

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investments Commission

Question: BET 72

Topic: Criminal Code

Reference: Hansard page no. 9 - 03 June 2015

Senator: Bushby, David

Question:

Senator BUSHBY: Thank you for assisting us today. You referred to the Criminal Code section that deals with this issue. Have any cases been successfully prosecuted on that section? I am particularly interested in how the courts have dealt with establishing that the undesirable culture exists?

Mr Medcraft: Because it only extends to certain limited parts of the Corporations Act at the moment, and it does not extend to financial services and products, there have never been any successful prosecutions.

Senator BUSHBY: Have there been any prosecutions?

Mr Medcraft: No.

Senator BUSHBY: So no unsuccessful prosecutions either?

Mr Medcraft: No. However, obviously, in other areas under Commonwealth law, there have been. We could provide—

Senator BUSHBY: In respect to culture?

Mr Medcraft: Yes, I believe there may have been in respect to other areas of Commonwealth law. We may come back to you on that.

Mr Price: We will take that on notice. There has been some commentary about it by some judges. However, I seem to remember there was a case where there was some commentary around this particular provision. So it might be best if we take that on notice.

Mr Medcraft: We will take that on notice. As I say, we will give you some examples that are perhaps outside the corporations law, so it might be in the health area or whatever.

Answer:

ASIC is not aware of any prosecutions, successful or unsuccessful, that have been based upon the "corporate culture" provisions of s12.3 of the *Criminal Code*.

In areas of law including environmental law and workplace safety at both Commonwealth and State level there are legislative provisions that have the effect of holding company officers criminally liable for offences committed by the corporations they manage.

A similar provision is also in operation for taxation offences under the *Taxation Administration Act 1953* (Cth) - see s.8Y. Instances of prosecutions of company officers pursuant to these provisions include *Environment Protection Authority v Wyanga Holdings Pty Ltd*; *Environment Protection Authority v Cauchi* [2014]

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NSWLEC 68, *Orbit Drilling Pty Ltd; Smith v R* (2012) 35 VR 399 and *Vadasz v DPP (Cth)* [1999] SASC 255.