

Sec. 1001. Statements or entries generally

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

- (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

- (c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to -
 - (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
 - (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

Securities Exchange Act of 1934

Section 32 -- Penalties

- a. Any person who willfully violates any provision of this title (other than section 30A), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this title, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$1,000,000 or imprisoned not more than 10 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$2,500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.
- b. Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 15 of this title or any rule or regulation thereunder shall forfeit to the United States the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.
- c.
 1.
 - A. Any issuer that violates section 30A(a) shall be fined not more than \$2,000,000.
 - B. Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.
 2.
 - A. Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 30A(a) shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.
 - B. Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 30A(a), shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.
 - C. Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

- c. Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

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Securities Act of 1933

Section 24 -- Penalties

Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both.

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AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

- SECT 64

False information

(1) A person shall not:

- (a) in purported compliance with a requirement made under this Part; or
- (b) in the course of an examination of the person;

give information, or make a statement, that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) A person shall not, at a hearing, give evidence that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(3) It is a defence to a prosecution for a contravention of subsection (1) or (2) if it is proved that the defendant, when giving the information or evidence or making the statement, believed on reasonable grounds that it was true and not misleading.

CORPORATIONS LAW

- SECT 1309

False information etc.

- (1) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:
 - (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
 - (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
 - (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer:

- (d) is false or misleading in a material particular; or
- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

is guilty of an offence.

- (2) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:
 - (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
 - (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
 - (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;

being information, whether in documentary or any other form, relating to the affairs of the corporation that:

- (d) is false or misleading in a material particular; or
- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

without having taken reasonable steps to ensure that the information:

- (f) was not false or misleading in a material particular; and
- (g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;

is guilty of an offence.

- (3) The references in subsections (1) and (2) to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of a corporation include references to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the corporation.
- (4) Where information is made available or furnished to a person referred to in paragraph (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.

- (5) A person shall not, for the purposes of this Law, lodge with a futures exchange, a clearing house for a futures exchange, or a futures association, a document that contains a statement that, to the person's knowledge, is false or misleading.

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PART XXVII
OFFENCES

Miscellaneous offences

Misleading statements and practices.

390.-(1) This subsection applies to a person who-

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;

(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or

(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)-

(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement was made in conformity with price stabilising rules or control of information rules.

(5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show-

(a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;

(b) that he acted or engaged in the conduct-

(i) for the purpose of stabilising the price of investments; and

(ii) in conformity with price stabilising rules; or

(c) that he acted or engaged in the conduct in conformity with control of information rules.

(6) Subsections (1) and (2) do not apply unless-

(a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;

(b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or

(c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

(7) Subsection (3) does not apply unless-

(a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or

(b) the false or misleading impression is created there.

(8) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(9) "Relevant agreement" means an agreement-

(a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and

(b) which relates to a relevant investment.

(10) "Relevant investment" means an investment of a specified kind or one which falls within a prescribed class of investment.

(11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 20 being read as references to each of those

subsections.

(12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).

(13) "Investment" includes any asset, right or interest.

(14) "Specified" means specified in an order made by the Treasury.

Misleading the Authority: residual cases.

391. - (1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

(3) A person guilty of an offence under this section is liable-

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

Misleading the Director General of Fair Trading.

392. Section 44 of the Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of the Director General of Fair Trading under this Act as if it were a function under Part I of that Act.

Bodies corporate and partnerships

Offences by bodies corporate etc.

393. - (1) If an offence under this Act committed by a body corporate is shown-

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) If an offence under this Act committed by a partnership is shown-

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) “partner” includes a person purporting to act as a partner.

(5) “Officer”, in relation to a body corporate, means-

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and

(b) an individual who is a controller of the body.

(6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown-

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

200 False and misleading statements

- (1) A person commits an offence if—
- (a) for the purposes of or in connection with any application under this Act; or
 - (b) in purported compliance with any requirement imposed on him by or under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

- (2) A person commits an offence if, not being an authorised person or exempted person, he—
- (a) describes himself as such a person; or
 - (b) so holds himself out as to indicate or be reasonably understood to indicate that he is such a person.
- (3) A person commits an offence if, not having a status to which this subsection applies, he—
- (a) describes himself as having that status, or
 - (b) so holds himself out as to indicate or be reasonably understood to indicate that he has that status.

(4) Subsection (3) above applies to the status of recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house.

- (5) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(6) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

(7) Where a contravention of subsection (2) or (3) above involves a public display of the offending description or other matter the maximum fine that may be imposed under subsection (6) above shall be an amount equal to the fifth level on the standard scale multiplied by the number of days for which the display has continued.

(8) In proceedings brought against any person for an offence under subsection (2) or (3) above it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

NOTES

Commencement. As to the commencement of this section, see the current “*Is it in Force?*”.

Sub-s (1) : Person. See the note to s 142 ante.

Commits an offence. As to prosecutions, see s 201 post; as to offences by bodies corporate, etc, see s 202 post; and as to jurisdiction and procedure, see s 203 post. See also s 189 ante and Sch 14 post for restrictions of the Rehabilitation of Offenders Act 1974, Vol 12, title Criminal Law.

Knows. See the note “Knowledge” to s 146 ante.

False or misleading. Cf the note “Untrue or misleading” to s 150 ante.

Material particular. A particular may be material on the ground that it renders another statement more credible; see *R v Tyson* (1867) LR 1 CCR 107. As to whether evidence should be adduced to show why a piece of information was a material particular, see *R v Mallett* [1978] 3 All ER 10, [1978] 1 WLR 820, CA.

Recklessly. In *R v Caldwell* [1982] AC 341, [1981] 1 All ER 961, HL (applied in *R v Lawrence* [1982] AC 510, [1981] 1 All ER 974, HL; and see also *R v Pigg* [1982] 2 All ER 591, CA, revsd on another point [1983] 1 All ER 56, HL; *Elliott v C* [1983] 2 All ER 1005, [1983] 1 WLR 939; and *Goldman v Thai Airways International Ltd* [1983] 3 All ER 693) it was held that when used in criminal enactments, the term “reckless” was used not as a term of legal art but in the popular or dictionary sense of meaning “careless, regardless or

heedless of the possible harmful consequences of one's acts". As such the term encompassed both a decision to ignore a risk of harmful consequences flowing from an act which the accused had recognised as existing and also a failure to give any thought to whether there was any risk in circumstances where, if any thought were given to the matter, it would be obvious that there was. On the meaning of "recklessly", see also 11 Halsbury's Laws (4th edn) para 14, and 4 Words and Phrases (2nd edn) 272, 273, and the cases there cited.

Sub-s (4) : Recognised self-regulation organisation. See the note to s 180 ante.

Sub-s (5) : Shall be liable, etc; conviction on indictment; fine; summary conviction; statutory maximum. See the notes to s 149 ante.

Sub-s (6) : Standard scale. By the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, as amended, and the Criminal Justice Act 1982, s 37(3), Vol 27, title Magistrates, this means the standard scale set out in s 37(2) of the 1982 Act as amended by order made under the Magistrates' Courts Act 1980, s 143(1), Vol 27, title Magistrates. The scale as amended by the Criminal Penalties etc (Increase) Order 1984, SI 1984/447, art 3(4), Sch 4, is : level 1: £ 50; level 2: £ 100; level 3: £ 400; level 4: £ 1,000; and level 5: £ 2,000.

Sub-s (8) : It shall be a defence, etc. See the note "If he proves, etc" to s 154 ante.

Exercised all due diligence. Whether or not the accused has exercised all due diligence is a question of fact, but on a case stated the High Court will interfere if there was no evidence to support a finding on this point; see *R C Hammett Ltd v Crabb* (1931) 145 LT 638, [1931] All ER Rep 70.

The failure of the directors of a limited company to exercise due diligence is the failure of the company (*Pearce v Cullen* (1952) 96 Sol Jo 132), but the failure of subordinate managers and similar employees of a company with large-scale business to exercise due diligence is not necessarily the failure of the company (*Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL).

It has been said of a contractual obligation to exercise due diligence that it is indistinguishable from an obligation to exercise reasonable care; see *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1960] 1 QB 536 at 581, [1960] 1 All ER 193 at 219, CA, per Willmer LJ, revsd on other grounds [1961] AC 807, [1961] 1 All ER 495, HL.

Definitions. For "authorised person", "exempted person", "recognised clearing house", "recognised investment exchange", "recognised professional body" and "recognised self-regulating organisation", see s 207(1) post.

201 Prosecutions

(1) Proceedings in respect of an offence under any provision of this Act other than section 133 or 185 shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(2) (*See Vol 22, title Insurance.*)

(3) Proceedings in respect of an offence under section 185 above shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Treasury or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Treasury or the Director of Public Prosecutions for Northern Ireland.

(4) The functions to which section 114 above applies shall include the function of the Secretary of State under subsection (1) above to institute proceedings but any transfer of that function shall be subject to a reservation that it is to be exercisable by him concurrently with the designated agency and so as to be exercisable by the agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

NOTES

Commencement. Sub-s (1) above was brought into force on 15 November 1986 by the Financial Services Act 1986 (Commencement No 1) Order 1986, SI 1986/1940, made under s 211(1) post, for the purposes of any provision brought into operation on that date by that order, and that subsection was brought into force, in so far as not already in force, on 18 December 1986 by the Financial Services Act 1986 (Commencement No 3) Order 1986, SI 1986/2246. The latter order also brought sub-s (4) above into force on 12 January 1987. Sub-s (3) was brought into force on 23 April 1987 by virtue of the Financial Services Act 1986 (Commencement) (No 4) Order 1987, SI 1987/623 (also made under s 211(1) post).