

Director liability State of play

Australian directors face a uniquely complex and high-risk legal landscape.

The Australian Institute of Company Directors (AICD) has commissioned Allens to update its 2019 research on director liability in Australia. The original research compared how directors are held legally responsible in Australia and five other comparable jurisdictions – Canada, Hong Kong, New Zealand, the UK, and the US – across 10 key areas including corporations, competition, tax, environmental, and workplace laws.

The updated research extends this analysis to contemporary governance areas like cyber security, financial accountability, and mandatory climate reporting.

Allens' legal assessment is that Australia's director liability environment remains unique and, overall, is more burdensome compared to Canada, Hong Kong, New Zealand, the UK, and the US.¹

Australia is assessed as the 'high water mark' – the jurisdiction with the most onerous or wide-ranging liability settings compared to peers – when considered holistically.

The comparative assessment shows areas where Australia is:

- Alone in imposing higher liability: corporate law (breaches of directors' duties), taxation law (personal liability for company tax offences) and environmental law (personal liability for company contraventions).
- Equally the highest among peers: cyber security (general cyber and data obligations), consumer protection (misleading or deceptive conduct) and financial accountability (failure to comply with financial accountability obligations).
- Not the highest, but still imposes significant obligations: health and safety, superannuation, sustainability and competition law.

Allens legal analysis – key takeaways

- **Australian company directors face unique legal risks.** Compared to international peers, Australian directors generally face more legal risks and heavier penalties.
- **Regulation through director liability.** Australia continues to regulate through the imposition of specific director liability provisions, on top of existing directors' duties. Since 2019, new director liability provisions have been introduced across various areas of law.
- **New laws add significant responsibilities.** Australian directors now face reporting and attestation requirements in areas like sustainability reporting, modern slavery and security of critical infrastructure. This pushes boards closer to the traditional domain of management and encourages a compliance focus.
- **Emerging governance issues bring new burdens.** Cyber security and sustainability reporting obligations for Australian directors go further than most other jurisdictions.
- **More changes are coming.** Reforms to anti-money laundering and aged care will further increase director responsibilities.
- **Australia stands out in enforcement.** Australian directors generally face criminal liability more readily and harsher penalties, despite national principles² recommending such liability be reserved for exceptional cases.
- **Unique legal mechanisms increase exposure.** Australia is the only country (among those reviewed) with a public system for enforcing directors' duties. Legal precedent allows regulators to pursue directors even if they were not involved in the primary contravention.
- **Broad application of liability extends to culture.** Directors can be held liable for organisational and culture failings under the Commonwealth's internationally unique corporate criminal responsibility mechanism.

¹ This assessment is qualitative, based on a range of factors including the scope of the obligation or prohibition to which liability attaches, modes of liability, defences available and level of penalties across ten areas of law: competition, consumer protection, corporations, cyber security, environmental, financial accountability, health and safety, superannuation, sustainability and taxation.

² The Council of Australian Governments (COAG) endorsed a set of principles in 2008 to guide the imposition of criminal liability on directors and officers. These principles were designed to ensure that criminal liability is applied fairly, consistently, and only in appropriate circumstances.

AICD perspective – what needs to change

The Allens advice confirms that Australian directors operate in a uniquely high-risk environment.

The AICD believes this needs to change if we are to reorientate boards to focus on growth and productivity, not just compliance with the next piece of regulation.

AICD supports proportionate, globally competitive policy settings, while also equipping directors with the tools and knowledge to navigate the current environment.

Our position is not about diluting accountability – it is about ensuring the regulatory environment is fit for purpose. Right now, excessive liability risks are driving a risk focus in boardrooms, at a time when Australia needs an economy-wide focus on productivity and opportunity. Boards have dual responsibilities: strategic performance and compliance oversight. Regulation must support both – not skew the balance.

Key asks of government

In submissions to the [Productivity Commission](#) and the [Economic Reform Roundtable](#) the AICD has provided solutions that are focused on improving productivity. In particular, we call on the Government to:

- Avoid new director liability provisions unless they are clearly justified, recognising that existing duties are flexible and cover a wide range of circumstances.
- Streamline and align regulatory requirements across jurisdictions.
- Ensure regulation supports productivity, innovation, and long-term value creation – regulation should balance risk and growth, not focus on the edge case.

Summary messages

- **Regulatory overload is real.** Directors face a growing and overlapping set of obligations across federal, state, and local levels, crowding out board focus on strategy and innovation.
- **Regulation must be proportionate.** Australia needs a more balanced, risk-based approach that enables business while managing risk.
- **Global competitiveness matters.** While the UK, EU, and US are simplifying regulation to drive renewed growth, Australia risks falling behind if we do not take immediate action.