

Who Does the Act Apply to?

Corporations

s 130 CCA defines “corporation” in the ACL by reference to s 4 CCA.

“corporation ” means a body corporate that:

- (a) is a foreign corporation;
- (b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed;
- (c) is incorporated in a Territory; or
- (d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c).

Trading Corporation

Test of “substantial current activities” in relation to trading. Per *Hughes v Western Australian Cricket Association*, this means:

- Not all corporations that trade are trading corporations
- Purpose of incorporation is a relevant factor, but is not the test
- Trading must be a “substantial corporate activity”
- Trading denotes activity of “providing, for reward, goods or services”
- Trading corporations and financial corporations are different but not mutually exclusive

Financial Corporation

Test of “substantial current activities” in relation to financial activities. Distinguish between transactions that have the subject matter of finance (lending/borrowing money) as opposed to transactions involving money (sale).

Related Bodies Corporate

s 6 ACL deems relation by reference to s 4A(5) CCA, which deems a body corporate related where:

- One is the holding company of another
- One is a subsidiary of another
- One is a subsidiary of the holding company of another

Natural Persons

Indirect or Accessorial Liability

Only occurs where they are “involved” in and have sufficient knowledge of the contravention within the definition of s 2 ACL.

“involved” : a person is involved, in a contravention of a provision of this Schedule or in conduct that constitutes such a contravention, if the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Test is twofold [*Yorke v Lucas*]:

- Were the acts sufficient to meet the definition
- Did the person have sufficient knowledge

Sufficient Acts

- To aid and abet (part a), clearly requires knowledge of the “essential matters” of the offence
 - Knowledge that it is an offence is irrelevant
- To induce or conspire (parts b, d) requires [*Yorke v Lucas*]
 - “intent based upon knowledge”
 - “something more than innocent participation”

Sufficient Knowledge:

- “knowledge of the essential facts constituting the contravention” [*Yorke v Lucas*, HCA]
 - Therefore, someone who acts innocently without knowledge will not be liable.
 - Knowledge of false, untrue statements meets the test.
- Actual knowledge and not constructive knowledge is the test [*Keller v LED Technologies*]
- Mere negligence in turning their mind to the facts is insufficient [*Rafferty v Time 2000 West*]
- Actual knowledge may be inferred in cases of ‘wilful blindness’
 - “..ignorance being dishonestly and deliberately maintained” [*Crocodile Marketing v Griffith Vinters*]
 - It may be imputed in circumstances where there are suspicious circumstances and a failure to enquire
- Where the offence is directed to the public at large:
 - Knowledge of the essential elements and
 - Knowledge of how an objective member of the target audience might understand the representation is required [eg; *Keller v LED Technologies*].