

EXTRACTS FROM THE AUSTRALIAN CRIMINAL CODE

Reproduced here are sections of the Australian Criminal Code relating to corporate criminal responsibility. The full text, prepared by the Office of Legislative Drafting, Attorney-General's Department, Canberra, is available at www.ausimm.com/ohs/crimcode.pdf.

Part 2.5 Corporate criminal responsibility: Division 12

12.1 GENERAL PRINCIPLES

- (1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set forth in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.
- (2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

12.2 PHYSICAL ELEMENTS

If a physical element of an offence is committed by an employee, agent, or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

12.3 FAULT ELEMENTS OTHER THAN NEGLIGENCE

- (1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly, or impliedly authorised or permitted the commission of the offence.
- (2) The means by which such authorisation or permission may be established include:
 - (a) proving that the body corporate's board of directors intentionally, knowingly, or recklessly carried out the relevant conduct, or expressly, tacitly, or impliedly authorised or permitted the commission of the offence; or

(b) proving that a high managerial agent of the body corporate intentionally, knowingly, or recklessly engaged in the relevant conduct, or expressly, tacitly, or impliedly authorised or permitted the commission of the offence; or

(c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated, or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of paragraph (2)(c) or (d) include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent, or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the act.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors means the body (by whatever named called) exercising the executive authority of the body corporate.

corporate culture means an attitude, policy, rule, course of conduct, or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes [sic] place.

high managerial agent means an employee, agent, or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

12.4 NEGLIGENCE

(1) The test of negligence for a body corporate is that set out in section 5.5.

(2) If:

(a) negligence is a fault element in relation to a physical element of an offence, and

(b) no individual employee, agent, or officer of the body politic has that fault element;

that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents, or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control, or supervision of the conduct of one or more of its employees, agents, or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.5 MISTAKE OF FACT (STRICT LIABILITY)

(1) A body corporate can only rely on section 9.2 (mistake of fact [strict liability]) in respect of conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent, or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control, or supervision of the conduct of one or more of its employees, agents, or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.6 INTERVENING CONDUCT OR EVENT

A body corporate cannot rely on section 10.1 (intervening conduct or event) in respect of the physical element of an offence brought about by another person if the other person is an employee, agent, or officer of the body corporate.