of co-operatives.	See Part 5.8 of the <i>Corporations Act 2001</i> (Cth).					Other

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Appendix, s 223:</b> Name to appear on seals, publications and business documents.	A director of a co-operative if the director knowingly authorises or permits a contravention of this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 243:</b> Registration of special resolution.	An officer of the co-operative who knowingly fails to file the required copies under this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 328:</b> Contravention by Directors of provisions of this Part.	<p>A director of a co-operative, if they contravene the Act and the contravention is dishonest.</p> <p>A director contravenes the Act if they fail to take all reasonable steps to comply with or to secure compliance with:</p> <ul style="list-style-type: none"> <li>(a) section 272 (Small co-operative – direction by Registrar (cf Corporations Act section 294));</li> <li>(b) section 284(1) or (2) (Annual financial reporting to members);</li> <li>(c) section 289 (Lodgment of annual reports by large co-operatives with Registrar (cf Corporations Act section 319));</li> <li>(d) section 290 (Lodgment of half-year reports with Registrar (cf Corporations Act section 320));</li> </ul>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	(e) section 291 (Registrar's power to require lodgment (cf Corporations Act section 321));						
	(f) section 292 (Relodgment if financial statements or directors' reports amended after lodgment (cf Corporations Act section 322));						
	(g) section 293 (Lodgment by small co-operatives of annual returns with Registrar);						
	(h) section 315(1) of the Corporations Act (Deadline for reporting to members) as applying under section 285(2) of this Co-operatives National Law (Deadline for reporting to members); or						
	(i) section 318 of the Corporations Act (Additional reporting by debenture issuers) as applying under section 288 of this Co-operatives National Law (Application of Corporations Act – additional reporting by debenture issuers).						

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Appendix, s 359:</b> Acquisition and disposal of assets.	Each person who is a member of the board of the co-operative if the co-operative contravenes this section.	No, the onus is on the prosecution to prove the required elements.	If the person was in a position to influence the conduct of the co-operative in relation to the offence, the person used all due diligence to prevent the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Other
<b>Appendix, s 401:</b> Transfer of engagements by direction of Registrar.	An officer of a co-operative who fails to take all reasonable steps to secure compliance by the co-operative with a direction given or by a wilful act or omission causes the failure by the co-operative to comply with a direction given.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 422:</b> Directors to arrange for reports.	Each director of the co-operative.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 429:</b> Contravention of this Division – offence by co-operative.	If a provision of this Division 2 of Part 4.4 (Explanatory statements) is contravened, the co-operative concerned and any other person involved in the contravention commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The contravention was because of the failure of a person (other than the defendant), who is a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the explanatory statement particulars of the person's interests.	Onus on the accused to establish a defence.	Other



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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Appendix, s 469:</b> Name and place of origin to appear on business and other documents.	A director of a participating co-operative, if they knowingly authorise or permit a contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 484:</b> Falsification of books.	An officer, former officer, employee, former employee, member or former member of a co-operative who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities, books or records.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b>Appendix, s 546:</b> Enforcement orders after contravention of undertaking.	Each officer of the co-operative or other Corporation if the officer knowingly authorised or permitted the breach.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Other
<b><i>Dangerous Goods (Road and Rail Transport) Act 2010</i></b> <b>s 104:</b> Liability of directors, partners, employers and others for offences by Bodies Corporate, partnerships, associations and employees.	Each director of the Body Corporate, and each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person took reasonable precautions and exercised due diligence to prevent the commission of the offence.	The accused was not in a position to influence the conduct of the Body Corporate.	N/A	Onus on the accused to establish a defence.	Type 2
<b><i>Electricity Industry Safety and Administration Act 1997</i></b> <b>s 92:</b> Liability of directors and managers.	Each director or manager of the Body Corporate who knowingly authorised or permitted the offence.	No, the onus is the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b><i>Environmental Management And Pollution Control Act 1994</i></b> s 60(1): Liability of officers of Body Corporate.	Officers of the Body Corporate.	Yes, if a corporate breach is established.	The alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature.	N/A	The act or omission alleged to constitute the offence was justified by the need to protect life, the environment or property in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.	Onus on the accused to establish a defence.	Type 2
s 60(3): Liability of officers of Body Corporate.	An officer of the Body Corporate who knowingly promoted or acquiesced in the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b><i>Explosives Act 2012</i></b> s 64: Offences by Bodies Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent that act or omission of the Body Corporate.	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Farm Water Development Act 1985</i></b> s 13: False or misleading statements	Every director, or member of the governing body, of the Body Corporate and every manager or secretary of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Firearms Act 1996</i></b> s 127: Offences by Corporations.	Directors and those concerned in the management of the Corporation, where the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Food Act 2003</b> <b>s 106:</b> Offences by Bodies Corporate.	Each person who is a member of the governing body of the Body Corporate and those concerned in the management of the Body Corporate where the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b>Gaming Control Act 1993</b> <b>s 170:</b> Offences by Corporations.	Directors and those concerned in the management of the Corporation who knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b>Gas Act 2000</b> <b>s 131:</b> Offences by Bodies Corporate.	Each director of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence. The offence was reasonably necessary in the circumstances in order to avert, eliminate or minimise danger to any person or property.	Onus on the accused to establish a defence.	Type 2
<b>Health Service Establishments Act 2006</b> <b>s 52:</b> Offences by Corporations.	Directors and those concerned in the management of the Corporation who knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Heavy Vehicle National Law (Tasmania)</b> <b>s 636(1):</b> Liability of Executive Officers of Corporation.	If a Corporation commits an offence against a provision of the Act specified in column 2 (Provision specified for the purposes of section 636(1)) of Schedule 4 (Provisions specified for liability of executive officers for offences by corporations), each executive officer of the corporation who knowingly authorised or permitted the conduct constituting the offence also commits an offence against the provision.	No, knowledge element must be proven.	The person exercised reasonable diligence to ensure the Corporation complied with the provision.	The person was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the prosecution to prove that the officer knew or ought to have reasonably known.	Type 2
<b>s 636(2):</b> Liability of Executive Officers of Corporation.	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: (a) of the conduct constituting the offence; or (b) that there was a substantial risk that the offence would be committed; also commits an offence against the provision.	No, knowledge element must be proven.	The person exercised reasonable diligence to ensure the corporation complied with the provision.	The person was not in a position to influence the conduct of the corporation in relation to the offence.	N/A	Onus on the prosecution.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Industrial Hemp Act 2015</b> <b>s 30</b> Offences by Corporations.	Each person who is a Director of the Corporation or who is concerned in the management of the Corporation, if the person knowingly authorised or permitted contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b>Industrial Relations Act 1984</b> <b>s 93:</b> Offences by Bodies Corporate.	Every person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge.	Onus on the accused to establish a defence.	Type 2
<b>Legal Profession Act 2007</b> <b>s 238:</b> Liability of principals of law practice.	Each principal of the law practice is liable jointly and severally.	Yes, if breach by the law practice is established.	N/A	N/A	Discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.	Onus on the accused to establish a defence.	Type 2
<b>s 239:</b> Former practices, principals and associates.	Former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.	Yes, if breach by the law practice is established.	N/A	N/A	Discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.	Onus on the accused to establish a defence.	Type 2
<b>s 644:</b> Liability of principals.	Each principal of the law practice.	Yes, if breach by the law practice is established.	The principal used all due diligence to prevent the contravention by the practice.	The principal was not in a position to influence the conduct of the law practice in relation to the contravention.	The practice contravened the provision without the actual, imputed or constructive knowledge of the principal.	Onus on the accused to establish a defence.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b><i>Listening Devices Act 1991</i></b> s 25: Offences by Corporations.	Directors and those concerned in the management of the Corporation.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the contravention by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the contravention.	The Corporation contravened the provision without the knowledge of the person.	Onus on the accused to establish a defence.	Type 2
<b><i>Living Marine Resources Management Act 1995</i></b> s 212: Liability of person concerned in management of Body Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent that act or omission by the Body Corporate.	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Misuse of Drugs Act 2001</i></b> s 35: Offences by Bodies Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent or contrary to the person's orders or directions.	Onus on the accused to establish a defence.	Type 2
<b><i>Motor Vehicle Traders Act 2011</i></b> s 60: Offence by Body Corporate.	Each director and person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The director or person used all due diligence to prevent the act or omission by the Body Corporate.	N/A	The act or omission constituting the offence took place without the knowledge or consent of the director or person.	Onus on the accused to establish a defence.	Type 2
<b><i>Occupational Licensing Act 2005</i></b> s 39(4): Vicarious liability.	Each director or manager of the Body Corporate who authorised or permitted the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>s 87:</b> Offences by corporations and partnerships &c.	Officers and those concerned in the management of the Corporation.	Yes, if a corporate breach is established.	The person used all reasonable diligence to prevent the commission of the offence.	The person was not in a position to influence the conduct of the corporation in respect of the commission of the offence.	The commission of the offence by the Corporation occurred without the knowledge of the person.  The Corporation would not have been found guilty of the offence by reason of a defence available under the Act.	Onus on the accused to establish a defence.	Type 2
<b>Passenger Transport Services Act 2011</b> <b>s 62:</b> Offences by Bodies Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent that act or omission by the Body Corporate.	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b>Pharmacy Control Act 2001</b> <b>s 79:</b> Offences by Bodies Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b>Plant Quarantine Act 1997</b> <b>s 84:</b> Liability of director.	Each director or other person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person could not have prevented the commission of the offence by the exercise of reasonable diligence.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b><i>Poisons Act 1971</i></b> <b>s 86:</b> Offences by Bodies Corporate.	Each director or member of the governing authority of the Body Corporate and each officer concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the commission of the offence.	N/A	The offence was committed without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Property Agents and Land Transactions Act 2005</i></b> <b>s 210:</b> Liability of directors, etc.	Each Director, Manager, Secretary or other similar Officer of the Company or a person who is acting or purporting to act as such.	Yes, if a corporate breach is established.	The person exercised such diligence to prevent the commission of the offence as the person ought to have exercised having regard to the nature of the person's functions in that capacity and the circumstances in which the offence was committed.	N/A	The offence was committed without the person's consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Public Health Act 1997</i></b> <b>s 157:</b> Offences by Corporations.	Each director of the Body Corporate.	Yes, if a corporate breach is established.	N/A	The director could not have reasonably prevented the commission of the offence.	N/A	Onus on the accused to establish a defence.	Type 2



## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Radiation Protection Act 2005 s 78:</b> Liability of executive officers of Body Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the act or omission by the Body Corporate.	N/A	The Body Corporate would not have been found guilty of the offence because it would have been able to establish a defence.  The person could not reasonably be expected to have known, and did not know, that the act or omission constituting the offence would take place.	Onus on the accused to establish a defence.	Type 2
<b>Rail Safety National Law (Tasmania) s 55:</b> Duty of officers to exercise due diligence.	If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Other
<b>Retirement Villages Act 2004 s 43:</b> Liability of Directors and managers.	Each director of the Body Corporate.	Yes, if a corporate breach is established.	The person could not, by the exercise of reasonable diligence, have prevented the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
<b>Second-hand Dealers and Pawnbrokers Act 1994 s 22:</b> Offences by directors of Bodies Corporate.	Each director of the Body Corporate.	Yes, if a corporate breach is established.	The person could not, by the exercise of reasonable diligence, have prevented the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b><i>Security-sensitive Dangerous Substances Act 2005</i></b> s 68: Offences by Bodies Corporate.	Each person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent that act or omission of the Body Corporate.	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Shop Trading Hours Act 1984</i></b> s 5: Certain shops prohibited from opening on certain occasions.	Each director or person concerned in the management of the Body Corporate if that person knowingly authorised or permitted the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b><i>TOTE Tasmania (Sale) Act 2009</i></b> s 28: Offence by TOTE Tasmania or TOTE subsidiary.	Each director and other person concerned in the management of TOTE Tasmania or the TOTE subsidiary.	Yes, if a corporate breach is established.	The person used all due diligence to prevent that act or omission by TOTE Tasmania or the TOTE subsidiary.	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
<b><i>Tasmanian Qualifications Authority Act 2003</i></b> s 66: Offences by Body Corporate and director, etc.	A director or other person concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person, if in that position, used all due diligence to prevent the contravention by the Body Corporate.	The person was not in a position to influence the conduct of the Body Corporate in relation to its contravention of the provision.	The Body Corporate contravened the provision without the knowledge of the person.	Onus on the accused to establish a defence.	Type 2
<b><i>Taxation Administration Act 1997</i></b> s 109: Offences by Bodies Corporate.	A person who is concerned in, or takes part in, the management of the Body Corporate.	Yes, whether or not a corporate breach is established.	The person, if in that position, used all due diligence to prevent the contravention by the Body Corporate.	The person was not in a position to influence the conduct of the Body Corporate in relation to its contravention of the provision.	The Body Corporate contravened the provision without the person's knowledge.	Onus on the accused to establish a defence.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Therapeutic Goods Act 2001</i> s 26: Offences by Bodies Corporate.	Each person who is a director, or a person concerned in the management, of the Body Corporate if the person knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Tourism Tasmania Act 1996</i> s 15: Duties of Directors.	A Director who does not adhere to the following duties: (a) to act honestly in the performance and the exercise of the functions and powers of the position; (b) in the performance and exercise of the functions and powers of a director, exercising the same degree of care and diligence that a person in a like position in a corporation within the meaning of the Corporations Act is required to exercise; (c) not to use improperly information acquired as a director to gain, directly or indirectly, a personal advantage or an advantage for another person or to cause damage to the Authority; and	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	Section 47 (Protection of chief executive officer and staff) provides: An employee does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the course of his or her employment.	Onus on the accused to establish a defence.	

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	(d) not to use improperly their position as a director to gain, directly or indirectly, a personal advantage or an advantage for another person or to cause damage to the Authority.						
<b>s 21:</b> Duties of chief executive officer.	<p>A Chief Executive Officer who does not adhere to the following duties:</p> <p>(a) to act honestly in the performance and the exercise of the functions and powers of the position;</p> <p>(b) in the performance and exercise of the functions and powers of a CEO, exercising the same degree of care and diligence that a person in a like position in a corporation within the meaning of the Corporations Act is required to exercise;</p> <p>(c) not to use improperly information acquired as a CEO to gain, directly or indirectly, a personal advantage or an advantage for another person or to cause damage to the Authority; and</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	<p>Section 47 (Protection of chief executive officer and staff) provides:</p> <p>The chief executive officer does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this or any other Act.</p>	Onus on the accused to establish a defence.	

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
	(d) not to use improperly their position as a CEO to gain, directly or indirectly, a personal advantage or an advantage for another person or to cause damage to the Authority.						
<b><i>Training and Workforce Development Act 2013</i></b> s 92: Liability of director, etc., if offence by Body Corporate.	An officer of the Body Corporate or a person who was purporting to act as an officer of the Body Corporate, where it is proved that the offence occurred with their consent or connivance, or was attributable to any neglect on their part.	No, onus on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b><i>Unauthorized Documents Act 1986</i></b> s 6: Penalties, etc, in case of Bodies Corporate.	A director, manager, secretary, or officer of any such company and a member of the managing body or any such Body Corporate who commits or knowingly authorises or permits an offence.	No, onus on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b><i>Veterinary Surgeons Act 1987</i></b> s 40: Offences by veterinary services entities.	Every person concerned in the management of the Company.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Water Management Act 1999 s 291:</b> Liability of officers of Body Corporate.	An officer of a Body Corporate where: (a) the offence was committed with the consent or connivance of the officer; or (b) the officer failed to exercise reasonable care to prevent the commission of the offence having regard to the nature of the officer's functions and the circumstances of the offence.	No, onus on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<b>Water and Sewerage Industry Act 2008 s 105:</b> Offences by the Corporation.	A Director of the Corporation or a person who is concerned in the management of the Corporation.	Yes, whether or not a corporate breach is established.	The person used reasonable due diligence to prevent the corporation's contravention of the provision.	The person was not in a position to influence the conduct of the Corporation in relation to its contravention of the provision.	The Corporation contravened the provision without the person's actual, imputed or constructive knowledge.	Onus on the accused to establish a defence.	Type 2
<b>s 107:</b> Liability of officers of Body Corporate.	An officer of a Body Corporate where: (a) the offence was committed with their consent or connivance; or (b) the officer failed to exercise reasonable care to prevent the commission of the offence having regard to the officer's functions and circumstances of the offence.	No, onus on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

## Tasmanian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<b>Weed Management Act 1999</b> s 55: Offences by Bodies Corporate.	A person who is concerned in, or takes part in, the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used reasonable due diligence to prevent the Corporation's contravention of the provision.	The person was not in a position to influence the conduct of the Corporation in relation to its contravention of the provision.	The Corporation contravened the provision without the person's actual, imputed or constructive knowledge.	Onus on the accused to establish a defence.	Type 2
<b>Work Health and Safety Act 2012</b> s 27: Duty of Officers.	If a person conducting a business or undertaking has a duty or obligation under the Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 2
<b>Workers Rehabilitation And Compensation Act 1988</b> s 160: Offences by Bodies Corporate.	Each director or member of the governing authority of the Body Corporate and each officer concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person proves that he used all due diligence to prevent the commission of the offence.	N/A	The offence was committed without the person's knowledge or consent or contrary to the person's orders or directions.	Onus on the accused to establish a defence.	Type 2

**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.**

