

Director and Executive Officer Liabilities and powers relating to regulatory actions for officers in building and building licensing laws in Australian States and Territories¹

Jurisdiction	Type of provisions
Queensland	<i>Queensland Building and Construction Commission Act 1991 – Section 111B</i> Executive officer liability offence for: • carrying out, or undertaking to carry out, building work without the appropriate contractor’s licence; or • a licensed contract engaging or directing and employee to carry out fire protection work unless they are authorised to carry out the work. Officer may have proceedings against them whether or not the company has had proceedings against them. <i>Queensland Building and Construction Commission Act 1991 – Section 111C</i> Directors jointly and severally liable for amounts incurred in relation to: • an offence the company has been convicted of, or • a disciplinary action imposed on the company, or • an amount owed to the commission because of a payment made by the commission on a claim under the insurance scheme. Liability occurs when the amount of the penalty is not paid within the time required for its payment. Applies regardless of the status of the company, including, for example, that the company is being, or has been, wound up. <i>Queensland Building and Construction Commission Act 1991 – Section 74AI</i> General duty in relation to non-conforming building products for any person in the chain of responsibility that installs the product or knows, or is reasonably expected to know, the product will be used in a building. Specific duties of an executive officer of a company.
NSW	<i>Home Building Act 1989 – Section 54</i> Officer liability which provides that an individual who is a member of a partnership or an officer of a corporation that is the holder of a contractor licence is guilty of improper conduct if the holder undertakes specific actions listed in the Act. Disciplinary action for improper conduct may be taken against a partner or officer whether or not any such disciplinary action has been taken against the partnership or corporation. <i>Home Building Act 1989 – Section 137</i> Director liability that provides if body corporate contravenes any provision of that Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

¹ This is not an exhaustive list of all powers that may exist in related legislation (for example, many jurisdictions have separate Acts for different occupations) but provides a summary of the powers in building laws.

	A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision. <i>Home Building Act 1989 – Section 137A</i> Executive liability offence for contractor licensees for failing to notify the Secretary in writing with 7 days after becoming aware of: • the licensee or a partner in a partnership licence becomes bankrupt, applies to take the benefit for the relief of debts, or compounds with creditors, • the corporation is subject of a winding up order or has voluntarily wound up, or • the corporation is deregistered.
Victoria	<i>Building Act 1993</i> Director (nominee) general duty offence for a nominee director for not ensuring that the body corporate complies with the Building Act. Liability incurred when the body corporate fails to comply with the Act. (Note: in Victoria, a licensed body corporate must have at least one nominee director, who must also hold a building practitioner licence).
Tasmania	<i>Occupational Licensing Act 2005 – Section 39 (1)</i> Executive officer offence that provides that when a person commits an offence against the Act any other person who has the management or control of the person or is the nominated manager in respect of the person is also guilty of the offence and liable for a penalty not exceeding the maximum penalty for the offence. A defence relating to reasonable diligence applies. An executive officer may be convicted of the offence whether or not proceedings have been brought against the body corporate. <i>Occupational Licensing Act 2005 – Section 39 (2)</i> Executive officer offence that provides that when a licensed body corporate commits an offence against the Act, each director or manager of the licensee is taken to have committed the offence and is punishable accordingly, and liable for a penalty not exceeding the maximum penalty for the offence. A defence relating to reasonable diligence applies. Liability occurs when offence is committed. A director or manager may be convicted of the offence whether or not proceedings have been brought against the body corporate. <i>Occupational Licensing Act 2005 – Section 87</i> Executive officer offence for corporations and partnerships that provides that if a corporation commits an offence against the Act, each person who is an officer or is concerned in the management of the corporation is also guilty of the offence and liable for the penalty prescribed for the offence. Defences relating to due diligence, knowledge and influence of the person in relation to the offence apply. An officer person concerned in the management may be convicted of the offence whether or not proceedings have been brought against the corporation.

NT	<i>Building Act 1993 – Section 151</i> Executive officer offence where a corporation contravenes a provision of that Act or the Regulations, each person being a director of the corporation or a person concerned in the management of the corporation is taken to have contravened the same provision unless the person proves that he or she had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence. A person may be proceeded against and found guilty pursuant to this section whether or not the corporation has been proceeded against or been found guilty.
Western Australia	<i>Building Services (Registration) Act 2011 – Section 59 Disciplinary action against nominated supervisor or officer of building service contractor</i> Provides for the State Administrative Tribunal to suspend or cancel the licence of a nominated supervisor of a building service contractor and to impose fines up to \$25,000 for certain disciplinary matters on: • a nominated supervisor of the contractor; • where the contractor is a partnership, a partner; • where the contractor is a body corporate — a director of the body corporate; a person who is concerned in the management of the body corporate; • where the contractor is an unincorporated body, a person who is concerned in the management of the body. An officer may be found guilty regardless of whether the body corporate is found guilty. <i>Building Services (Registration) Act 2011 – Section 97</i> Executive officer liability in relation to offences committed by a body corporate, which provides that an officer can be charged with an offence if the body corporate is, and if the body corporate is found guilty of the offence, the officer is taken to have also committed the offence, subject to any defences. <i>Building Services (Complaint Resolution and Administration) Act 2011 – Section 105</i> Liability of officers of body corporates (directors and any person concerned in the management of the body corporate) providing that: • If a body corporate is charged with an offence under that Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence. • If a body corporate and an officer are charged as permitted by the section and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to the defences provided in the section. Also provides that if an officer is charged and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to defences provided in the section. If a body corporate commits an offence, every person who was an officer at the time the offence was committed may be charged with the offence regardless of whether the body corporate is charged.
South Australia	Nil.