



Protecting your Position

Victorian laws imposing
personal liability on directors
and officers



About the Authors



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

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

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

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Introduction

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

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 Victoria, the Victorian Government passed the *Statutes Law Amendment (Directors' Liability) Act 2013* (Vic). In broad terms, the Act:

- amended some 18 statutes that imposed personal liability on directors and officers; and
- in most cases introduced new provisions which required the prosecution to establish that the director or officer authorised or permitted the offence or was knowingly concerned in the commission of the offence.

That being said, there are still in excess of 90 Victorian 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

Introduction (cont'd)

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 Victoria, liability most commonly attaches to those who fall within the definition of 'Officer'. This includes not only directors but also those concerned with or who take part in management. Caught within this latter group can be a very wide range of personnel within a company extending well beyond senior management.

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

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

- make an assessment of which Acts apply to the activities of their companies;

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

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

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

Overview

1 Definitions

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

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

body corporate means:

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

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

corporation means:

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

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

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

executive officer of a corporation means:

- (a) a director of the corporation; or
- (b) any other person who is concerned, or takes part, in the management of the corporation (regardless of the person's designation).

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 who is concerned, or takes part, in the management of the corporation (regardless of the person's designation).

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

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

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

2 How to Read This Publication

This document is divided into the following columns.

2.1 Provisions

This column lists the Victorian 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 is 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 accused to establish a defence.

2.8 Type of Provision

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

3 Summary of Types of Provisions

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

3.1 Type 1 Provision

Type 1 provisions provide that directors and those who are concerned in the management of the corporation will be deemed liable where the corporation contravenes a provision of the Act.

An example of this type of provision is section 66B of the *Environment Protection Act 1970*, which provides:

66B Offences by corporations and partnerships etc.

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a notice or a licence or permit under this Act, each person who is a director or is concerned in the management of the corporation is also guilty of the offence which relates to the contravention and liable to the penalty for that offence.
- (1A) It is a defence to a charge brought under subsection (1) against a person who is a director or is concerned in the management of a corporation if that person proves that –
 - (b) the person was not in a position to influence the conduct of the corporation in relation to the contravention;
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation; or

(d) the corporation would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act.

- (1B) A person who is a director of a corporation or who is concerned in the management of a corporation may, by virtue of subsection (1), be proceeded against and be convicted of an offence in respect of a contravention referred to in that subsection, whether or not the corporation has been proceeded against or been convicted in respect of the contravention.
- (2) When in any proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (3) In respect of any proceedings for an offence by a corporation against this Act any statement made by an officer of the corporation is admissible as evidence against the corporation.
- (4) If a person who is a partner in a partnership contravenes, whether by act or omission, any provision of this Act or a notice or a licence or permit under this Act in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence which relates to the contravention and liable to the penalty for that offence.
- (4A) If a person who is concerned in the management of an unincorporated association contravenes whether by act or

3 Summary of Types of Provisions (cont'd)

omission, any provision of this Act or a notice or a licence or permit under this Act in the course of the activities of the unincorporated association, each other person who is at the time of the contravention concerned in the management of the unincorporated association is also guilty of the offence which relates to the contravention and liable to the penalty for that offence.

- (4B) It is a defence to a charge brought under subsection (4) or (4A) if the person charged proves that –
- (b) the person was not in a position to influence the conduct of the person who committed the contravention; or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention; or
 - (d) the person who committed the contravention would not have been found guilty of the offence by reason of a defence available under this Act.
- (5) In this section –
- (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as it has in the Corporations Act;
 - (b) in relation to a corporation which is not a corporation within the meaning of the Corporations Act, means any person, by whatever name called, who is concerned or takes part in the management of the corporation; and

- (c) includes any employee of the corporation who gives to an authorized officer any information relating to any part of the operations of the corporation over which that employee exercises any superintendence or control.

3.2 Type 2 Provision

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

- (a) authorised or permitted the commission of the offence by the corporation; or
- (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the corporation.

An example of this type of provision is section 72A of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*, which provides:

72A Criminal liability of officers of bodies corporate – accessory liability

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer –
- (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.

3 Summary of Types of Provisions (cont'd)

- (2) For the purposes of subsection (1), the following provisions are specified –
 - (a) section 18(4);
 - (b) section 20(3);
 - (c) section 28;
 - (d) section 46(2);
 - (e) section 46A(2);
 - (f) section 49(4);
 - (g) section 50(4);
 - (h) section 52(4);
 - (i) section 52AA;
 - (j) section 54(3);
 - (k) section 55(3);
 - (l) section 56(3);
 - (m) section 58(4);
 - (n) section 59(1), (2) and (3);
 - (o) section 60(3);
 - (p) section 61(2);
 - (q) section 62(2);
 - (r) section 67B(1).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section –
 - body corporate** has the same meaning as corporation has in section 57A of the Corporations Act;
 - officer** in relation to a body corporate means –
 - (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.
- (6) This section does not affect the operation of section 323 or 324 of the *Crimes Act 1958* or section 52 of the *Magistrates' Court Act 1989*.

3 Summary of Types of Provisions (cont'd)

3.3 Type 3 Provision

Type 3 provisions provide that officers will be deemed liable where the corporation contravenes a provision of the Act and the officer knowingly authorised or permitted the contravention.

It must be noted that wording of Type 3 provisions varies from Act to Act.

An example of this type of provision is section 221 of the *Accident Towing Services Act 2007*, which provides:

221 Offences by bodies corporate

- (1) If a body corporate contravenes any provision of this Act, each officer (within the meaning of section 9 of the Corporations Act) of the body corporate who knowingly authorised or permitted the contravention is to be taken to have contravened the same provision.

- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1), whether or not the body corporate has been proceeded against or convicted.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

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
<i>Accident Towing Services Act 2007</i> s 221: Offences by Bodies Corporate.	Officers 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 3
<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992</i> s 72A: Criminal liability of officers of Bodies Corporate – accessory liability. Applies to offences against the following provisions: (a) section 18(4) (Offences involving labelling requirements); (b) section 20(3) (Labelling of certain meal of animal origin); (c) section 28 (Offence of use without certificate); (d) section 46(2) (Notices to owners of defective spraying equipment); (e) section 46A(2) (Notice to operators of defective spraying equipment); (f) section 49(4) (Contaminated stock notice) (g) section 50(4) (Land use restriction notice); (h) section 52(4) (Contaminated produce notice);	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the body corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
(i)	section 52AA (Offence to sell contaminated agricultural produce);						
(j)	section 54(3) (Powers of authorised officers);						
(k)	section 55(3) (Testing of sub-standard fertiliser or stock food);						
(l)	section 56(3) (Testing of contaminated stock or agricultural produce);						
(m)	section 58(4) (Destruction notice);						
(n)	section 59(1), (2) or (3) (False or misleading statements);						
(o)	section 60(3) (Extra information about application may be required);						
(p)	section 61(2) (Information about licence, permit or certificate may be required);						
(q)	section 62(2) (Information about sale of a chemical product, fertiliser or stock food); or						
(r)	section 67B(1) (Non-return of cancelled or suspended authority an offence).						

Victorian 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 72B: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence. Applies to offences against the following provisions:</p> <p>(a) section 6(1) (Offences involving unregistered chemical products);</p> <p>(b) section 19(1), (3), (4), (5), (6), (7) or (8) (Off-label use of chemical products);</p> <p>(c) section 21 (Application of chemical products to agricultural produce);</p> <p>(d) section 24(1) (Standards for fertiliser or stock food);</p> <p>(e) section 25A(1) (Orders prohibiting or regulating use);</p> <p>(f) section 26(4) (Recall);</p> <p>(g) section 30(1) (Offence of commercial use without licence);</p> <p>(h) section 32(1) or (2) (Prohibiting misuse of registered chemical products);</p> <p>(i) section 39(4) (Effect of order);</p> <p>(j) section 40(1) (Damage by spray drift);</p> <p>(k) section 41(1) (Contamination by spray drift);</p> <p>(l) section 48(2) (Contaminated stock order); or</p> <p>(m) section 67A(1) (Non-compliance with condition of authority an offence).</p>	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

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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>s 72C: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence (evidential burden of proof). Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 18(1) (Offences involving labelling requirements); (b) section 20(1) (Labelling of certain meal of animal origin); (c) section 25(1) (Orders prohibiting or regulating sale); (d) section 42(3) (Requirements for pilots); or (e) section 43(2) or (3) (Requirements for aircraft operators). 	Officers of the Body Corporate.	Yes, if a corporate breach is established.	The person presents or points to evidence that suggests a reasonable possibility that the person exercised due diligence to prevent the commission of the offence by the Body Corporate and the contrary is not proved (beyond reasonable doubt) by the prosecution.	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 1
<p>ANZAC Day Act 1958 s 5E: Criminal liability of officers of Bodies Corporate – accessory liability.</p>	<p>Officers of the Body Corporate if the officer:</p> <ul style="list-style-type: none"> (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Architects Act 1991 s 68: Offences by Bodies Corporate.	Any person who is concerned in or takes part in the management of that Body Corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Australian Consumer Law and Fair Trading Act 2012 s 195: Contraventions by Bodies Corporate.	Each officer 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 3
Back to Work Act 2015 s 49: Criminal liability of officers of Bodies Corporate –accessorial liability. Applies to offences against the following provisions: (a) section 24(1) (Form of record— English language); or (b) section 39(7) (Recovery of amounts from third parties).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>s 50: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence. Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 20 (Requirement to keep proper records); (b) section 21(2) (Additional records); (c) section 22 (Inclusion of false or misleading information in records); (d) section 23 (Accessibility); (e) section 25(1) (Period of retention); (f) section 26 (Wilfully destroying records); (g) section 30(4) (Power of investigation); (h) section 36 (Obstruction of authorised officer); (i) section 42(1) (Prohibition on certain disclosures of information by authorised persons); (j) section 46(1) (Prohibition on secondary disclosure of information); or (k) section 48(1) and (2) (False and misleading information in connection with claims). 	An officer of the Body Corporate if the officer failed to exercise due diligence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

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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
Building Act 1993 s 243: Offences by Bodies Corporate.	Any person who is concerned in or takes part in the management of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Bus Safety Act 2009 s 69: Liability of officers of Bodies Corporate.	Each officer of the Body Corporate failing to take reasonable care.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer of a Body Corporate who is a volunteer is not liable for anything done or not done by him or her as a volunteer.	Onus on the accused to establish a defence.	Type 4
Cemeteries and Crematoria Act 2003 s 178: Offences by Bodies Corporate.	Any person who is concerned in or takes part 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 3
Child Employment Act 2003 s 50A: Offences by Bodies Corporate.	Each person who is an officer of the Body Corporate who knew of, or 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 3
Children's Services Act 1996 s 48: Offences by Bodies Corporate.	Any person who is concerned in or takes part 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 3
Co-operative Housing Societies Act 1958 s 44A: Quarterly returns by society.	Each officer of the society.	Yes, if a corporate breach is established.	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
s 44B: Auditor to submit report.	Each officer of the society.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 1
s 44C: Intervention by the Registrar.	Each officer of the society who is in default.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 1
s 84: Failure to display name, keep rules, give returns or information.	Every director or officer of the society who knowingly and willfully authorizes or permits the default.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 86: Carrying on unlawful business.	Every director or officer of the society who knowingly and willfully authorizes or permits the default.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Co-operatives National Law Application Act 2013 Annexure Appendix, s 119: Carrying on business with too few members.	A person who is a director of a co-operative who knowingly allows the co-operative to continue to carry on business with fewer than the minimum number of members allowed.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 158: Failure to cancel membership – offence by director.	If the board of a co-operative fails to cancel the membership of a member as required, a director of the co-operative who did not use all due diligence to prevent the failure commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 191: Responsibility of secretary.	The secretary of a co-operative.	Yes, if a corporate breach is established.	The person took all reasonable steps to ensure that the co-operative complied with the section.	N/A	N/A	Onus on the accused to establish a defence.	Type 4

Victorian 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
Annexure Appendix, s 201: Application of Corporations Act – offences by officers of co-operatives.	The provisions imposing personal liability on directors and officers under Part 5.8 of the <i>Corporations Act 2001</i> (Cth) (Offences (relating to external administration)) apply to officers of co-operatives.	See Part 5.8 of the <i>Corporations Act 2001</i> (Cth).					Type 4
Annexure Appendix, s 223: Name to appear on seals, publications and business documents.	A director of a co-operative if the director knowingly authorises or permits a contravention of this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 243: Registration of special resolution.	An officer of the co-operative who knowingly fails to file the required copies under this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 328: Contravention by directors of provisions of this Part.	A director of a co-operative, if they contravene the Act and the contravention is dishonest. A director contravenes the Act if they fail to take all reasonable steps to comply with or to secure compliance with: (a) section 272 (Small co-operative – direction by Registrar (cf Corporations Act section 294)); (b) section 284(1) or (2) (Annual financial reporting to members); (c) section 289 (Lodgment of annual reports by large co-operatives with Registrar (cf Corporations Act section 319)); (d) section 290 (Lodgment of half-year reports with Registrar (cf Corporations Act section 320));	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

Victorian 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 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).						

Victorian 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
Annexure Appendix, s 359: Acquisition and disposal of assets.	Each person who is a member of the board of the co-operative if the co-operative contravenes this section.	No, the onus is on the prosecution to prove the required elements.	The person was in a position to influence the conduct of the co-operative in relation to the offence, the person used all due diligence to prevent the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Type 4
Annexure Appendix, s 401(8): Transfer of engagements by direction of Registrar.	An officer of a co-operative who fails to take all reasonable steps to secure compliance by the co-operative with a direction given or by a wilful act or omission causes the failure by the co-operative to comply with a direction given.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 422: Directors to arrange for reports.	Each director of the co-operative.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 429: Contravention of this Division – offence by co-operative.	If a provision of this Division 2 of Part 4.4 (Explanatory statements) is contravened, the cooperative concerned and any other person involved in the contravention commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The contravention was because of the failure of a person (other than the defendant), who is a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the explanatory statement particulars of the person's interests.	Onus on the accused to establish a defence.	Type 4

Victorian 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
Annexure Appendix, s 469: Name and place of origin to appear on business and other documents.	A director of a participating co-operative, if they knowingly authorise or permit a contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 484: Falsification of books.	An officer, former officer, employee, former employee, member or former member of a co-operative who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities, books or records.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Annexure Appendix, s 546: Enforcement orders after contravention of undertaking. The Act has not yet commenced, and will come into force on a date to be set by proclamation, see section 2.	Each officer of the co-operative or other Corporation if the officer knowingly authorised or permitted the breach.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Congestion Levy Act 2005 Section 130A <i>Taxation Administration Act 1997</i> (Criminal liability of officers of bodies corporate – accessorial liability) applies to offences against the following provisions: (a) section 27(1) (Requirement for registration – private car parks); or (b) section 28(1) or (2) (Requirement for registration – public car parks).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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
Conservation, Forests and Lands Act 1987 s 90: Offences by Bodies Corporate and partnerships etc.	Officers of the Body Corporate or a person purporting to be an officer of the body corporate, if the contravention was committed with the person's consent or connivance or because of the person's wilful neglect.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Construction Industry Long Service Leave Act 1997 s 17: Offences by Corporations and partnerships etc.	Any person who is a Director of the Corporation or who is 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 3
Control of Genetically Modified Crops Act 2004 s 21: Offences by Bodies Corporate.	Officers of a Body Corporate who knowingly authorised or allowed the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Control of Weapons Act 1990 s 8EA: Offences by Body Corporate.	Officers of a Body Corporate who knowingly authorised or allowed the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Corrections Act 1986 s 105A: Offences by Bodies Corporate.	Directors, managers, secretaries or other officers of the Body Corporate where the offence was committed with the consent or connivance of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Credit Act 1984 s 160: Offence by Corporation.	Directors, managers, secretaries or other officers of the Corporation where the offence was committed with the consent or connivance of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

Victorian 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
Credit (Administration) Act 1984 s 92: Offences by Bodies Corporate.	Any officer of the Body Corporate who was knowingly a party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Crimes Act 1958 s 84: Liability of company officers for certain offences by Company.	Directors, managers, secretaries or other officers of the Body Corporate where an offence against sections 81 (Obtaining property by deception), 82 (Obtaining financial advantage by deception) or 83 (False accounting) was committed with the consent or connivance of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Dairy Act 2000 s 55A: Criminal liability of officers of Bodies Corporate – accessory liability. Applies against the following provisions: (a) section 22(2)(a) (Certain businesses and vehicles to be licensed); (b) section 50 (Offences with respect to authorised officers); or (c) section 53(1)(a) (Miscellaneous offences).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2
s 55B: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence.	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence against section 30 (Offence relating to dairy food) by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

Victorian 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 55C: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence (legal burden of proof). Applies to offences against the following provisions:</p> <p>(a) section 22(1) or (2)(b) (Certain businesses and vehicles to be licensed);</p> <p>(b) section 36(1) (Sale and delivery of dairy food which has not been pasteurised or packed and sealed as required);</p> <p>(c) section 46(4) (Actions which an authorised officer may take); or</p> <p>(d) section 53(1)(b) (Miscellaneous offences).</p>	Officers of the Body Corporate for offences against specific sections of the Act.	Yes, if a corporate breach is established.	The officer of a Body Corporate exercised due diligence to prevent the commission of the offence by the Body Corporate.	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 1
<p>Dangerous Goods Act 1985 s 46: Offences by Bodies Corporate and partnerships etc.</p>	Officers of the Body Corporate or a person purporting to be an officer of the Body Corporate, if the offence was committed with the person's consent or connivance attributable to any wilful neglect on the part of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
<p>Domestic Animals Act 1994 s 91: Liability of officers of Bodies Corporate for offences.</p>	Any person who is concerned in or takes part in the management of that Body Corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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>Drugs, Poisons and Controlled Substances Act 1981</i> s 103: Offences by Corporations.	Any Officer of the Corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Duties Act 2000</i> Section 130A of the <i>Taxation Administration Act 1997</i> (Criminal liability of officers of Bodies Corporate – accessorial liability). Applies to offences against the following provisions: (a) section 69D(2) (Misleading information); (b) section 89X(4) (Disqualifying circumstances for certain unit trust schemes); (c) section 139(5) (Ascertainment and disclosure of place of use of goods), (d) section 142(1) (Cancellation of registration of commercial hire business); (e) section 257(3) (Adhesive stamps); (f) section 258(6) (Licences to deal in stamps); (g) section 270(1) (Registration of transfer of shares in private companies); or (h) section 271(1) (Registration of transfer of units).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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>Section 130B of the <i>Taxation Administration Act 1997</i> (Criminal liability of officers of bodies corporate – failure to exercise due diligence).</p> <p>Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 21B (Records to be kept); (b) section 21C(1) (Period of retention); (c) section 21D(2) (Power to require documents); (d) section 24(6) (Aggregation of certain dutiable transactions); (e) section 89O(2) (Misleading information); (f) section 140(2) (Commercial hire businesses must be registered); (g) section 185 (General insurers must be registered); (h) section 188(1) (Cessation of business and cancellation of registration by the general insurer); (i) section 253(1) (Limitation on use of designated stamps); (j) section 264B(3) (Conditions of authorisation); (k) section 266(1) (Payment of duty by authorised persons); or (l) section 269 (Registration of instruments). 	Officers of the Body Corporate if the officer failed to exercise due diligence to prevent the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

Victorian 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
Section 130C of the <i>Taxation Administration Act 1997</i> (Criminal liability of officers of bodies corporate – failure to exercise due diligence (legal burden of proof)) applies to an offence against section 268(1) or (2) (Unauthorised endorsement).	Officer of the Body Corporate.	Yes, if a corporate breach is established.	A person proves that he or she exercised due diligence to prevent the commission of the offence by the Body Corporate.	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 1
<i>Education and Care Services National Law Act 2010</i> s 285: Offences by Bodies Corporate.	Any person with management or control of the Body Corporate who failed to exercise due diligence to prevent the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
<i>Education and Training Reform Act 2006</i> s 5.8.7: Offences by a Body Corporate etc.	Each officer of the Body Corporate if that 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 3

Victorian 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>Electoral Act 2002 s 179A: Criminal liability of officers of Bodies Corporate – accessorial liability. Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 36(1) (Use of enrolment information); (b) section 37(2) or (3) (Prohibition of disclosure or commercial use of enrolment information); (c) section 83(1) (Printing and publication of electoral advertisements, handbills, pamphlets or notices); (d) section 84(1) or (2) (Misleading or deceptive matter); (e) section 85 (Heading to electoral advertisements); (f) section 86(1) (Authors to be identified); (g) section 110I (Offence in relation to electronic voting); (h) section 123(4) (Election information); (i) section 151(1) or (2) (Bribery); (j) section 155 (Prohibition of publicly disseminating exit poll results during the hours of voting); or (k) section 158(2)(a), (b), (c), (d), (e) or (f) (Conduct near voting centres). 	Officers of the Body Corporate if the officer: <ul style="list-style-type: none"> (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate. 	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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>Electricity Industry Act 2000</i> s 97: Offences.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person acting in good faith in the execution of this Part (Electricity Supply Emergency Provisions) or any proclamation or direction under this Part is not liable to any action, claim or demand on account of any damage, loss or injury sustained or alleged to be sustained.	Onus on the accused to establish a defence.	Type 3
<i>Electricity Safety Act 1998</i> s 146: Offences by Bodies Corporate.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Environment Protection Act 1970</i> s 66B: Offences by Corporations and partnerships etc.	Each person who is a Director or is 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 would not have been found guilty of the offence by reason of its being able to establish a defence available to it.	Onus on the accused to establish a defence.	Type 1
<i>Equipment (Public Safety) Act 1994</i> s 31: Offences by Bodies Corporate.	An officer of the Body Corporate or a person purporting to act as an officer if the offence is proved to have been committed with the person's consent or connivance, or to have been attributable to any wilful neglect on the part of the person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

Victorian 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
Farm Debt Mediation Act 2011 s 34: Offences by Bodies Corporate.	Each officer 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 3
Fines Reform Act 2014 s 29: Declared director – jointly and severally liable with the Body Corporate.	A person who was a director of a Body Corporate at the time of the commission of the offence where: <ul style="list-style-type: none"> (a) the Body Corporate is deregistered after the commission of the alleged offence; or (b) the person executing an enforcement warrant issued against the Body Corporate in relation to the registered fine returns that the person cannot find sufficient personal property of the Body Corporate to satisfy the amounts specified in the enforcement warrant together with all lawful costs of execution. 	Yes, if a corporate breach is established.	N/A	N/A	The person has 28 days from the date of service of the declared director notice to apply to the Magistrates' Court for an order under section 30 that the person is not a declared director. The Magistrates' Court may order that the person is not a declared director if the court is satisfied that: <ul style="list-style-type: none"> (a) at the time of the commission of the offence, the person did not take part in the management of the Body Corporate because of illness or for some other good reason which prevented the person from taking part in that 		

Victorian 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>management in accordance with the person's duties as a director under the Corporations Act; or</p> <p>(b) if paragraph (a) does not apply to the person, as soon as practicable after the service of the infringement notice for the offence on the Body Corporate, the person either took all reasonable steps or, in all the circumstances, there were no reasonable steps the person could have taken to ensure that:</p> <p>(i) the fine was paid; or</p> <p>(ii) a payment plan or a payment arrangement was made; or</p>		

Victorian 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
					(iii) the Body Corporate appointed an administrator under the Corporations Act; or (iv) the Body Corporate was wound up in accordance with the Corporations Act.		
Firearms Act 1996 s 142: Liability of officers of Body Corporate or nominated persons for offences committed by the Body Corporate.	Any officer of the Body Corporate or nominated person who was in any way, by act or omission, directly or indirectly, knowingly concerned in or a party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Fisheries Act 1995 s 120: Liability for offences.	Any nominee of the Corporation specified on the relevant licence.	Yes, if a corporate breach is established.	N/A	N/A	The person did everything that was reasonably practicable to ensure that the offence would not be committed and did not in any way aid, abet, counsel or procure the commission of the offence.	Onus on the accused to establish a defence.	Type 1

Victorian 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>Food Act 1984 s 51A:</p> <p>Criminal liability of officers of Bodies Corporate – accessory liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 17(1) (Proprietor's name to be affixed to premises);</p> <p>(b) section 29 (Offences with respect to authorised officers and articles);</p> <p>(c) section 34 (Prohibition on use of analyst's certificate for certain purposes);</p> <p>(d) section 40A (Certificates must be shown on demand);</p> <p>(e) section 59(1) or (2) (False and misleading statements); or</p> <p>(f) section 59A (Destroying or damaging records).</p>	<p>Officers of the Body Corporate if the officer:</p> <p>(a) authorised or permitted the commission of the offence by the body corporate; or</p> <p>(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	<p>For an offence under Part 2 (Offences relating to food), it is a defence if the person proves the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.</p>	<p>N/A</p>	<p>A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.</p> <p>For an offence against sections 59(1) or (2), it is a defence if the accused proves that at the time the offence was allegedly committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.</p>	<p>Onus on the accused to establish a defence.</p>	<p>Type 2</p>

Victorian 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 51B: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence (legal burden of proof). Applies to offences against the following provisions:</p> <p>(a) section 8 (Knowingly handling food in unsafe manner);</p> <p>(b) section 8A (Handling food in unsafe manner in other circumstances);</p> <p>(c) section 9 (Knowingly selling unsafe food);</p> <p>(d) section 9A (Sale of unsafe food in other circumstances);</p> <p>(e) section 10(1) or (2) (Knowingly falsely describing food);</p> <p>(f) section 10A(1) or (2) (Falsely describing food in other circumstances);</p> <p>(g) section 11(1) or (2) (Handling and sale of unsafe food);</p> <p>(h) section 12(1) or (2) (Handling and sale of unsuitable food);</p> <p>(i) section 13(1), (2) or (3) (Misleading conduct relating to sale of food);</p> <p>(j) section 14(1) (Sale of food not complying with purchaser's demand);</p> <p>(k) section 15(1) or (2) (Sale of unfit equipment or packaging or labelling material);</p>	Officers of the Body Corporate for contraventions of specific sections of the Act.	Yes, if a corporate breach is established.	<p>The person exercised due diligence to prevent the commission of the offence by the body corporate.</p> <p>For offences under Part 2 (Offences relating to food), it is a defence if the person proves the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.</p>	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus is on the accused to establish a defence.	Type 1

Victorian 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 16(1), (2), (3) or (4) (Compliance with Food Standards Code);						
(m)	section 19(7) or (8) (Orders relating to food premises);						
(n)	section 19AA(8) or (9) (Orders relating to premises on which primary food production and related activities are carried out);						
(o)	section 19A(7) or (8) (Orders relating to food vending machines and other equipment);						
(p)	section 19B(7) (Orders relating to food handlers);						
(q)	section 19CB(6) (Minimum record keeping);						
(r)	section 19F (Food safety program must be kept at premises);						
(s)	section 19GB (Name of supervisor to be provided on request);						
(t)	section 35A(1) or (2) (Requirement to be registered or to notify registration authority);						
(u)	section 38F(2) (Change in operation of registered food premises);						
(v)	section 39B (Offence to fail to comply with registration condition);						
(w)	section 39C (Contravention of section 34(1) of the <i>Meat Industry Act 1993</i>);						
(x)	section 43(1) (Statement of trade); or						
(y)	section 44E (Failure to comply with emergency order).						

Victorian 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
Gas Industry Act 2001 ss 210 and 230: Offences by Bodies Corporate.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Gas Safety Act 1997 s 115: Offences by Bodies Corporate.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Geothermal Energy Resources Act 2005 s 148: Offences by Corporations also offences by Officers.	Any Officer of the Corporation where the offence has been committed at the instigation of, or with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, the Officer.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Greenhouse Gas Geological Sequestration Act 2008 s 277: Offences by Corporations also offences by Officers.	Any Officer of the Corporation where the offence has been committed at the instigation of, or with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, the Officer.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Guardianship and Administration Act 1986 s 81: Offences by Bodies Corporate.	Any 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 offence took place without the person's knowledge or consent.	Onus is on the accused to establish a defence.	Type 1
Health Services Act 1988 s 152A: Offences by Bodies Corporate etc.	Any person who is concerned or takes part in the management of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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
Heavy Vehicle National Law (Vic) s 636(1): Liability of executive officers of Corporation.	Each Executive Officer of the Corporation who knowingly authorised or permitted the conduct constituting the offence.	No, the onus is on the prosecution to prove the required elements.	The person exercised reasonable diligence.	The person was not in a position to influence the conduct of the Corporation.	N/A	Onus on the accused to establish a defence.	Type 3
s 636(2): Liability of executive officers of Corporation. The Act has not yet commenced, and will come into force on a date to be set by proclamation, see section 2.	Each Executive Officer of the Corporation who knew or ought reasonable to have known of the conduct constituting the offence or that there was a substantial risk that the offence would be committed.	No, the onus is on the prosecution to prove the required elements.	The person exercised reasonable diligence.	The person was not in a position to influence the conduct of the Corporation.	N/A	Onus on the accused to establish a defence.	Type 4
Heritage Act 1995 s 180: Provisions relating to offences by Bodies Corporate.	Any person who is concerned or takes part in the management of the Body Corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
House Contracts Guarantee Act 1987 s 29: Offences by Corporation.	Any Officer of the Corporation where the offence has been committed at the instigation of, or with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, the Officer.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Independent Broad-based Anti-corruption Commission Act 2011 s 185: Offences by Corporations.	Any Officer of the Corporation who was knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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>Infringements Act 2006</i> s 91: Enforcement against Bodies Corporate.</p>	Any person who was a director of a Body Corporate at the time of the commission of an offence by the body corporate for which an infringement notice was issued may be declared jointly and severally liable for the payment of the fine.	Yes, if a corporate breach is established.	N/A	N/A	The person satisfies the infringements registrar that: <ul style="list-style-type: none"> (a) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the Body Corporate would be able to meet any liabilities that it incurred at that time; and (b) the person had taken all reasonable steps in carrying on the business of the Body Corporate to ensure that it would be able to meet its liabilities as and when they became due. 	Onus is on the accused to establish a defence.	Type 4

Victorian 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>Inquiries Act 2014</i> s 128: Criminal liability of officers of Bodies Corporate – accessorial liability. Applies to offences against the following provisions:	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	N/A	Type 2
(a) section 43 (Confidentiality for Royal Commission officers);							
(b) section 45(2) (Taking advantage of information);							
(c) section 46 (Offence to fail to comply with a notice to produce or attend);							
(d) section 48(1) (Offence to contravene exclusion or restriction orders);							
(e) section 51(1) (Offence for employers to take detrimental action against employees);							
(f) section 52(1) (Offence of taking detrimental action against commissioners);							
(g) section 83 (Confidentiality for Board of Inquiry officers);							
(h) section 85(2) (Taking advantage of information);							
(i) section 86 (Offence to fail to comply with a notice to produce or attend);							
(j) section 88(1) (Offence to contravene exclusion to restriction orders);							

Victorian 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 91(1) (Offence for employers to take detrimental action against employees);							
(l) section 92(1) (Offence of taking detrimental action against members);							
(m) section 115 (Confidentiality for Formal Review officers);							
(n) section 117(2) (Taking advantage of information);							
(o) section 118(1) (Offence to contravene exclusion or restriction orders);							
(p) section 121(1) (Offence for employers to take detrimental action against employees); or							
(q) section 122(1) (Offence of taking detrimental action against members).							
Judicial Proceedings Reports Act 1958 s 3(3): Restriction on publication of reports of judicial proceedings.	Any person being a member of the governing body, Director, Manager or Secretary of a Corporation.	Yes, if a corporate breach is established.	N/A	N/A	The offence took place without the person's knowledge or consent.	Onus is on the accused to establish a defence.	Type 1
s 4(3): Prohibition of reporting of names.	Any person being a member of the governing body or being a Director, Manager or Secretary of the Corporation shall severally be deemed to have committed the offence.	Yes, if a corporate breach is established.	N/A	N/A	The offence took place without the person's knowledge or consent.	Onus is on the accused to establish a defence.	Type 1

Victorian 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
Juries Act 2000 s 79: Offence by Body Corporate.	Any Officer of the Corporation where the offence has been committed at the instigation of, or with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, the Officer.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Liquor Control Reform Act 1998 s 53A: Criminal liability of officers of Bodies Corporate – accessorial liability. Applies to offences against the following provisions: (a) section 54(11) (Nominee of licensee or permittee); (b) section 99 (Refreshments to be available); (c) section 99A(1) (Free drinking water to be provided at licensed premises); (d) section 100 (Residents' register); (e) section 101 (Copy of licence or permit to be displayed on premises); (f) section 101A(3) (Plan of premises to be given to the Commission if requested); (g) section 101B(1) or (2) (Plan of premises to be retained and produced for inspection); (h) section 102(1) or (2) (Notices required by the Commission must be displayed);	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate,	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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)	section 103(1) or (2) (Change of directors)						
(j)	section 103A(2) (Change of associates);						
(k)	section 105(1) (No letting or sub-letting without consent);						
(l)	section 106B (Requirement to notify Commission that sexually explicit entertainment provided on licensed premises);						
(m)	section 106K(1), (2), (4) or (5) (Licensee or permittee must keep records of barring orders);						
(n)	section 108(1) (Offences by licensee and permittee)						
(o)	section 108AD(2) (Licensee must keep approved responsible service of alcohol register);						
(p)	section 108AE(2) (Licensee must produce approved responsible service of alcohol program register for inspection);						
(q)	section 108B(1) (Corporate licensee must provide details of directors);						
(r)	section 109(1) (Taking orders for liquor at unlicensed premises);						
(s)	section 115(1) (Betting on licensed premises);						
(t)	section 122(1) (Permitting minor to supply liquor);						

Victorian 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
(u) section 148Q(1) (Offence to permit contravention of banning notice or exclusion order);							
(v) section 148ZA (Offence to refuse entry to a fire safety inspector); or							
(w) section 148ZL(1) (Sign must be displayed).							
s 53B: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence. Applies to offences against the following provisions:	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the body corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4
(a) section 108AA(3) (Licensee must complete refresher approved responsible service of alcohol programs);							
(b) section 108AB(2) (Licensee must ensure staff complete approved responsible service of alcohol programs);							
(c) section 108AC(2) (Licensee must ensure staff complete refresher approved responsible service of alcohol programs);							
(d) section 148ZK (Offence to allow entry); or							
(e) section 25(5) or (7) of Schedule 3 (<i>Transitional provisions – Liquor Control Reform Amendment Act 2010</i>).							

Victorian 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 53C: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence (evidential burden of proof). Applies to offences against the following provisions:</p> <p>(a) section 106(1) (Control of business of supply of liquor); (b) section 108(4) (Offences by licensee and permittee); (c) section 115A(2) (Prohibited advertising or promotion); (d) section 119(1) or (2) (Supplying liquor to minors); (e) section 120(1) (Allowing minors on licensed or authorised premises); or (f) section 148ZJ(1) (Offence to fail or refuse to comply with a closure and evacuation notice or direction).</p>	Officers of the Body Corporate for offences by the Body Corporate against specific sections of the Act.	Yes, if a corporate breach is established.	The person of a Body Corporate proves that he or she exercised due diligence to prevent the commission of the offence by the Body Corporate.	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus is on the accused to establish a defence.	Type 1
<p>s 106A(4): Lessees etc. are liable for offences.</p>	The directors of the Body Corporate at the time of the act or omission are severally liable for the act or omission as if they were the licensee or permittee.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 1

Victorian 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>Livestock Disease Control Act 1994 Section 130A <i>Taxation Administration Act 1997</i> (Criminal liability of officers of Bodies Corporate – accessorial liability). Applies to offences against the following provisions:</p> <p>(a) section 92(1), (1A) or (2) (Payment of duty by owner of cattle, sheep, goats or pigs);</p> <p>(b) section 94B (Notification about livestock slaughter or disposal);</p> <p>(c) section 95(5) or (7) (Payment of duty by approved agents in respect to cattle);</p> <p>(d) section 95A(5) or (7) (Payment of duty by approved agents in respect to sheep and goats); or</p> <p>(e) section 95B(5) or (7) (Payment of duty by approved agents in respect to pigs).</p>	<p>Officers of the Body Corporate if the officer:</p> <p>(a) authorised or permitted the commission of the offence by the Body Corporate; or</p> <p>(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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>Section 130B Taxation Administration Act 1997 (Criminal liability of officers of Bodies Corporate – failure to exercise due diligence).</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 94(A)(1) or (2) (Records of sales and purchases);</p> <p>(b) section 95(1), (2), (3) or (4) (Payment of duty by approved agents in respect to cattle);</p> <p>(c) section 95A(1), (2), (3) or (4) (Payment of duty by approved agents in respect to sheep and goats);</p> <p>(d) section 95B(1), (2), (3) or (4) (Payment of duty by approved agents in respect to pigs);</p> <p>(e) section 96(2) (Offences); or</p> <p>(f) section 96B (Evidence of ownership of livestock).</p>	Officers of the Body Corporate if the officer failed to exercise due diligence to prevent the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4
<p>s 134: Persons liable for offences.</p>	Any person who is concerned in or takes part in the management of the Body Corporate who knowingly authorised or permitted that contravention (other than an offence against Part 6 – Duty and Records).	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Livestock Management Act 2010 s 55: Offences by Bodies Corporate.</p>	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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
Local Government Act 1989 s 239A: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence.	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the body corporate against sections 59(1) or (2) (Bribery, treating and undue influence).	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4
Long Service Leave Act 1992 s 158A: Conduct of Corporations imputed to Directors.	Any Executive Officer of the Corporation if the Executive Officer knew about the conduct or was reckless as to whether it was engaged in.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Major Sporting Events Act 2009 s 189: Offences by Bodies Corporate.	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Marine Safety Act 2010 s 285: Liability of officers of Bodies Corporate.	Any officer of the Body Corporate if the contravention is attributable to that officer failing to take reasonable care.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer of a Body Corporate who is a volunteer is not liable to be prosecuted for anything done or not done by him or her as a volunteer.	Onus on the accused to establish a defence.	Type 4

Victorian 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>Medical Treatment Planning and Decisions Act 2016</i> s 93:</p> <p>Criminal liability of officers of Bodies Corporate – failure to exercise due diligence.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 14(1) (Offence to induce giving of advance care directive);</p> <p>(b) section 15(1) or (2) (False or misleading statements);</p> <p>(c) section 42(1) (Offence to induce appointment of appointed medical treatment decision maker).</p>	<p>An officer of the Body Corporate if the officer failed to exercise due diligence.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	N/A	N/A	<p>A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.</p>	<p>Onus on the accused to establish a defence.</p>	Type 4
<p><i>Mineral Resources (Sustainable Development) Act 1990</i> s 111:</p> <p>Offences by Corporations.</p>	<p>Any Officer of the Corporation who was in any way, by act or omission, knowingly concerned in or party to the commission of the offence.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	N/A	N/A	N/A	N/A	Type 1
<p><i>Non-Emergency Patient Transfer Act 2003</i> s 53:</p> <p>Offences by Bodies Corporate.</p>	<p>Each Director or Officer of the Corporation who knowingly authorised or permitted the contravention.</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
<p><i>Occupational Health and Safety Act 2004</i> s 11:</p> <p>Duties of persons who manage or control workplaces.</p>	<p>A person who (whether as an owner or otherwise) has, to any extent, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.</p>	<p>No, the onus is on the prosecution to provide the required elements.</p>	N/A	N/A	N/A	N/A	Type 4

Victorian 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 144: Liability of officers of Bodies Corporate.	Any officer of the Body Corporate if the contravention is attributable to that officer failing to take reasonable care.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer of a Body Corporate who is a volunteer is not liable to be prosecuted for anything done or not done by him or her as a volunteer.	Onus on the accused to establish a defence.	Type 4
Payroll Tax Act 2007 Section 130A <i>Taxation Administration Act 1997</i> (Criminal liability of officers of Bodies Corporate - accessorial liability). Applies to offences against the following provisions: (a) section 97(1) or (3) (Agent for absentee principal winding-up business); or (b) section 21 of Schedule 2 (Notification of change in circumstances).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2
Petroleum Act 1998 s 225: Certain offences by Corporations may also be offences by officers.	Officers of the Corporation if the offence is proved to have been committed at the instigation of, or with the consent or connivance of, or to be attributable to any wilful neglect on the part of the Officer.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

Victorian 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>Planning and Environment Act 1987 s 128: Criminal liability of Officers of Bodies Corporate – failure to exercise due diligence.</p>	An officer of the Body Corporate if the officer failed to exercise due diligence.	Yes, if a corporate breach is established.	The person was not in a position to influence the Body Corporate	N/A	<p>The person proves that the act or omission constituting the offence took place without that person's knowledge or consent.</p> <p>The person took all reasonable steps to prevent the offence.</p>	Onus is on the accused to establish a defence.	Type 4
<p>Plant Biosecurity Act 2010 s 127: Offences by Bodies Corporate.</p>	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Port Management Act 1995 s 94: Liability of officers of Bodies Corporate. Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 63A (Prohibition); (b) section 73E(1) (Offence to provide towage services without notification); (c) section 73O(3) (Compliance with determined towage condition); (d) section 88M(1) (Hazardous port activity notice); (e) section 88O (Offence not to comply with hazardous port activity direction); or (f) section 91C(2) or (3) (Port manager's responsibilities for management plans). 	Officers of the Body Corporate if the officer failed to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4

Victorian 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>Powers of Attorney Act 2014</i> s 137: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence for an offence against section 135(1), (2) or (3) (Offences as to enduring powers of attorney).	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	N/A	Type 4
<i>Prevention of Cruelty to Animals Act 1986</i> s 41AA: Offences by Bodies Corporate.	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Private Security Act 2004</i> s 159: Liability of officers of Body Corporate for offences committed by the Body Corporate.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or a party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Public Health and Wellbeing Act 2008</i> s 214: Offences by Corporations.	Any Officer of the Corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Public Safety Preservation Act 1958</i> s 9: Offences and penalties.	Any chairman, member of the governing body, Director, Manager, Secretary or Officer of the Corporation who knowingly authorizes or permits the commission of an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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
Racial and Religious Tolerance Act 2001 s 27: Liability of Body Corporate.	Each officer of the Body Corporate who knowingly directed, authorised or permitted the commission of 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 3
Racing Act 1958 s 66: Provision in case of offence by Body Corporate.	Every chairman, director, manager and officer of a Body Corporate who directs, authorizes or knowingly suffers the commission of such offence by the Body Corporate shall be severally liable.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Radiation Act 2005 s 128: Offences by Corporations.	Each Officer of the Corporation if the officer knowingly authorised or permitted the commission of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Rail Safety (Local Operations) Act 2006 s 98: Criminal liability of officers of bodies corporate—failure to exercise due diligence. Applies to offences against the following provisions: (a) section 20(1) (Duties of rail transport operators); (b) section 22(1) and (2) (Rail contractor duties); (c) section 22A(1) and (2) (Duties of persons providing railway operations by means of contracted personnel); (d) section 23(1), (2) and (3) (Duties of rail safety workers);	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

Victorian 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 23A(1) (Duty of persons engaged in loading and unloading rolling stock);						
(f)	section 26 (Accredited rail transport operator must consult before establishing safety management system);						
(g)	section 27 (Accredited rail transport operator to have in place a safety management system);						
(h)	section 28(1) (Accredited rail transport operator must comply with a safety management system);						
(i)	section 28A(2) (Provision of access to SMS to Safety Director or transport safety officer);						
(j)	section 28B(2) (Requirements of exempted rail transport operator);						
(k)	section 33(4) and (5) (Safety Director may require utility works or railway operations to stop);						
(l)	section 34(5) (Safety Director may direct utility works or railway operations to be altered, demolished or taken away);						
(m)	section 34J(7) (Safety Director may give directions if persons fail to make safety interface agreements);						
(n)	section 34K(2) (Register of safety interface agreements);						

Victorian 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
(o)	section 36 (Offence for certain rail transport operators not to be accredited);						
(p)	section 42(6) (Safety Director may give directions in relation to rolling stock operator applicants);						
(q)	section 43(4) and (5) (Safety Director may direct applicants to co-ordinate and cooperate in their accreditation applications);						
(r)	section 48(1) (Offence to fail to comply with conditions etc.);						
(s)	section 54(2) (Application for variation of accreditation is required in certain cases);						
(t)	section 57(1) (False or misleading information);						
(u)	section 61K (Penalty for breach of condition or restriction);						
(v)	section 68(1) (Accredited rail transport operator must put into effect emergency plan without delay);						
(w)	section 69(1) (Accredited rail transport operator must notify emergency services and others of a major incident);						
(x)	section 69A(2) and (3) (Accredited rail transport operators to provide information); or						
(y)	section 69R(1) (Offences relating to registration).						

Victorian 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
Rail Safety National Law Application Act 2013 s 49: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence.	An officer of the Body Corporate if the officer failed to exercise due diligence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 4
Shop Trading Reform Act 1996 s 8A: Criminal liability of officers of Bodies Corporate – accessorial liability. For offences against section 5(2) or (3) (Ordinary shop closing times).	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2
Summary Offences Act 1966 s 54: Offence by Body Corporate.	Any director, manager or officer of the Body Corporate who knowingly directs, authorizes or suffers the commission of 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 3

Victorian 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>Supported Residential Services (Private Proprietors) Act 2010 s 201: Offences by Corporations and partnerships etc.</p>	Any Officer of the Corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Surveillance Devices Act 1999 s 32: Criminal liability of officers of Bodies Corporate – accessorial liability. Applies to offences against the following provisions: (a) section 23 (Failure to comply with assistance order); (b) section 24(1) or (2) (Existence and operation of assistance order not to be disclosed); or (c) section 31 (Unlawful interference with surveillance devices).</p>	<p>Officers of the Body Corporate if the officer:</p> <p>(a) authorised or permitted the commission of the offence by the Body Corporate; or</p> <p>(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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 32A: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 6(1) (Regulation of installation, use and maintenance of listening devices);</p> <p>(b) section 7(1) (Regulation of installation, use and maintenance of optical surveillance devices);</p> <p>(c) section 8(1) (Regulation of installation, use and maintenance of tracking devices);</p> <p>(d) section 9B(1) (Prohibition on certain uses of optical surveillance devices or listening devices);</p> <p>(e) section 9C(1) (Prohibition on communication or publication of activities or conversations permitted to be observed etc.);</p> <p>(f) section 11(1) (Prohibition on communication or publication of private conversations or activities); or</p> <p>(g) section 30E(1) or (2) (Prohibition on use, communication or publication of protected information).</p>	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

Victorian 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>Taxation Administration Act 1997 s 130A:</p> <p>Criminal liability of officers of Bodies Corporate – accessory liability.</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 22(2) (Windfalls – refusal of refund);</p> <p>(b) section 47(6) (Collection of tax from third parties);</p> <p>(c) section 54(1) (Form of record – English language);</p> <p>(d) section 60 (Falsifying or concealing identity);</p> <p>(e) section 89 (Impersonating Commissioner or authorised officer); or</p> <p>(f) section 91(1) (Prohibition on certain disclosures of information by tax officers).</p>	<p>Officers of the Body Corporate if the officer:</p> <p>(a) authorised or permitted the commission of the offence by the Body Corporate; or</p> <p>(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	N/A	N/A	<p>A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.</p>	<p>Onus on the accused to establish a defence.</p>	Type 2

Victorian 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 130B: Criminal liability of officers of Bodies Corporate - failure to exercise due diligence.</p> <p>Applies to offences against the following provisions:</p> <ul style="list-style-type: none"> (a) section 10(1) or (2) (Instruments and returns to include all relevant information) (b) section 43(1) or (2) (Effect of approval); (c) section 50(1) (Requirement to keep proper records); (d) section 51(2) (Additional records); (e) section 52(1) (Inclusion of false or misleading information in records); (f) section 53 (Accessibility); (g) section 55(1) (Period of retention); (h) section 56 (Wilfully destroying records); (i) section 58 (Deliberately omitting information); (j) section 59 (Failure to lodge documents); 	Officers of the Body Corporate if the officer failed to exercise due diligence to prevent the commission of the offences by the Body Corporate against specific sections of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4

Victorian 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 73(8) (Power to require information, documents and things, and attendance);							
(l) section 88(1) (Obstruction of Commissioner or an authorised officer);							
(m) section 94(1) (Prohibition on secondary disclosures of information);							
(n) section 116E(1) (Prohibition on disclosures of information obtained for feasibility study); or							
(o) section 116I(1) (Secondary disclosure of information under this Part).							
s 130C: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence (legal burden of proof).	Officer of the Body Corporate if a Body Corporate commits an offence against section 57(1) (Giving false or misleading information to tax officers) or 61 (Tax evasion).	Yes, if a corporate breach is established.	The officer exercised due diligence to prevent the commission of the offence by the Body Corporate.	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 1
Therapeutic Goods (Victoria) Act 2010 s 55: Offences by Bodies Corporate.	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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>Tobacco Act 1987</i> s 41: Offences by a Body Corporate. This provision does not apply to contraventions of the following sections:</p> <ul style="list-style-type: none"> (a) section 6(2D) (Certain advertising prohibited); (b) section 7(5) (Competitions, rewards and shopper loyalty schemes); (c) section 8(3) (Free samples); (d) section 9(5) (Prohibition of certain sponsorships); (e) section 13A(2A) (Mobile selling of tobacco products); (f) section 15M(1) (Offence for tobacco company to sell tobacco products from temporary outlet); or (g) section 15S(2) (Offence to breach a ban order). 	Each officer of the Body Corporate if the officer knowingly authorised or permitted the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p><i>Transport (Compliance and Miscellaneous) Act 1983</i> s 226: Offences by Bodies Corporate.</p>	Any 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 offence was committed by the Body Corporate without the person's consent or connivance and the person exercised due diligence to prevent the commission of the offence.	Onus on the accused to establish a defence.	Type 1

Victorian 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>Transport (safety Schemes Compliance and Enforcement) Act 2014</i> s 72B: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence:</p> <p>Applies to offences against the following provisions:</p> <p>(a) section 8(3) (General powers on entry or boarding);</p> <p>(b) section 22(6) (Power to require production of documents, devices or other things and answers to questions);</p> <p>(c) section 29(4) (Directions relating to seizure);</p> <p>(d) section 43(2) (Direction to provide certain information);</p> <p>(e) section 58(1) (Compliance with improvement notice);</p> <p>(f) section 63(1) (Compliance with prohibition notice);</p> <p>(g) section 73 (Compliance with non-disturbance notice);</p> <p>(h) section 86 (Compliance with transport safety undertaking);</p> <p>(i) section 90(4) (Response to certain safety reports);</p> <p>(j) section 91(4) or (6) (Power to require works to stop);</p> <p>(k) section 103(1), (2) or (3) (Offence to give false or misleading information);</p>	<p>Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections.</p>	<p>No, the onus is on the prosecution to prove the required elements.</p>	<p>N/A</p>	<p>N/A</p>	<p>An officer may rely on a defence that would be available to the Body Corporate if it were charged with the offence.</p>	<p>N/A</p>	<p>Type 4</p>

Victorian 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 110(9) (Supervisory intervention order); (m) section 111(5) (Exclusion orders); or (n) section 126 (Offence to assault, threaten or intimidate transport safety officer).							
Unauthorized Documents Act 1958 s 5: Penalties etc. in case of Bodies Corporate.	Every Director, Manager, Secretary or Officer of any such Company and every member of the managing body of any such Body Corporate who commits or knowingly authorizes or permits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Unclaimed Money Act 2008 s 26A: Criminal liability of officers of Bodies Corporate – accessory liability. Applies to offences against the following provisions: (a) section 17 (Requirements of business in respect of business register); (b) section 19 (Obligations of trustee in respect of unclaimed trust property); (c) section 21 (Inclusion of false or misleading information in records); (d) section 22 (Accessibility of records); (e) section 23 (Form of record – English language); (f) section 24 (Period of retention);	Officers of the Body Corporate if the officer: (a) authorised or permitted the commission of the offence by the Body Corporate; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 2

Victorian 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 25 (Giving false or misleading information to an authorised person); or (h) section 70(6) or (7) (Powers of entry, search and inspection).							
s 26B: Criminal liability of officers of Bodies Corporate - failure to exercise due diligence. For offences against the following provisions: (a) section 18 (Requirements of business in respect of payment to Registrar and lodgement of return); (b) section 20(1) or (2) (Requirement to keep proper records); or (c) section 69(4) (Power of investigation).	Officers of the Body Corporate if the officer failed to exercise due diligence to prevent the commission of the offence by the Body Corporate against specific sections of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	Onus on the accused to establish a defence.	Type 4
Veterinary Practice Act 1997 s 59(2): Advertising.	Any person who is concerned in or takes part in the management of the Body Corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	A person who, in good faith, publishes or prints an advertisement which contravenes on behalf of another person is not guilty of an offence.	Onus on the accused to establish a defence.	Type 3
Victorian Energy Efficient Target Act 2007 s 70: Offences by Bodies Corporate.	Any officer of the Body Corporate who knowingly authorised or permitted the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Victorian 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
Victorian Renewable Energy Act 2006 s 109: Offences by Bodies Corporate.	Any officer of the Body Corporate who knowingly authorised or permitted the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Water Act 1989 s 297: Offences by Corporations and partnerships etc.	Any Officer of the Corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Water Industry Act 1994 s 178: Offences by Bodies Corporate.	Any officer of the Body Corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Working with Children Act 2005 s 44: Offences by Bodies Corporate.	Officers of the Body Corporate if the person knew of, or 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 3
Workplace Injury Rehabilitation and Compensation Act 2013 s 601: Criminal liability of officers of Bodies Corporate – failure to exercise due diligence. Applies to offences against the following provisions: (a) section 16 (Notice to be displayed at workplaces); (b) section 17(1) and (3) (Register of injuries); (c) section 31(3) (Claims against certain employers);	Officers of the Body Corporate who fail to exercise due diligence to prevent the commission of an offence by the Body Corporate against specific sections.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	An officer may rely on a defence that would be available to the Body Corporate if it were charged with the offence.	N/A	Type 4

Victorian 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
(d)	section 73(1) and (2) (Responsibilities of employer);						
(e)	section 103(1) (Provide employment);						
(f)	section 104(1) (Plan return to work);						
(g)	section 105(1) (Consult about the return to work of a worker);						
(h)	section 106(1) (Return to work co-ordinator to be appointed);						
(i)	section 107(1) and (2) (Make return to work information available);						
(j)	section 108(1) (Employer to notify Authority of return to work of worker);						
(k)	section 109(2) (Host to co-operate with labour hire employer);						
(l)	section 120(2) (Authority may give direction);						
(m)	section 136(4) (Power to issue Return to Work improvement notice);						
(n)	section 139(2) (Issue of Return to Work improvement notice);						
(o)	section 143(2) (Other assistance in exercising powers);						
(p)	section 146 (Offences in relation to inspections);						
(q)	section 147 (Protection of inspectors);						
(r)	section 179(3) (Payment of weekly payments);						

Victorian 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)	section 292 (Offence to make false or misleading statement);						
(t)	section 295 (Offence not to comply with direction);						
(u)	section 384(5) (Review of approval);						
(v)	section 389(2) and (3) (Submission of return by self-insurer);						
(w)	section 403(4) (Employer ceases to be self-insurer);						
(x)	section 407(4) (Provision of guarantees);						
(y)	section 409(5) (Eligible subsidiary of self-insurer becomes a non-WorkCover employer);						
(z)	section 412(3) (Secrecy provisions);						
(aa)	section 434(3) (Registration of employers);						
(bb)	section 438(1) (Books and accounts to be preserved);						
(cc)	section 439 (Employer to give estimate of rateable remuneration);						
(dd)	section 442(1) (Employer to give certified statement);						
(ee)	section 443(1) and (2) (Revised estimates of rateable remuneration);						
(ff)	section 554(1), (2) and (3) (Offences);						
(gg)	section 558(8), (9) and (10) (Issue of search warrants);						

Victorian 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
(hh)	section 561 (Offence of engaging in prohibited conduct);						
(ii)	section 563(1) (Consequences of prohibited conduct for legal practitioners);						
(jj)	section 564(5) (Legal practitioner and agents can be requested to certify as to prohibited conduct);						
(kk)	section 566(3) (Power to restrict or ban agents who engage in prohibited conduct);						
(ll)	section 575(1) (Offence to engage in discriminatory conduct);						
(mm)	section 581(1) and (2) (Fraud);						
(nn)	section 582(1) and (2) (Bribery);						
(oo)	section 583(1) and (2) (False or misleading information);						
(pp)	section 584(1) and (2) (False or misleading statements);						
(qq)	section 585(1) and (3) (False information);						
(rr)	section 588 (Unauthorised use of information); or						
(ss)	section 589 (Obstructing officers).						

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.

