



Protecting your Position

Western Australian laws imposing
personal liability on directors
and officers



MinterEllison

About the Authors



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He is a member of the Takeovers Panel, the Deputy Chair of the Australian Institute of Company Directors' Law Committee, a member of the Regional Liaison Committee of the Australian Securities and Investments Commission and, until recently, was the Chair of the Law Council of Australia's Corporations Law Committee. All of which have played a leading role in the public debate on corporate governance.



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 Western Australia.

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 Western Australia, the Western Australian Government has introduced the *Directors' Liability Reform Bill 2015* but the Bill has not passed. Accordingly, this text does not incorporate the amendments that would be made if the Bill was passed.

There are still in excess of 90 Western Australian statutes, which impose personal liability on directors and officers.

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

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

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

Introduction (cont'd)

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

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

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

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

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

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

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



Overview

1 Definitions

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

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

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

body corporate means:

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

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

corporation includes a body politic or corporate, and means:

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

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

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

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 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).

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

2.2 Who is liable?

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

2.3 Is the liability automatic?

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

2.4 Defence of ‘Due Diligence’

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

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

2.5 Defence of ‘Unable to Influence’

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

2.6 Additional Defences

This column details any additional defences for the relevant provision.

2.7 Onus of Proof for Defence

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

2.8 Type of Provision

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



3 Summary of Types of Provisions

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

3.1 Type 1 Provision

Type 1 provisions provide that directors, managers and persons concerned in the management of the corporation will be deemed liable where the corporation contravenes, whether by act or omission, any provision of the Act or regulation in question and it is proved that the offence occurred with the consent or connivance of the person in question.

An example of this type of provision is section 115(1) of the *Classification (Publication, Films and Computer Games) Act 1996*, which provides that:

115 Liability of bodies corporate and their directors etc.

- (1) If a body corporate commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of any director, employee or agent of the body, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, commits that offence.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

- (3) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that —
 - (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the director, employee or agent had that state of mind.
- (4) If a director, employee or agent of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual or apparent authority, the body corporate must be taken, for the purposes of a prosecution for an offence against this Act, also to have engaged in the conduct unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct. In the summary below, defence (a) has been described as a defence of 'unable to influence' and defences (b) and (c) have been described as a defence of additional defences.

It must be noted that variations of Type 1 provisions may include additional requirements in order for the person to be liable.

Furthermore, the persons to whom the provision applies may also vary. An example of a variation of a Type 1 provision is section 58(1) of the *Exotic Diseases of Animals Act 1993*, which provides that:

3 Summary of Types of Provisions (cont'd)

58 Liability of officers for offence by a body corporate

- (1) If a body corporate commits an offence under this Act and it is proved that –
 - (a) the offence was committed with the consent or connivance of an officer of the body corporate; or
 - (b) an officer of the body corporate failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard –
 - (i) to the nature of the functions of that officer; or
 - (ii) to all the circumstances, the officer commits the like offence.

Type 1 provisions do not normally contain defences available to the person liable, however there are some exceptions (eg. section 53 of the *Human Reproductive Technology Act 1991*).

3.2 Type 2 Provision

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

A variety of defences apply (in most, but not all Type 2 provisions) including:

- (a) the person did not know that the offence was committed;
- (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
- (c) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

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

An example of this type of provision is section 35 of the *Auction Sales Act 1973*, which provides that:

35 Offences

- (1) Any corporation which or person who –
 - (a) fails to comply with any of the requirements of this Act within the time or in the manner thereby provided; or
 - (b) contravenes or fails to comply with any provision of this Act, commits an offence.
- (2) Any corporation or person convicted of an offence against this Act is liable, where no penalty is expressly provided for the offence, to a penalty not exceeding \$400.



3 Summary of Types of Provisions (cont'd)

- (3) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.
- (4) Where a corporation is charged with an offence against this Act, a person who is concerned or takes part in the management of the corporation may be charged with a like offence and where the corporation is convicted of the offence a person who is so concerned or takes part in the management of the corporation may be convicted of the like offence unless he proves that –
 - (a) the offence committed by the corporation was committed without his knowledge;
 - (b) he was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
 - (c) he, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.
- (5) Where by reason of or arising out of any act or omission of the holder of a licence granted for the benefit of a firm or corporation that firm or corporation is charged with an offence under this Act, is required to show cause for the purposes of section 22(1),

or is required to satisfy the court as to its fitness or repute upon any application for the grant or renewal of a licence it shall be an answer in any such case for the firm or corporation to show that –

- (a) the act or omission complained of was committed or occurred without its knowledge and that it could not reasonably be expected to have known that any provision of this Act had been contravened or had not been complied with;
- (b) the firm or corporation was not in a position to influence the conduct of the holder of the licence in relation to the act or omission; or
- (c) the firm or corporation used all due diligence to prevent the commission or occurrence of such act or omission.

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

3.3 Type 3 Provision

All other provisions are described as Type 3 provisions which impose liability on individuals in corporations in a variety of circumstances.

Western Australian laws
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Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Aboriginal Heritage Act 1972 s 57(2): Penalties.	Directors, managers, secretaries or other similar officers of a Body Corporate or any person who was purporting to act in that capacity, who consented to the offence by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Animal Welfare Act 2002 s 80: Liability of officers for offence by Body Corporate or scientific establishments.	Every person who was an officer of the body or establishment at the time the offence was committed.	Yes, if a corporate breach is established.	Both: (a) the officer exercised all such due diligence to prevent the commission of the offence as the Officer ought to have exercised having regard to the Officer's functions and to all the circumstances and (b) the offence was committed without the officer's consent or connivance.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
Anzac Day Act 1960 s 4: Race meetings on Anzac Day.	Each member of the managing body or committee of a racing club.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 5: Proceeds of race meetings on Anzac Day to be paid to Trust.	Each member of the managing body or committee of a racing club.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
s 6: Sports on Anzac Day.	Each member of the managing body or committee of a club, association or body.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
s 7: Proceeds of sports on Anzac Day to be paid to Trust.	Each member of the managing body or committee of a club, association or body.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
Architects Act 2004 s 76: Liability of certain officers of Body Corporate: offences.	Officers of the Corporation at the time the offence is committed.	Yes, if a corporate breach is established.	Both: (a) the Officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances; and (b) the offence was committed without the Officer's consent or connivance.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Armorial Bearings Protection Act 1979</i> s 4: Penalties in case of Bodies Corporate.	Directors, Managers, Secretaries or other Officers of the Company or other Body Corporate, who aided, abetted, counselled or procured 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
<i>Auction Sales Act 1973</i> s 35: Offences.	A person who is concerned or takes part in the management of the Corporation.	Yes, if a corporate breach is established.	The person was in a position to influence the conduct of the Corporation and, being in such a position, used all due diligence to prevent the commission of the offence by the Corporation.	The person was not in a position to influence the conduct of the Corporation in relation to the commission of the offence.	The offence committed by the Corporation was committed without the person's knowledge.	Onus on the accused to establish a defence.	Type 2
<i>Betting Control Act 1954</i> s 27G: Liability of persons who occupy a position of authority in a Body Corporate.	Where the offence was committed with the consent or connivance of a person who occupies a position of authority in the Body Corporate, the person who occupies that position. Each person who occupies a position of authority in the Body Corporate who fails to exercise due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all other circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 27H: Liability of natural persons, partners, Bodies Corporate and officers.	If a Body Corporate commits an offence under the Act related to the business as a book maker, each person who occupies a position of authority in the Body Corporate is liable for the offence committed by the manager, employee or agent of the Body Corporate.	Yes, if a corporate breach is established.	Both: (a) the person exercised all such due diligence to prevent the commission of the offence as ought to have exercised having regard to the nature of the person's functions and to all the circumstances; and (b) the offence was committed without the person's consent or connivance.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Biodiversity Conservation Act 2016</i> s 237: Liability of officers of body corporate for offence by body.	An officer of the Body Corporate, if the officer failed to take all reasonable steps to prevent the commission of an offence under: <ul style="list-style-type: none"> (a) section 48(1) (Modifying occurrence of threatened ecological community), 65(1) (Contravention of habitat conservation notice), 140(1) (Contravention of environmental pest notice), 150(1) (Taking threatened fauna) or 173(1) or (2) (Taking threatened flora); or (b) section 152(1) (Possessing fauna), 153(1) (Disturbing fauna), 157(1) (Dealing in fauna), 158(2) (Processing fauna), 159 (Importing fauna) or 160 (Exporting fauna) if the offence involves a cetacean or threatened fauna; or (c) section 176(1) (Supplying flora), 177(1) (Dealing in flora), 178(2) (Processing flora) or 179 (Exporting flora) if the offence involves threatened flora; or (d) a provision of the regulations that is prescribed for the purposes of this section. 	No	N/A	A court may have regard to whether the officer was in a position to influence the conduct of the Body Corporate in relation to the commission of an offence.	A court may have regard to what the officer knew about the commission of the offence.	The onus is on the accused to establish a defence.	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Biosecurity and Agriculture Management Act 2007</i> s 110: Liability of Body Corporate's officers.	Every person who was an Officer of the Corporation at the time the offence was committed.	Yes, if a corporate breach is established.	Both: (a) the Officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances and (b) the offence was committed without the Officer's consent or connivance	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Building Services (Complaint Resolution and Administration) Act 2011</i> s 105: Offences by Body Corporate - liability of officers.	Every person who was an Officer of the Corporation at the time the offence was committed.	Yes, if a corporate breach is established.	The Officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	The offence was committed without the Officer's consent or connivance.	Onus on the accused to establish a defence.	Type 2
<i>Building Services (Registration) Act 2011</i> s 97: Offences by Bodies Corporate - liability of officers.	Every person who was an Officer of the Corporation at the time the offence was committed.	Yes, if a corporate breach is established.	The Officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	The offence was committed without the Officer's consent or connivance.	Onus on the accused to establish a defence.	Type 2
<i>Business Names Act 1962</i> s 29: Offences committed by Corporations.	Directors, Managers, Secretaries or other Officers of the Corporation who was knowingly a party to the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Charitable Collections Act 1946</i> s 15(4): Statements to be furnished by licensees.	Members of the committee or governing body or members of the society, body or association shall be severally liable.	Yes, if a corporate breach is established.	N/A	N/A	The offence was committed without the person's knowledge or without his consent.	Onus on the accused to establish a defence.	Type 2
<i>Civil Judgments Enforcement Act 2004</i> s 90: Nature of default inquiry.	Where a Corporation is the judgment debtor, and doesn't comply with requirements in section 90(1), Officers of the Corporation are guilty of contempt of court.	Yes, if a corporate breach is established.	Both: (a) the Corporation's disobedience occurred without the Officer's consent or connivance; and (b) the Officer took all the measures to ensure the Corporation obeyed the order that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	N/A	N/A	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 98(3): Disobeying judgment is a contempt of court.	If a Corporation disobeys a judgment to which this Division (other non-monetary judgments) applies, the Corporation is guilty of a contempt of court, and each Officer of the Corporation is also guilty of a contempt of court.	Yes, if a corporate breach is established.	Both: (a) the Corporation's disobedience occurred without the Officer's consent or connivance; and (b) the Officer took all the measures to ensure the Corporation obeyed the order that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	N/A	N/A	Type 2
Classification (Publications, Films and Computer Games) Enforcement Act 1996 s 115: Liability of Bodies Corporate and their Directors etc.	Directors, employees or agents of the body, or any person who purported to act in such a capacity are liable if they consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Consumer Affairs Act 1971 s 23Y: Offences.	Every person who at the time of the commission of the offence was a director or officer concerned in the management of the Corporation and who 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
Co-operatives Act 2009 s 65: 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 for more than 28 days after the number of members falls below the minimum number.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 122: Failure to cancel membership – offence by director.	If the board of a co-operative fails to cancel the membership of a member as requested by this Part, a director of the co-operative who did not use all due diligence to prevent the failure commits an offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 181: Lodgement of special resolution.	An officer of the co-operative who knowingly fails to lodge 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 3
s 207A: Responsibility of secretary.	The secretary of a co-operative must take all reasonable steps to ensure that the co-operative does not contravene a provision of the Act that is prescribed by regulations.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 240: Name to appear on business documents etc.	A director of a co-operative who knowingly authorises or permits a contravention of the section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 244ZZO: Contravention by directors of a provision of this Part.	<p>A director of a co-operative, if they contravene the Act and the contravention is dishonest.</p> <p>A director of a co-operative contravenes the Act if they fail to take all reasonable steps to comply with or to secure compliance with:</p> <ul style="list-style-type: none"> (a) section 244I (Small co-operative: direction by members); (b) section 244J (Small co-operative: direction by Registrar); (c) section 244V(1) or (2) (Annual financial reporting to members); (d) section 244W(2) (Deadline for reporting to members); (e) section 244ZB (Lodgment of annual returns with the Registrar); (f) section 244ZC (Lodgment of financial reports etc. with Registrar); (g) section 244ZD (Lodgment of half-year reports with the Registrar); (h) section 244ZE (Registrar's power to require lodgment); (i) section 244ZF (Relodgment if financial report or directors' reports amended after lodgment); or (j) section 317 of the Corporations Act as applying under section 244ZA (Application of Corporations Act: additional reporting by debenture issuers). 	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 273: 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 provide the required elements.	If the person was in a position to influence the conduct of the co-operative in relation to the offence, the person used all due diligence to prevent the commission of the offence.	N/A	N/A	Onus on the accused to establish a defence.	Type 3
s 304: 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 3
s 346: 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 3
s 351: Contravention of Division – offence by co-operative.	If a provision of this Division 2 of Part 13 (Explanatory Statements) is contravened, the co-operative concerned and any other person involved in the contravention commits an offence.	No, the onus is on the prosecution to provide 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 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 380: 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 3
s 438: 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 concealment, destruction, mutilation or falsification of any securities, books or records.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 3
s 474: Offences by officers of co-operatives.	Any person who is a director of the co-operative or concerned in its management if the person knowingly authorised or permitted the contravention, and any other officer of the co-operative who by a wilful act or omission is the cause of the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 481D: Enforcement orders after contravention of undertaking.	Each officer of the co-operative or other Corporation if the officer knowingly authorised or permitted the breach.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Credit (Administration) Act 1984</i> s 48: Officers of Bodies Corporate, liability of for offences.	Directors, managers, secretaries or other officers of the Body Corporate who consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Credit Act 1984</i> s 160: Directors etc. of Corporations, liability of.	Directors, managers, secretaries or other officers of the Body Corporate who consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Criminal Procedure Act 2004</i> s 180: Corporation and its Officers, liability for offences.	Officers of the Corporation at the time of the alleged offence.	Yes, if a corporate breach is established.	Both: (a) that the offence was committed without the Officer's consent or connivance; and (b) that the Officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish defence	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Criminal Property Confiscation Act 2000</i> s 136: Offences by Body Corporate, liability of officers of in case of etc.	Officers, or person purporting to act as an officer who consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Dangerous Goods Safety Act 2004</i> s 61: Body Corporate's officers, liability of.	Officers of the body at the time of the alleged offence.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Debt Collectors Licensing Act 1964</i> s 23: Offence by Corporation.	Directors or managers at the time of the offence.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the commission of the offence.	N/A	The offence was committed without the person's knowledge.	Onus on the accused to establish a defence.	Type 2
<i>Dog Act 1976</i> s 43(3): Offences relating to enforcement, etc.	Any person who is concerned in or takes part in the management of the Body Corporate and who was 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>Education Service Providers (Full Fee Overseas Students) Registration Act 1991</i> s 46: Liability of directors etc. and Corporations.	Directors and persons concerned in the management of the Body Corporate who gave their authority, permission or consent to the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Emergency Management Act 2005</i> s 98: Body Corporate's officers, liability of.	Officers of the body at the time of the offence.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Employment Agents Act 1976 s 30(3): Offences.	A person who is concerned or takes part in the management of that Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the commission of the offence by the Body Corporate.	The person was not in a position to influence the conduct of the Body Corporate in relation to the commission of the offence by it.	The offence committed by the Body Corporate was committed without the person's knowledge.	Onus on the accused to establish a defence.	Type 2
Energy Operators (Powers) Act 1979 s 86: Liability for the acts of others, Bodies Corporate etc.	Directors, managers, secretaries or other officers of the Body Corporate who consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
Energy Safety Act 2006 s 35: Offence by Body Corporate.	Directors.	Yes, if a corporate breach is established.	N/A	N/A	Defence available if: (a) the person did not aid, abet, counsel or procure the act or omission of the Body Corporate concerned; or (b) the person was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the Body Corporate.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Environmental Protection Act 1986</i> s 118: Liability of Body Corporate and directors etc. of Body Corporate.	Directors or persons who are concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person used all due diligence and reasonable precautions to prevent the commission of the offence by the Body Corporate.	The person was not in a position to influence the conduct of the Body Corporate in relation to the commission of the offence.	Defence available if: (a) the person did not know, and could not reasonably be expected to have known, that the offence was being committed; or (b) the Body Corporate would not have been found guilty of the offence by reason of being able to establish a defence available to it under the Act.	Onus on the accused to establish a defence.	Type 2
<i>Evidence Act 1906</i> s 11A(3): Judge may restrict publication of evidence where section 11 (Court may compel answer to incriminating question) certificate given.	Directors, managers, secretaries or other officers of the Body Corporate, or of any person who was purporting to act in any such capacity, who consented to or connived in the acts or omissions	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Exotic Diseases of Animals Act 1993</i> s 58: Liability of officers for offence by Body Corporate.	Officers, where it is proven that: (a) the offence was committed with the consent or connivance of the officer; or (b) the officer failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard: (i) to the nature of the functions of that officer; or (ii) to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Fair Trading Act 2010</i> s 47: State Administrative Tribunal's powers to deal with contraventions of prescribed code of practice.	Directors who, at the time the offence was committed, consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
s 95: Vicarious liability of directors, employers etc.	Directors, managers, secretaries or similar officers of the body.	Yes, if a corporate breach is established.	If the person was in a position of influence they could not by the exercise of reasonable due diligence have prevented the commission of the offence.	The person was not in a position to influence the conduct of that Corporation or body.	Defence available if: (a) the offence was committed without the person's knowledge; or (b) the person did not authorise or permit the commission of the offence.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Finance Brokers Control Act 1975</i> s 64(2): Penalty for breach.	Directors, managers, secretaries or other officers of the Body Corporate who committed, authorised or permitted the act or omission constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 89: Liability of directors of Body Corporate.	Where a finance broker is a Body Corporate, all its directors are jointly and severally liable to the clients of the Body Corporate for its acts and defaults in respect of the proper application of trust funds received by the Body Corporate from or on behalf of its clients.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
<i>Firearms Act 1973</i> s 21B: Offences by Bodies Corporate and partnerships.	Officers or other persons concerned in the management of the Body Corporate, or any person purporting to act in any such capacity who consented or connived to commit the offence, or if the offence is able to be attributable to any failure to take all reasonable steps to secure compliance by the Body Corporate with the part of the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Fish Resources Management Act 1994</i> s 204: Officers of Body Corporate, liability of for offence by body.	Officers of the Body Corporate who consented to or connived to commit the offence, or who failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Fisheries Adjustment Schemes Act 1987</i> s 18: Offences by Bodies Corporate.	Officers of the Body Corporate who were 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
<i>Food Act 2008</i> s 128: Offences by Bodies Corporate - liability of directors and others.	Officers of the Body Corporate at the time of the offence.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken, having regard to the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
<i>Gaming and Wagering Commission Act 1987</i> s 37: Criminal liability of directors etc.	Directors, managers, secretaries or other similar officers of the Corporation, or who purported to act in any such capacity.	Yes, if a corporate breach is established.	The person took all reasonable steps to prevent the commission of the offence.	N/A	The offence was committed without the person's knowledge.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Gas Corporation (Business Disposal) Act 1999</i> s 13: Liability of management for offence by Body Corporate.	Officers.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer exercised all due diligence to prevent the commission of the offence that ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
<i>Gold Corporation Act 1987</i> s 76: Offences by Bodies Corporate.	Directors, managers, executive officers, secretaries or other persons concerned in the management of the Body Corporate, or any person purporting to act in any such capacity who consented or connived to commit or who is attributable to any failure to take all reasonable steps to secure compliance by the Body Corporate with the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Heritage of Western Australia Act 1990</i> s 68: Liability of successors in title, Bodies Corporate and their officers, defences etc.	Directors, managers, executive officers, secretaries or other persons concerned in the management of the Body Corporate, or any person purporting to act in that capacity who consented to or connived to commit and offence, or who may be attributable to any failure to take all reasonable precautions to secure that the Act should not be contravened by the Body Corporate.	No, the onus is on the prosecution to prove the required elements.	All of the following: (a) the contravention occurred without the consent or connivance of that person; (b) the person had taken all reasonable precautions to secure that this Act should not be contravened; and (c) that the person could not by the exercise of reasonable diligence have prevented the contravention.	N/A	N/A	Onus on the accused to establish a defence	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Higher Education Act 2004 s 27: Vicarious liability for Corporations.	Directors and other persons concerned in the management of the Body Corporate if the offence took place with his or her authority, permission or consent.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Home Building Contracts Act 1991 s 30: Offences by Body Corporate, liability of officers for.	Officers or persons purporting to act as officers of the Body Corporate are liable if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Hope Valley-Wattleup Redevelopment Act 2000 s 30: Liability of officers for offence committed by Body Corporate.	Officers who consented to or connived to commit an offence, or who failed to exercise all the due diligence to prevent the commission of the offence that ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Hospitals and Health Services Act 1927 s 26M: Vicarious liability of directors etc. for offence by Body Corporate.	Directors and persons who, at the time of the commission of the offence, were directors, managers, secretaries or other similar officers of the Body Corporate, or were acting, or purporting to act in any such capacity.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the person's consent or knowledge; and (b) the person exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to their functions in that capacity and in all the circumstances.	N/A	N/A	Onus on the accused to establish a defence	Type 2
Human Reproductive Technology Act 1991 s 53: Offences by Bodies Corporate and Partnerships.	Persons who are, or at the material time were officers of, or persons occupying a position of authority in, that Body Corporate or persons purporting to act in any such capacity and who were in any way, by act or omission, directly or indirectly, knowingly concerned in or a party to the commission of the principal offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	If it is proved that such direction had been given and such supervision had been exercised or caused to be exercised as were reasonably necessary to ensure that the principal offence was not committed.	Onus on the accused to establish a defence.	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Industrial Relations Act 1979 s 96G: Criminal responsibility of officers etc. for offences in s. 96C, 96D and 96E.	In relation to offences against section 96C (Discrimination because of membership of organisation) or 96E (Discriminatory etc. acts against persons because of non-membership of employee organisation), any officer or member of the organisation who was in any way, by act or omission and, directly or indirectly, knowingly concerned in or party to 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
s 96H: Criminal responsibility of Corporations etc. for offences in s. 96C, 96D and 96E.	In relation to offences against section 96C (Discrimination because of membership of organisation) or 96E (Discriminatory etc. acts against persons because of non-membership of employee organisation), any officer who was in any way, by act or omission and, directly or indirectly, knowingly concerned in or party to 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
Juries Act 1957 s 57: Jurors not to be photographed.	Directors, managers, secretaries or officers of a Company or any member of the managing body of a Body Corporate who commit, or knowingly authorise or permit, an offence under this section.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Land Valuers Licensing Act 1978 s 34: Offences by Corporations.	Officers of the Corporation who were 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
Legal Profession Act 2008 s 212: Liability of principals of law practices.	Principals of a law practice.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2
s 584: Liability of principals.	Principals of a law practice.	Yes, if a corporate breach is established.	The principal, if in that position, used all due diligence to prevent the contravention by the practice.	The principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision.	The practice contravened the provision without the knowledge actual, imputed or constructive of the principal.		Type 2
Liquor Control Act 1988 s 164: Bodies Corporate and partnerships, offences by.	Officers or other persons concerned in the management of the Body Corporate, or any person purporting to act in any such capacity who is found to have consented to or connived to commit an offence, or who is attributable to any failure to take all reasonable steps to secure compliance by the Body Corporate with the Act.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Litter Act 1979</i> s 24C: Offences by Bodies Corporate, liability of officers of in case of.	Directors, managers, secretaries or officers of the Body Corporate, or any person who was purporting to act in any such capacity is liable if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Major Events (Aerial Advertising) Act 2009</i> s 16: Liability of certain officers of Body Corporate: offences.	Officers of the Body Corporate at the time of the alleged offence.	Yes, if a corporate breach is established.	Both; (a) the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances; and (b) the offence was committed without the officer's consent or connivance.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Marketing of Potatoes Act 1946</i> s 41A: Offence by Body Corporate, liability of officers for.	Officers where the offence occurred with the consent or connivance of the officer or who failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Medicines and Poisons Act 2014</i> s 118: Liability of officers for acts of Body Corporate.	Every person who was a corporate officer of the Body Corporate at the time of the alleged offence, if: (a) the corporate officer is charged with the offence; and (b) it is proved that the Body Corporate committed the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	The offence was committed without the officer's knowledge, authority or consent. The officer took all the measures to prevent the commission of the offence that the officer could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances	N/A	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Metropolitan Redevelopment Authority Act 2011</i> s 129: Body Corporate's officers, liability of.	Officers where the offence occurred with the consent or connivance of the officer or who failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2
<i>Mines Safety and Inspection Act 1994</i> s 100: Liability of directors etc. for offences by Corporation.	Directors, managers, secretaries or officers of the body, or any person who was purporting to act in any such capacity is liable if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 100A: Liability of directors etc. for offences by Corporation involving gross negligence.	<p>Where an offence is committed under sections 9A(1) (Breaches of s. 9(1), penalties for), 12A(1) (Breaches of s. 12, penalties for), 12C(1) (Breaches of s. 12B, penalties for), 13A(1) (Breaches of s. 13, penalties for) or 15E(1) (Breaches of s. 15D, penalties for), an officer will be responsible:</p> <p>(a) if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions;</p> <p>(b) in circumstances where the officer knew that the contravention would be likely to cause the death or, or serious harm to, a person to whom a duty was owed but acted or failed to act as mentioned in a) in disregard of that likelihood.</p> <p>If the above does not apply, then an officer will commit an offence under sections 9A(2) (Breaches of s. 9(1), penalties for), 12A(2) (Breaches of s. 12, penalties for), 12C(2) (Breaches of s. 12B, penalties for), 13A(2) (Breaches of s. 13, penalties for) or 15E(2) (Breaches of s. 15D, penalties for) if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Mining Act 1978 s 154(3): General penalty.	Directors and every other officer of the Body Corporate concerned in the management thereof if the act or omission that constituted the offence took place with their authority, permission or consent.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
Misuse of Drugs Act 1981 s 35: Criminal liability of Company officers.	Directors of the Corporation and every officer concerned in the management of the Corporation.	Yes, if a corporate breach is established.	N/A	N/A	The act or omission constituting the offence took place without the person's knowledge or consent.	Onus on the accused to establish a defence.	Type 2
Motor Vehicle Dealers Act 1973 s 55: Offences by Corporations.	Directors or members of the governing authority of the Corporation or an officer concerned in the management of the Corporation and who 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
Motor Vehicle Repairers Act 2003 s 96: Recovery from directors of Body Corporate.	Directors of the Body Corporate when the act or omission occurred or when the Body Corporate became insolvent.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 110: Liability of directors and officers of Body Corporate.	Directors of the Body Corporate or officers concerned in its management who 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>Nuclear Waste Storage and Transportation (Prohibition) Act 1999</i> s 8: Offence by Corporation.	Directors of the Corporation or persons concerned in the management of the Corporation.	Yes, if a corporate breach is established.	The person, being in such a position, 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 its contravention of the section.	The Corporation contravened the section without the knowledge of the person.	Onus on the accused to establish a defence.	Type 2
<i>Occupational Safety and Health Act 1984</i> s 55(1): Offences by Bodies Corporate.	Directors, managers, secretaries or officers of the body, or any person who was purporting to act in any such capacity if the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 55(1A): Offences by Bodies Corporate.	<p>A person will be liable under sections 19A(1) (Breaches of s. 19(1)), 21A(1) (Breaches of s.21), 21C(1) (Breaches of s.21B), 22A(1) (Breaches of s. 22(1)), 23AA(1) (Breaches of s.23), 23B(1) (Breaches of s.23A), or 23H(1) (Breaches of s. 23G) if:</p> <p>(a) the offence was attributable to any neglect on the part of the officer or the officer consented to or connived in the acts or omissions;</p> <p>(b) in circumstances where the person knew that the contravention would be likely to cause death or serious harm to a person to whom a duty was owed, but acted or failed to act as outlined in a) in disregard of that likelihood.</p> <p>If the above does not apply, a person is guilty of an offence under sections 19A(2) (Breaches of s. 19(1)), 21A(2) (Breaches of s.21), 21C(2) (Breaches of s.21B), 22A(2) (Breaches of s. 22(1)), 23AA(2) (Breaches of s.23), 23B(2) (Breaches of s.23A), or 23H(2) (Breaches of s. 23G) if it occurred with the consent or connivance of the person or was attributable to any neglect on the part of the person.</p>	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Pawnbrokers and Second-Hand Dealers Act 1994</i> s 89(3): Liability of partners, Bodies Corporate and officers.	Officers.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the Officer's consent or connivance; and (b) the Officer exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the Officer's functions and to all the circumstances.	N/A	N/A	N/A	Type 2
<i>Pearling Act 1990</i> s 56: Offences by Bodies Corporate, liability of officers for.	Directors, managers, secretaries or officers of the Body Corporate, or any person who was purporting to act in any such capacity if the offence occurred with the consent or connivance of the person or was attributable to any 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 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Perry Lakes Redevelopment Act 2005</i> s 50: Body Corporate's officers, liability of.	Officers at the time of the alleged offence.	Yes, if a corporate breach is established.	Both: (a) that the offence was committed without the Officer's consent or connivance; and (b) that the Officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the Officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Petroleum Products Pricing Act 1983</i> s 29: Liability of officers etc., of Body Corporate.	Any chairman, member of the governing body, director, manager, secretary, or officer of a Body Corporate who knowingly authorises 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
<i>Pharmacy Act 2010</i> s 71: Liability of certain officers of Body Corporate: offences.	If a Body Corporate is charged with an offence under the Act, every person who was an officer of the Body Corporate at the time may also be charged with the offence.	Yes, if a corporate breach is established.	The officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.	N/A	The offence was committed without the officer's consent or connivance.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Prostitution Act 2000</i> s 59: Liability of managerial officer for offence by Body Corporate.	Managerial officers of the body, being: (a) a director or secretary of the body; (b) a person who exercises or exerts control or influence over the body, or is in a position to do so; (c) a person who at any time takes responsibility for the management of a business carried on by the body; or (d) a person who is a shareholder of the body, if the body is a proprietary company.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the person's consent or connivance; and (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
<i>Radiation Safety Act 1975</i> s 56: Liability for the acts of others etc.	Director or members of the governing authority of the Body Corporate, or the manager, secretary or other similar officer of the Body Corporate if the offence occurred with the consent or connivance of the person or was attributable to any neglect on the part of the person.	No, the onus is on the prosecution to prove the required elements.	The person had taken all reasonable means to enforce the provisions of this Act and that the contravention or non-compliance occurred without their consent or connivance and that he exercised all due diligence to prevent it.	N/A	N/A	Onus on the accused to establish a defence.	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Rail Safety National Law (WA) Act 2015</i> Schedule, s 55: Duty of officers to exercise due diligence.	If a person has a duty or obligation under the <i>Rail Safety National Law (WA)</i> , an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.	No, the onus is on the prosecution to provide the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Real Estate and Business Agents Act 1978</i> s 139: Directors of Body Corporate, liability of.	Directors who, at the time of any defalcation by the licensee, are jointly and severally liable in respect of that defalcation and, at the time of an order or direction made by a court, the Real Estate and Business Agents Supervisory Board, or the State Administrative Tribunal against the licensee are jointly and severally liable in respect of the order or direction.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
<i>Retail Trading Hours Act 1987</i> s 34: Liability of directors etc. of Bodies Corporate.	Directors, managers, secretaries or officers of the Body Corporate or a person who was purporting to act in any such capacity where the offence has been committed with the consent or connivance of, or was attributable to any neglect on the part of that person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Retirement Villages Act 1992</i> s 79: Liability of directors etc.	Officers or persons purporting to act as an officer of the Body Corporate where the offence has been committed with the consent or connivance of, or was attributable to any neglect on the part of that person.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 1
<i>Security and Related Activities (Control) Act 1996</i> s 90: Liability of officers.	Officers.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Settlement Agents Act 1981 s 65: Offences under this division (Trust accounts).	Directors, managers, secretaries or officers of the Body Corporate who committed, authorised or permitted the act or omission constituting the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
s 117: Liability of directors of Body Corporate for defalcations.	Directors of the Body Corporate at the time of any defalcation by the licensee is jointly and severally liable.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 3
Stamp Act 1921 s 75JE: Claw-back (instruments). s 75JF: Claw-back (Part IIIA statements).	Directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and penalty tax unless the Commissioner is satisfied that: (a) the winding-up was a creditors' voluntary winding-up; and (b) no creditor was an associate of the Body Corporate.	Yes, if a corporate breach is established	N/A	N/A	N/A	N/A	Type 3
s 75JG: Offences and recovery of duty etc.	If there is a contravention of section 75JA(3)(c) (Corporate reconstructions: exemptions) or 75JB(4) or (5f)(c) (Corporate reorganisations: exemption from duty on conveyances between associated bodies corporate) and recovery isn't possible under section 75JE (Claw-back (instruments)) or section 75JF (Claw-back (Part IIIA statements)), each officer at the time of contravention who is knowingly a party to the contravention.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Surveillance Devices Act 1998</i> s 39: Offences by Bodies Corporate.	Directors of the Body Corporate.	Yes, if a corporate breach is established.	Both: (a) the person, being in such a position, used all due diligence to prevent the contravention by the Body Corporate; and (b) the Body Corporate contravened the provision without the knowledge of the person.	Both: (a) the person was not in a position to influence the conduct of the Body Corporate in relation to its contravention of the provision; and (b) the Body Corporate contravened the provision without the knowledge of the person.	N/A	Onus on the accused to establish a defence.	Type 2
<i>Swan and Canning Rivers Management Act 2006</i> s 121: Offence by Body Corporate, liability of directors etc. in case of and proof of.	Directors or persons concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	The person being in such a position, used all due diligence and reasonable precautions to prevent the commission of the offence.	The person was not in a position to influence the conduct of the Body Corporate in relation to the commission of the offence.	The person did not know, and could not reasonably be expected to have known, that the offence was being committed. Had it been prosecuted, the Body Corporate would not have been found guilty of the offence by reason of being able to establish a defence available to it under this Act.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Taxation Administration Act 2003 s 67: Recovery from directors of Body Corporate.	Directors will become jointly and severally liable with the Body Corporate for the payment of the pay-roll tax unless before the expiry of 28 days from the date of the notice the Body Corporate remedies its default. If the Body Corporate fails to remedy its default within the time specified in the notice to a director under this section, the directors become jointly and severally liable. If a Body Corporate remedies its default by entering into a tax payment arrangement but later contravenes a condition of the arrangement, the default is revived and the Commissioner may serve another notice on the directors.	Yes, if a corporate breach is established.	N/A	N/A	The director was unable because of illness or for some other proper reason to take steps to get the Body Corporate to remedy its default. The director took all reasonable steps that were possible in the circumstances to get the Body Corporate to remedy the default.	Onus on the accused to establish a defence.	Type 3
s 109: Offence by Body Corporate.	Directors of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	Both: (a) the person did not aid, abet, counsel or procure the act or omission of the Body Corporate concerned; and (b) the person was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the Body Corporate.	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Tobacco Products Control Act 2006</i> s 109: Liability of officers of Bodies Corporate.	Officers at the time of the offence.	Yes, if a corporate breach is established.	Both: (a) that the offence was committed without the officer's consent or connivance; and (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Transport Co-Ordination Act 1966 s 55A:</i> Directors etc. of Bodies Corporate, liability of.	Directors, managers, secretaries or other similar officers, of the Body Corporate, or any person who was purporting to act in any such capacity if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on their part.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	If the person can prove that neither they nor any agent or servant did, or knew of the doing of, any act that constituted the offence or can reasonably be regarded as having been the cause or amongst the causes of it, or omitted to do, or knew of an omission to do, any act the omission whereof constituted the offence or the doing whereof can reasonably be regarded as a precaution that would have prevented it.	Onus on the accused to establish a defence.	Type 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Travel Agents Act 1985</i> s 57: Liability of directors and others when offence committed by Body Corporate.	Directors or other officers concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	That the offence was committed without their consent or connivance and that they exercised all such due diligence to prevent the commission of that offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2
<i>Trustee Companies Act 1987</i> s 44: Criminal liability of Trustee Company officers.	Members of the board of directors, principal executive officers, secretaries or other officers of the Trustee Company (including a person who has subsequently ceased to be an officer) who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is guilty 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

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Unauthorised Documents Act 1961</i> s 6: Penalties in case of Bodies Corporate.	Directors, Managers, Secretaries or Officers of that Company, and every member of the managing body of any such Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2
<i>Unclaimed Money Act 1990</i> s 22: Offences.	Directors, managers, secretaries or other officers of a holder of unclaimed money (pursuant to s 7) who wilfully or negligently authorises or permits such failure in compliance.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<i>Veterinary Chemical Control and Animal Feeding Stuffs Act 1976</i> s 61: Vicarious liability.	Directors, managers, secretaries or other similar officers, of the Body Corporate, or any person who was purporting to act in any such capacity if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any 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 1
<i>Water Corporations Act 1995</i> Schedule 2, c 14(2): Prohibition on loans to directors and related person.	Directors who are knowingly concerned in a contravention of the provision.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
Water Services Act 2012 s 196: Liability of officers of Body Corporate.	Officers.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the officer's consent or connivance; and (b) the officer took all the measures to prevent the commission of the offence that the officer could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.	N/A	N/A	Onus is on the accused to establish the defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Waterways Conservation Act 1976</i> s 73: Offences by Bodies Corporate.	Directors, managers, secretaries or other similar officers, of the Body Corporate, or any person who was purporting to act in any such capacity if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any 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 1
<i>Western Australian Products Symbol Act 1972</i> s 13: Vicarious liability.	Directors, managers, secretaries or other similar officers, of the Body Corporate, or any person who was purporting to act in any such capacity if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any 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 1

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
<i>Workers' Compensation and Injury Management Act 1981</i> s 170(2b): Failure to insure.	If an order is made under the provision WorkCover WA may sue and recover from a responsible officer (a director or other officer concerned in the management of the Body Corporate) the unpaid amount, whether or not the responsible officer has been convicted of the offence.	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the person's consent or connivance; and (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 3

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 170(5): Failure to insure.	Responsible officers (a person who is a director or other officer concerned in the management of the Body Corporate).	Yes, if a corporate breach is established.	Both: (a) the offence was committed without the person's consent or connivance; and (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Western Australian laws imposing personal liability on directors and officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof	Type of Provision
s 174AA: Recovering section 174 payments from officers of Body Corporate.	Responsible officers (a director or other officers concerned in the management of the Body Corporate) where: (a) the Body Corporate has contravened section 160(1) (Employers' duty to be insured etc.; insurers' duties) in respect of a policy of insurance or otherwise failed to ensure that it had a sufficient policy of insurance that would have covered the Body Corporate for the liability to which the payment made under s174 (Payment to worker from General Account 174AAA. Setting aside certain judgments and agreements) related (whether or not the Body Corporate has been proceeded against or convicted of an offence for the contravention); and (b) the person does not prove that: (i) the contravention or failure occurred without the person's consent or connivance; and (ii) the person exercised all such due diligence to prevent the contravention or failure as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.	No, the onus is on the prosecution to prove the required elements.	Both: (a) the contravention or failure occurred without the person's consent or connivance; and (b) the person exercised all such due diligence to prevent the contravention or failure as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

The information contained in this publication is intended only to provide a summary and general overview and is not intended to be comprehensive nor does it constitute legal advice. You should seek legal or other professional advice before acting or relying on any of the information contained in this publication.

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