

QUESTION ON NOTICE

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**Question Number:** 1QON

**Topic:** Maximum penalty for breaches of Corporations Act

**Hansard page number:** p16 & 17.

**Hansard Extract:**

**Ms KEARNEY:** You've mentioned today that there are a lot of investigations underway by ASIC, and I'm sure you are incredibly busy, but can you confirm whether or not there is an investigation into matters concerning the collapse of Queensland Nickel at the moment?

**Mr Price:** Yes. We have confirmed on the public record previously that that is the case.

**Ms KEARNEY:** Are you able to tell us the potential offences or contraventions that are part of that investigation?

**Mr Price:** Yes. Again, we've previously provided that information to another committee—bear with me, and I can give some high-level observations in that that regard. Our investigation concerns suspected breaches of provisions on directors' duties and provisions dealing with lodgement of misleading documents. Broadly speaking, it relates to the use of company funds to fund the Palmer United Party, the transfer of assets without payment of due consideration and how those transactions were accounted for, the disclosure of information to company auditors and to the regulator, and the extent of related party transactions. As these inquiries are ongoing there is some difficulty in getting into more detail.

**Ms KEARNEY:** I understand. Thank you, that's very helpful. Are you able to tell us what the maximum penalties are for those offences? They sound quite serious.

**Mr Price:** I'd like to take that question on notice. But I'd just like to reiterate that these are investigations at this stage. Our investigations are well advanced, but these are investigations at this stage.

**Answer:**

In relation to ASIC's investigation into matters concerning the collapse of Queensland Nickel and suspected breaches of provisions on directors' duties and provisions dealing with lodgement of misleading documents, the relevant offences and maximum penalties are:

- A person who dishonestly applies to their own use or to the use of any person property belonging to another, or who dishonestly gains a benefit or advantage for any person, commits an offence pursuant to s408(1) Criminal Code Act 1899 (Qld). This offence is commonly referred to as "fraud"; the penalty for which is 5 years imprisonment. However, the maximum penalty increases to 12 years imprisonment, if the value of the property applied or the benefit gained was greater than \$30,000, or if the person was a director of a corporation and the victim is the corporation.
- A person who dishonestly uses their position as a director, officer or employee of a corporation, with the intention of directly or indirectly gaining an advantage for themselves or someone else, or causing detriment to the corporation, commits an offence pursuant to s184(2) *Corporations Act 2001* (Cth). The maximum penalty for

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which is a fine of \$420,000 (2000 Penalty Units) or 5 years imprisonment or both. Pursuant to the s4AA *Crimes Act 1914* (Cth), as at 1 July 2017, one penalty unit is \$210.

- A person who makes false or misleading statements in a material particular, including statements in a document lodged with ASIC, or who omits or authorises the omission of any material information, commits an offence pursuant to s1308(2) *Corporations Act 2001* (Cth). The maximum penalty for which is a fine of \$42,000 (200 Penalty Units) or 5 years imprisonment or both.
- An officer or an employee of a corporation who gives false or misleading information in a material particular, to a director, auditor or member of the corporation commits an offence pursuant to s1309(1) *Corporations Act 2001* (Cth). The maximum penalty for which is a fine of \$42,000 (200 Penalty Units) or 5 years imprisonment or both.