



Protecting your Position

Queensland laws imposing personal liability
on Directors and Officers



MinterEllison

LAWYERS

About the Authors



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

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Introduction

Welcome to the second edition of *Protecting your Position* in relation to the laws of Queensland.

At present, there is a plethora 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. As shown below, there are in excess of 100 Queensland statutes – approximately twenty per cent of the total number of statutes in the State – which impose personal liability on company directors and officers.

This kind of legislation raises a number of policy issues. 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 all Australian jurisdictions. The extent of the inconsistency is considerable. Minter Ellison research shows that within each State and Territory there are literally dozens of provisions imposing personal liability and on top of that, each State and Territory has its own unique way of drafting its laws. The consequence is that across Australia there are many hundreds of laws imposing personal liability on directors and officers, many of which are drafted in different terms, and with different defences available.

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

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

The third significant area of concern for directors and officers is that many of the provisions 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.

In November 2008 the Council of Australian Governments (COAG) initiated a review of Commonwealth, State and Territory laws imposing personal criminal liability for corporate fault, with a view to increased harmonisation of the laws. As part of the COAG National Partnership Agreement to Deliver a Seamless Economy, the review delivered an agreement between State, Territory and Commonwealth governments on principles for reform on 7 December 2009. The COAG agreed principles, upon which legislation will be based, are as follows:

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
3. A 'designated officer' approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
 - (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);
 - (b) liability of the corporation is not likely on its own to sufficiently promote compliance; and
 - (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
 - i. the obligation on the corporation, and in turn the director, is clear;
 - ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
 - iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.
5. Where principle 4 is satisfied and directors' liability is appropriate, directors could be liable where they:
 - (a) have encouraged or assisted in the commission of the offence; or
 - (b) have been negligent or reckless in relation to the corporation's offending.

Commencement of nationally consistent legislation in relation to personal liability of directors and company officers is slated for the end of 2010 or 2011. However, until a nationally consistent legislative approach is adopted, 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 of legislation

1. Definitions

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

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

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

body corporate means:

- (a) a corporation as defined in the *Corporations Act 2001* (Cth); or
- (b) an incorporated association as defined in the *Associations Incorporation Act 1981* (Qld); or
- (c) any other body incorporated under any other Act or law.

chairperson of directors means chairperson of the board of directors.

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

corporation means:

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

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

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

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

executive officer of a corporation means:

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

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

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

member of a governing body means each of the persons composing a governing body.

officer of a corporation means:

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

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

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

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

representative, of a person means:

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

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

2. How to Read This Publication

This document is divided into the following columns.

2.1 Provisions

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

2.2 Who is liable?

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

2.3 Is the liability automatic?

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

2.4 Defence of 'Due Diligence'

This column notes whether there is a defence of due diligence under the relevant provision. Whilst the wording of this defence may vary from Act to Act, the defence essentially applies where the relevant party was/is in a position to influence the conduct of the corporation in relation to the offence and has exercised reasonable diligence to ensure the corporation complied with the provision.

2.5 Defence of 'Unable to Influence'

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

2.6 Additional Defences

This column details any additional defences for the relevant provision.

2.7 Onus of Proof for Defence

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

2.8 Type of Offence

The offences are categorised in accordance with the 'Summary of Types of Provisions' set out below.

3. Summary of Types of Provisions

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

3.1 Type 1 Provision

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

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

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

An example of this type of provision is section 44 of the *Agricultural Chemicals Distribution Control Act 1966*, which provides that:

44 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.
Maximum penalty—the penalty for the contravention of the provision by an individual.
- (3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

3.2 Type 2 Provision

Type 2 provisions are very similar to Type 1 provisions, but apply to specific named roles and phrase the relevant defences differently. These provisions deem the named persons to have committed an offence where the corporation in question commits an offence under the relevant Act. However, it is a defence for the named persons to prove that:

- (a) the person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstance; or
- (b) the offence was committed without the person's consent or connivance.

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

An example of this type of provision is section 42 of the *Exotic Diseases in Animals Act 1981*, which provides that:

42 Liability for offences by corporations

- (1) Where a corporation offends against this Act each and every one of the following persons shall be deemed to have committed the offence, and shall be liable to be proceeded against and punished accordingly, namely:
 - (a) the managing director, manager, or other governing officer, by whatever name called, and every member of the governing body, by whatever name called, thereof; and
 - (b) every person who in Queensland manages or acts or takes part in the management, administration or government of the business in Queensland of the corporation.
- (1A) This section applies so as not to limit or affect howsoever the liability of a corporation to be proceeded against and punished for an offence against this Act committed by it.
- (2) No person who is proceeded against pursuant to this section shall be convicted if the person satisfies the court that the offence was committed without the person's consent or connivance and that the person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstances.

3.3 Type 3 Provision

Type 3 provisions generally provide that directors or other persons concerned in the management of the corporation will be deemed liable where the corporation contravenes, whether by act or omission, any provision of the Act or regulation in question, and the directors or other persons knowingly authorised or permitted the contravention.

Under these provisions liability is not automatic, and the onus is on the prosecution to prove the required elements.

An example of this type of provision is section 454 of the *Cooperatives Act 1997* which provides that:

454 Offences by officers of cooperatives

- (1) If a cooperative contravenes a provision of this Act—
 - (a) a person who is a director of the cooperative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and
 - (b) another officer of the cooperative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.
- (2) A person may be proceeded against and convicted under a provision under subsection (1) whether or not the cooperative has been proceeded against or convicted under the provision.
- (3) This section does not affect any liability imposed on a cooperative for an offence committed by the cooperative against this Act.

It must be noted that whilst the wording of Type 3 provisions may vary as to the persons to whom the provision applies, and the fault elements required, the effect remains the same.

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Agricultural Chemicals Distribution Control Act 1966</p> <p>s 44: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Animal Care & Protection Act 2001</p> <p>s 209: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	In a proceeding against an executive officer, it is a defence for the officer to prove information that tended to incriminate the Corporation was obtained under a help requirement or document production requirement.	Onus on the accused to establish a defence.	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Biodiscovery Act 2004 s 115: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Building Act 1975 s 257: Liability for Corporations default.	Each member of the governing body of the Body Corporate.	Yes, if a corporate breach is established.	The member could not have prevented the commission of the offence by the exercise of reasonable diligence.	The member had no knowledge of the commission of the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Business Names Act 1962 s 29: Offences committed by Corporations.	Each Director, Secretary or other officer of the Corporation who was knowingly a party to the offence shall also be guilty of that offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Casino Control Act 1982</p> <p>s 123: Liability for offence by Body Corporate.</p>	<p>Chairperson of Directors, Managing Director, Manager or other governing officer, each member of the governing body and every person who managed or acted or took part in the management, administration or government of the business in the State of the Body Corporate.</p>	<p>Yes, if a corporate breach is established.</p>	<p>The person exercised due diligence to prevent the commission of the offence.</p>	<p>The offence was committed without that person's knowledge or consent or connivance.</p>	<p>N/A</p>	<p>Onus on the accused to establish a defence.</p>	<p>Type 2</p>
<p>Charitable and Non-Profit Gaming Act 1999</p> <p>s 170: Executive Officers must ensure the Corporation complies with the Act.</p>	<p>Executive Officers.</p>	<p>Yes, if a corporate breach is established.</p>	<p>The officer exercised reasonable diligence to ensure the Corporation complied with the provision.</p>	<p>The officer was not in a position to influence the conduct of the Corporation in relation to the offence.</p>	<p>N/A</p>	<p>Onus on the accused to establish a defence.</p>	<p>Type 1</p>

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Chemical Usage (Agricultural and Veterinary) Control Act 1988</p> <p>s 30A: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Child Care Act 2002</p> <p>s 159: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Child Employment Act 2006</p> <p>s 33: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Clean Energy Act 2008 s 27: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Coal Mining Safety and Health Act 1999 s 262: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Commission for Children and Child Guardian Act 2000 s 383: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Community Services Act 2007 s 123: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Cooperatives Act 1997 s 454: Offences by officers of cooperatives.	Directors of the cooperative or those concerned in its management if the person knowingly authorised or permitted the contravention. Any other officer of the cooperative who by 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
Criminal Law (Sexual Offences) Act 1978 s 12: Liability of Directors etc. of Body Corporate.	Directors or members of the governing body of the Body Corporate or the Manager of or an officer concerned in the management of the business in Queensland of the Body Corporate.	Yes, if a corporate breach is established.	The person exercised all due diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstances.	N/A	The offence was committed without the person's consent or connivance.	Onus on the accused to establish a defence.	Type 2

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Criminal Proceedings Confiscations 2002</p> <p>s 253:</p> <p>Responsibility for acts or omission of representatives.</p>	Executive Officers, Employees or Agents of the Corporation.	Yes, if a corporate breach is established.	N/A	The person could not by exercising reasonable diligence have prevented the act/omission.	N/A	N/A	Type 2
<p>Dangerous Goods Safety Management Act 2001</p> <p>s 173:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	If the officer was in a position to influence the conduct of the Corporation in relation to the offence, the officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Dental Technicians and Dental Prosthetists Act 2001</p> <p>s 196:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

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Disability Services Act 2006 s 206: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Domestic Building Contracts Act 2000 s 95: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Drugs Misuse Act 1986 s 113: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Education (Queensland College of Teachers) Act 2005</p> <p>s 228:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Electrical Safety Act 2002</p> <p>s 199:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Electricity Act 1994</p> <p>s 240A:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

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<p>Emblems of Queensland Act 2005</p> <p>s 5:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence. It is sufficient for the officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable precautions and exercised due diligence to ensure compliance with the provision.	N/A	Onus on the accused to establish a defence.	Type 1

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Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Environmental Protection Act 1994 s 493: Executive Officers must ensure that the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Exotic Diseases in Animals Act 1981 s 42: Liability for offences by Corporations.	Managing Director, Manager, other governing officer and every person who in Queensland manages or acts or takes part in the management, administration or government of the business in Queensland of the Corporation.	Yes, if a corporate breach is established.	The person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstances.	The offence was committed without the person's consent or connivance.	N/A	Onus on accused to establish defences	Type 2
Explosives Act 1999 s 117: Executive Officers must ensure that the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Fair Trading Act 1989 s 96: Offences by Body Corporate.	Director or member of the governing body of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	Where the information that tended to incriminate the Corporation was obtained under section 88B or 90.	Onus on the accused to establish a defence.	Type 2
Family Services Act 1987 s 29: Offences by Body Corporates.	The managing director, manager or other governing officer (by whatever name called).	Yes, if a corporate breach is established.	The person exercised all due diligence to prevent the offence.	The offence was committed without the person's consent or connivance.	N/A	Onus on the accused to establish a defence.	Type 2
Fire and Rescue Service Act 1990 s 151: Offences by Body Corporate.	Executive Officers.	Yes, if a corporate breach is established.	N/A	The person could not have prevented the commission of the offence by exercising a reasonable degree of diligence.	The offence was committed without the person's knowledge.	Onus on the accused to establish a defence.	Type 2
Fisheries Act 1994 s 219A: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Food Act 2006 s 260: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Foreign Ownership of Land Register Act 1988 s 26: Offences by Corporations.	The chairperson of Directors, managing director or other governing officer, by whatever name called, and every member of the governing body, by whatever name called; and every person who in Queensland manages or acts or takes part in the management or administration of the business of that Corporation in Queensland.	Yes, if a corporate breach is established.	N/A	The person could not by due diligence have prevented the commission of the offence.	The offence was committed without the person's knowledge or connivance.	Onus on the accused to establish a defence.	Type 2
Funeral Benefit Business Act 1982 s 84: Offences by Corporation	Directors, Managing Director, Managers or other governing officers and the Public Officer or Secretary of the Corporation.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Gaming Machine Act 1991 s 352: Liability for offence by Body Corporate.	Secretary, executives and every person who manages or acts to takes part in the management, administration or government of the business in Queensland.	Yes, if a corporate breach is established.	The person exercised due diligence to prevent the commission of the offence.	N/A	The offence was committed without that person's knowledge or consent or connivance.	Onus on accused to establish defences.	Type 2
Greenhouse Gas Storage Act 2009 s 393: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Guide, Hearing and Assistance Dogs Act 2009 s 106: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Health Act 1937 s 153ZN: Executive Officers must ensure that the Corporation complies with the relevant provisions and Part 4 (Drugs and Other Articles).	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Higher Education (General Provisions) Act 2008 s 113: Executive Officers must ensure the Corporation comply with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Housing Act 2003 s 91: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Industrial Relations Act 1999</p> <p>s 673:</p> <p>If a Corporation commits an offence against section 138 (Order setting tool allowance), 368 (Employee register), 406 (Contributory operational superannuation) or 666 (Nonpayment of wages), the Executive Officers of the Corporation:</p> <p>a) are also taken to have committed the offence; and</p> <p>b) are liable to the prescribed penalty and any other order the magistrate may make under the section.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Interactive Gambling (Player Protection) Act 1998</p> <p>s 247:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Introduction Agents Act 2001</p> <p>s 94: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence. It is sufficient for the officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the Corporation complied with the provision.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Invasion of Privacy Act 1971</p> <p>s 49: Offences and penalty.</p>	Any Director, Manager, Secretary or other officer of the Corporation who knowingly authorises or permits the same or is a party to the offence.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Keno Act 1996 s 226: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Land Act 1994 s 431 J: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Land Sales Act 1984 s 32B: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	Where the information that tended to incriminate the Corporation was obtained under section 30F (Inspectors' search powers).	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Legal Profession Act 2004</p> <p>s 702:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence. It is sufficient for the officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the Corporation complied with the provision.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Liquor Act 1922</p> <p>s 128: If licence is held by Corporation, Directors have same liabilities as corporate licensee.</p>	Directors.	Yes, if corporate breach is established.	N/A	N/A	N/A	N/A	Type 2
<p>Lotteries Act 1997</p> <p>s 212: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Manufactured Homes (Residential Parks) Act 2003</p> <p>s 139: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Marine Parks Act 2004</p> <p>s 136: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Medical Radiation Technologists Registration Act 2001</p> <p>s 207: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Mining and Quarrying Safety & Health Act 1999</p> <p>s 241: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Motor Racing Events Act 1990 s 44: Offences by Body Corporates.	Executive Officers.	Yes, if corporate breach is established.	The officer used a reasonable degree of diligence to prevent the commission of the offence.	N/A	The offence was committed without the officer's knowledge.	Onus on the accused to establish a defence.	Type 2
Motor Vehicles and Boats Securities Act 1986 s 35: Offence by Corporation.	Director, Manager, Secretary or other Officer of the Corporation.	Yes, if a corporate breach is established.	N/A	N/A	The offence was committed without the person's consent or connivance.	Onus on the accused to establish a defence.	Type 2
Nature Conservation Act 1992 s 162: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The Corporation's offence was committed without the officer's consent or knowledge and the officer took all reasonable steps to ensure that the Corporation complied with the act.	N/A	N/A	Onus on the accused to establish a defence.	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Nuclear Facilities Prohibition Act 2007</p> <p>s 22: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Occupational Therapists Registration Act 2001</p> <p>s 192: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Offshore Minerals Act 1998</p> <p>s 443: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	If the officer was in a position to influence the conduct of the Corporation in relation to the offence, the officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Pest Management Act 2001 s 122: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Petroleum and Gas (Production and Safety) Act 2004 s 814: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Pharmacy Business Ownership Act 2001 s 197: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Place Names Act 1994</p> <p>s 17: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The person took all reasonable steps to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Plant Protection Act 1989</p> <p>s 29A: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The person exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Printing and Newspapers Act 1981</p> <p>s 10: Liability for offence by Body Corporate.</p>	<p>Chairperson of Directors, Managing Director, Manger or other governing officer by whatever name called or other member of the governing body thereof by whatever name called; and every person who at the time the offence is committed manages or acts or takes part in the management, administration or government of the business in Queensland.</p>	<p>Yes, if a corporate breach is established.</p>	<p>The person exercised due diligence to prevent the commission of the offence.</p>	<p>If the person can prove that the offence was committed without that person's knowledge or consent or connivance.</p>	<p>N/A</p>	<p>Onus on the accused to establish a defence.</p>	<p>Type 2</p>

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Private Employment Agents Act 1983</p> <p>s 45:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The person took all reasonable steps to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence. It is sufficient for the officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the Corporation complied with the provision.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Private Health Facilities Act 1999 s 143: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Property Agents and Motor Dealers Act 2000 s 591: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Prostitution Act 1999 s 99: Offences by Body Corporate.	Executive Officers.	Yes, if a corporate breach is established.	The officer used all due diligence to prevent the offence being committed.	N/A	If the offence was committed without the officer's knowledge.	Onus on the accused to establish a defence.	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Public Health Act 2005 s 448: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Public Health (Infection Control for Personal Appearance Services) Act 2003 s 142: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Queensland Building Services Authority 1991 s 111B: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>s 111C: Directors are liable for amounts owed in the forms of penalties not paid in the time permitted under certain conditions.</p>	Directors.	No, the onus is on the prosecution to prove the required elements.	N/A	N/A	N/A	N/A	Type 3
<p>Queensland Heritage Act 1992</p> <p>s 160: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Racing Act 2002</p> <p>s 339: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	Where the information that tended to incriminate the Corporation was obtained under s 286.	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Radiation Safety Act 1999</p> <p>s 205: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Recreation Areas Management Act 2006</p> <p>s 203: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Residential Services (Accreditation) Act 2002</p> <p>s 172: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Residential Tenancies and Rooming Accommodation Act 2008</p> <p>s 513: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Retirement Villages Act 1999</p> <p>s 225: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Second-Hand Dealers and Pawnbrokers Act 2003</p> <p>s 112:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence. It is sufficient for the officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the Corporation complied with the provision.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Speech Pathologists Registration Act 2001</p> <p>s 192: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Stock Act 1915</p> <p>s 45: Liability for offences by Corporations.</p>	Managing Director, Manager, other governing officer and every person who in Queensland manages or acts or takes part in the management, administration or government of the business in Queensland of the Corporation.	Yes, if a corporate breach is established.	The person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstances.	N/A	The offence was committed without the person's consent or connivance.	Onus on the accused to establish a defence.	Type 2
<p>Surveyors Act 2003</p> <p>s 185: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Sustainable Planning Act 2009</p> <p>s 611: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Taxation Administration Act 2001</p> <p>s 140: Executive Officers must ensure the Corporation complies with tax laws.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Tobacco Products (Licensing) Act 1988</p> <p>s 46:</p> <p>Where an offence is committed against section 15(1) (Selling without licence) or 16(1) or (2) (Wholesaling and retailing without licence) by a Body Corporate, every Director of the Body Corporate is jointly and severally liable with the Body Corporate and every other Director for the payment of:</p> <p>(a) any fine imposed on the Body Corporate for the offence; and</p> <p>(b) a fee that is payable under section 44 (Recovery of fees from unlicensed persons).</p>	Directors including any officer (by whatever name called) concerned in the management of the Body Corporate.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Tobacco and Other Smoking Products Act 1998 s 51B: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Tourism Services Act 2003 s 89: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Tow Truck Act 1973 s 41: Offence by Corporation.	Managing Directors, Managers or other governing officers and every person who in Queensland manages, or acts or takes part in the management or administration or government of the business in Queensland.	Yes, if a corporate breach is established.	N/A	N/A	N/A	N/A	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Transport Operations (Marine Pollution) Act 1995</p> <p>s 121:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Transport Operations (Road Use Management) Act 1995</p> <p>s 57:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer took all reasonable steps to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Transport Security (Counter-Terrorism) Act 2008</p> <p>s 55:</p> <p>Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Travel Agents Act 1988 s 52: Offences by Corporations.	Each member of the governing body of the Corporation.	Yes, if a corporate breach is established.	N/A	The member could not by the exercise of reasonable diligence, have prevented the offence.	N/A	Onus on the accused to establish a defence.	Type 2
Urban Land Development Act 2007 s 140: Executive Officer must ensure that Corporation does not commit particular offences.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Vegetation Management Act 1999 s 60A: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
<p>Vocational Education, Training and Employment Act 2000</p> <p>s 280: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Wagering Act 1998</p> <p>s 289: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
<p>Water Act 2000</p> <p>s 828: Executive Officers must ensure the Corporation complies with the Act.</p>	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Water Fluoridation Act 2008 s 91: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Water Supply (Safety and Reliability) Act 2008 s 487: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1
Weapons Act 1990 s 162: Offences by incorporated bodies and associations.	Every person who is a member of the governing body of the body or association and, in the case of a body or an association that is incorporated, the managing director, director, manager or other governing officer by whatever name called.	Yes, if a corporate breach is established.	The person used all due diligence to prevent the commission of such an offence.	N/A	The offence was committed without knowledge of the person.	Onus on the accused to establish a defence.	Type 2

Summary of Queensland Provisions Imposing Personal Liability on Directors and Officers

Provision	Who is liable?	Is the liability automatic?	Defence of 'Due Diligence'	Defence of 'Unable to Influence'	Additional Defences	Onus of Proof for Defence	Type of Provision
Workplace Health & Safety Act 1995 s 167: Executive Officers must ensure the Corporation complies with the Act.	Executive Officers.	Yes, if a corporate breach is established.	The officer exercised reasonable diligence to ensure the Corporation complied with the provision.	The officer was not in a position to influence the conduct of the Corporation in relation to the offence.	N/A	Onus on the accused to establish a defence.	Type 1

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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