

## CORPORATE IDENTITY AS THE BASIS FOR THE CRIMINAL LIABILITY OF JURISTIC PERSONS (2): PRACTICAL APPLICATION

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### SUMMARY

The shortcomings of individualist models of corporate criminal liability have led to the development of more realistic approaches to the criminal liability of juristic persons. In this contribution two legislative attempts to impose criminal liability on corporations based on their unique corporate identity or corporate ethos are critically discussed. The *Criminal Code Act* of 1995 applicable in the Commonwealth of Australia provides that the fault element of an offence must be attributed to a corporate body if that body expressly, tacitly or impliedly authorised or permitted the commission of the offence. One of the manners in which the authorisation or permission for the offence may be established is by having regard to the corporate culture which had existed within the body corporate that directed, encouraged or tolerated the criminal conduct. This approach is often regarded as the most sophisticated and comprehensive model for corporate criminal liability. *The Corporate Manslaughter and Corporate Homicide Act* of the United Kingdom of 2007 provides that a jury may take into consideration the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within an organisation that were likely to have encouraged failure to comply with health and safety legislation. The corporate culture or corporate identity model is not the exclusive model of attribution in these jurisdictions. It does, however, go a long way towards recognising true corporate or organisational fault. Corporate acts are not merely reduced to the fault of individuals but are rather based on the manner in which the corporation is structured.

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**KEYWORDS**

Criminal liability; doctrine of identification; vicarious liability; juristic persons; organisational theory; corporate identity; corporate culture