

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

19 – 20 October 2011

Question No: SBT 818

Topic: ASF licence

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Senator Williams asked:

Senator Williams: I have one more question. If you claim to have an ASF licence and you actually do not and you are doing business, is that a criminal offence? One of Ian Lazar's companies, Commercial Mortgage Trade, claimed that they are a holder of an ASF licence number—284596—but a quick check of the ASIC register reveals that, in fact, this licence belonged to an innocent third party who denies categorically any involvement with Lazar and any of his companies and who has lodged a complaint with ASIC. I understand that falsely claiming to hold an ASF licence is a criminal offence carrying severe penalties. Is that the situation, Mr Day?

Mr Day: I would have to go away and look at it.

Mr Medcraft: It is a breach of the law, whether it is criminal or civil, I think.

Mr Day: More importantly, holding out depending on what the person.

Answer:

Section 911C of the Corporations Act 2001 states that a person must not hold out that they hold an Australian financial services licence or that, in providing a financial service, the person acts on behalf of another person, if that is not the case.

Failure to comply with this section is an offence under section 1311(1) of the Corporations Act. The penalties for contravening section 911C are up to 50 penalty units (\$5,500), imprisonment for one year, or both. In addition, both the Corporations Act and the ASIC Act 2001 contain specific prohibitions in relation to conduct that is misleading and deceptive.