Chapter 1

Introduction and Overview

1.1 On 25 November 2015, the Senate referred the matter of inconsistencies and inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct or white-collar crime to the Economics References Committee for inquiry and report.[1]

1.2 The terms of reference are as follows:

(a) evidentiary standards across various acts and instruments;

(b) the use and duration of custodial sentences;

(c) the use and duration of banning orders;

(d) the value of fine and other monetary penalties, particularly in proportion to the amount of wrongful gains;

(e) the availability and use of mechanisms to recover wrongful gains;

(f) penalties used in other countries, particularly members of the Organisation for Economic Co-operation and Development [OECD]; and

(g) any other relevant matters.

1.3 This chapter provides an overview of the policy context of the inquiry, including a summary of recent inquiries and reports that address the issue of penalties for white-collar crime and corporate and financial misconduct.[2]

Submissions and public hearings

1.4 The committee received 139 submissions, including 5 confidential submissions.

1.5 The committee held a public hearing in Melbourne on 6 December 2016.

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1 At the dissolution of the Senate and the House of Representatives on 9 May 2016 for a general election on 2 July 2016, the parliamentary committees of the 44th Parliament ceased to exist, and ongoing inquiries automatically lapsed. On 11 October 2016, the Senate agreed to the committee's recommendation that this inquiry be re-adopted in the 45th Parliament.

2 For the most part, this report uses the phrase 'white-collar crime and misconduct'. It might be noted that the financial and corporate misconduct captured by this phrase is not always criminal in nature. Where the report is referring specifically to criminal offences or non-criminal offences this is made clear.

Defining 'white-collar crime' and 'corporate and financial misconduct'

1.6 A number of submissions addressed or sought to clarify the meaning of the terms 'white-collar crime' and 'corporate and financial misconduct'.

1.7 As the Institute of Public Affairs (IPA) noted in its submission, when the term 'white-collar crime' first entered usage in the mid-twentieth century it generally referred to crimes committed by persons of high social status in the course of their employment. More recently, however, the term has evolved to encompass the specific nature of those crimes, rather than focussing on the social status or position of the offender.[3]

1.8 In their joint submission, Professor Michael Adams, Dr Tom Hickie and Mr Ian Lloyd QC, suggested that while the meaning of the term 'white-collar crime' is debated, in simple terms it captures offences such as:

> …fraud, bribery, tax evasion, and multiple regulatory offences involving corporate entities. Inevitably, these offences are non-violent and, in the main, committed by educated and/or [those] who can be described as 'well off' individuals or corporations.
>
> Similarly, the motive for the commission of these crimes is to obtain money or property or avoiding the payment of money or debts. Thus, generally, the aim is to obtain some form of financial advantage.[4]

1.9 While social status is no longer the main criterion for determining whether an offence can rightly be categorised as 'white-collar crime', the individual's relationship to the victim remains a defining feature of the white-collar criminal. That is, a white-collar criminal is generally acting from a position of trust and authority, and from inside a business or organisation. For example, the Attorney-General's Department advised that it understood the terms 'corporate and financial misconduct' and 'white-collar crime' to:

> …encompass illegal or unethical acts that violate fiduciary responsibility or public trust. These acts may be committed by an individual or organisation and are usually committed during the course of legitimate occupational activity for personal or organisational gain.[5]

1.10 The Australian Federal Police (AFP) defined 'white-collar crime' as a form of serious financial crime (while noting that the AFP does not itself distinguish 'white-collar crime' from financial crime generally). It explained:

> The term 'white-collar crime' generally refers to financially-motivated, non-violent crime and can cover a broad range of criminal conduct. Criminal conduct may occur in the course of the perpetrator's business or profession.

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3 Institute of Public Affairs, *Submission 33*, p. 2.

4 Professor Michael Adams, Dr Tom Hickie and Mr Ian Lloyd QC, *Submission 5*, p. 1.

5 Attorney-General's Department, *Submission 52*, p. 1.

> In some cases, perpetrators exploit their social status or that of the business or profession with which they are associated, for example, corporate fraud or corruption. Other offences involve criminal conduct benefitting a business directly, for example bribery of a foreign official to obtain a business advantage, or indirectly, by profiting from the proceeds of crime, such as through money laundering.[6]

1.11 Some inquiry participants objected to the idea of treating white-collar criminals as a distinct class of criminal. For example, the IPA voiced broad concerns about the concept of 'white-collar crime', and the related instinct to treat white-collar criminals as distinct from other non-violent criminals. To do so, the IPA argued, tended to undermine the concept of equality before the law 'by singling out a special class of offenders for different treatment'.[7] Asked whether it was right to group white-collar crime together with social security fraud (particularly given the latter type of offence was often undertaken by people in relatively desperate situations), the IPA advised:

> I think the problem here is that defining a white-collar crime is actually really difficult. And that probably goes back to the origin of the term, which is rooted in a very particular political view point. The man who invented the term was a guy named Edwin Sutherland, who was a criminologist. It was his contention that rich people, if you like, committed crime at the same rate as anyone else but they were able to avoid conviction. So this idea of greed versus need is already conflated in this topic, because there is no clear [way] to delineate what a white-collar crime is. We are actually happy to talk about social security fraud and white-collar crime and other kinds of things as fraud, as theft, in their general categories, rather than trying to ring-fence them as white-collar crime and imply that that requires some sort of special attention.[8]

1.12 While the term 'white-collar crime' remains contested,[9] a useful definition is financially motivated non-violent crimes committed by businesses or individuals acting from a position of trust and authority. This basic definition is used in this report. Common examples of white-collar crime include fraud, bribery, insider trading, embezzlement, money laundering, forgery, cybercrime, identity theft and Ponzi schemes (although these offences do not always fit neatly into the 'white-collar crime' category).

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6 Australian Federal Police, *Submission 54*, p. 6.

7 Mr Andrew Bushnell, Research Fellow, Institute of Public Affairs, *Proof Committee Hansard*, 6 December 2016, p. 8.

8 Mr Andrew Bushnell, Research Fellow, Institute of Public Affairs, *Proof Committee Hansard*, 6 December 2016, p. 11.

9 Gilbert Geis, 'White-collar crime: what is it?' *Current Issues in Criminal Justice* 3 (1991), p. 10.

Is Australia a 'paradise' for white-collar crime?

1.13 The apparent prevalence of white-collar crime and misconduct in Australia, and a series of high-profile scandals in recent years in the corporate sector, has increased attention on the adequacy and consistency of the relevant criminal, civil and administrative penalties.

1.14 The Attorney-General's Department provided the following information on the incidence of white-collar crime in Australia:

> According to PwC's 2014 Global Economic Crime Survey, 57 per cent of surveyed Australian organisations had experienced white collar crime in the past two years, with more than a third of organisations losing more than $1 million.
>
> There has also been over $1.2 billion in reported fraud against the Commonwealth from 2010–14 stemming from 391,831 incidents. The actual cost of fraud, however, is likely to be much greater as this figure does not include undetected, unquantified or unreported incidents.[10]

1.15 The Attorney-General's Department further noted that as at 30 June 2015, the AFP had 114 fraud-related matters on hand with an estimated total value of $1.6 billion.[11] The AFP, meanwhile, advised the committee that serious and organised crime costs the Australian economy $36 billion per year, of which organised fraud comprises $6.3 billion.[12]

1.16 Dr Mark Zirnsak, the Director of the Uniting Church's Justice and International Mission Unit (hereafter 'Uniting Church (JIMU)'), advised that the levels of misconduct in the corporate world were likely higher than was publicly reported. Dr Zirnsak explained that many firms preferred to address instances of fraud or other misconduct internally, thus avoiding reputational damage:

> We would be concerned about the levels that are there, and in private conversation with corporate firms that investigate fraud they seem to indicate there are very high levels of fraud that take place in Australia, most of which goes unreported. So, often, companies are embarrassed by frauds and therefore do not take action against them. That is of concern because it would add to that broader perception that you will not get detected and you will not get caught, and it helps exacerbate crime.[13]

1.17 However, Dr Zirnsak also acknowledged that it was difficult to gauge if the incidence of white-collar crime was on the increase:

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10 Attorney-General's Department, *Submission 52*, p. 1.

11 Attorney-General's Department, *Submission 52*, p. 1.

12 Australian Federal Police, *Submission 54*, p. 3.

13 Dr Mark Zirnsak, Director, Justice and International Mission Unit, Uniting Church in Australia, Synod of Victoria and Tasmania, *Proof Committee Hansard*, 6 December 2016, p. 2.

> Often with criminal activity, it is very hard because you cannot go out and survey people, 'How many frauds did you commit this year?' You cannot get accurate statistics. Often, greater reporting does not necessarily mean that there is more; it simply means more has been detected. That is always the challenge about knowing what was the base level of white-collar crime that was taking place before this.[14]

1.18 While quantifying the costs of white-collar crime and misconduct is difficult, various regulators and other experts have voiced concern about its prevalence in Australia. For example, Australian Securities and Investments Commission (ASIC) Chairman, Mr Greg Medcraft, gave voice to concerns about the prevalence of white-collar crime and the adequacy of current penalties when, in an October 2014 'Q&A' with a business audience, he seemed to suggest Australia was a 'paradise' for white-collar criminals. Mr Medcraft further observed the need to 'lift the fear and supress the greed' in order to deter white-collar criminals, and suggested the threat of going to jail could help achieve this (a subject discussed in detail in chapter 4). Mr Medcraft also highlighted what he viewed as insufficient civil penalties for white-collar offences:

> The penalties, particularly civil penalties, in Australia for white-collar offences are basically not strong enough, not tough enough. All you're doing is giving them a slap on the wrist [and] that is not deterring people.[15]

1.19 In a subsequent appearance at Senate Estimates, Mr Medcraft sought to clarify his apparent characterisation of Australia as a paradise for white-collar crime, while reiterating his broader point about the need for stronger penalties:

> [T]he point I was making was not that we are a paradise, but we need to be careful that we are not seen as a haven and, therefore, regarding the issue we have raised previously about corporate penalties and which the Senate inquiry[16] has actually recommended, we need to make sure that our penalties are consistent with the rest of the world. That is the point I have made on a number of occasions about making sure that we are consistent in terms of our penalty regime.[17]

1.20 Mr Medcraft has made similar points about the inadequacy of current penalties on other occasions and in various forums. For example, appearing before the Senate Economics References Committee during its inquiry into the performance of ASIC, Mr Medcraft advised that the 'inadequacy of penalties' constituted a barrier to ASIC taking strong action against wrongdoers and thereby sending a message that

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14 Dr Mark Zirnsak, Director, Justice and International Mission Unit, Uniting Church in Australia, Synod of Victoria and Tasmania, *Proof Committee Hansard*, 6 December 2016, p. 5.

15 Sue Mitchell, 'Australia "paradise" for white-collar criminals, says ASIC chairman Greg Medcraft', *Sydney Morning Herald*, 21 October 2014.

16 Mr Medcraft was referring the Senate Economics References Committee's 2013–14 inquiry into the performance of ASIC, which is discussed later in this chapter.

17 Mr Greg Medcraft, Chairman, Australian Securities and Investments Commission, *Senate Economics Legislation Committee Estimates Hansard*, 22 October 2014, p. 69.

might shape future behaviour. Mr Medcraft submitted that the inadequacies of the current penalty regime included:

> …the fact that some comparable criminal offences attract inconsistent penalties and that civil penalties are currently set too low and they are not available for a sufficiently wide range of offences.[18]

1.21 ASIC's views on the overall adequacy of current penalties for white-collar crime and misconduct, and the views of other participants in the inquiry in this respect, are discussed in the next chapter.

Impacts of white-collar crime and corporate and financial misconduct

1.22 A clear message to the committee from inquiry participants was that white-collar crime and misconduct can cause serious harms, both at the individual level and in the community as a whole.

1.23 The committee received a large number of submissions from individuals relaying their own experiences with white-collar crime and misconduct. These submissions primarily related to 'predatory' or irresponsible lending, Loan Application Form fraud, and other disputes with banks and financial institutions regarding lending practices. Other submissions related to inappropriate or fraudulent financial advice or similar matters. A unifying theme in these submissions was that white-collar crime and misconduct can have a profound, and in some cases devastating, impact on the lives of individuals.

1.24 The HNAB Action Group (a group formed by clients who received financial advice from Mr Peter Holt or his associates) submitted that the victims of white-collar crime not only suffer financially, but also experience immeasurable damage to their well-being, health, family and social life and careers.[19] It submitted:

> Innocent people have been forced to sell their home, had their life-savings and/or superannuation effectively stolen, retirement rendered impossible or the quality of it radically reduced including ending up in poverty. People have been forced into bankruptcy or insolvency arrangements.
>
> Beyond the devastating financial ramifications, from which many will never recover, the personal life-altering toll is inestimable and deeply traumatic. The toxic tentacles extend to marriages / relationships, children, elderly parents, friendships, social-life, work and career and include severe physical, emotional and mental health impacts extending to suicidality.
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> The protracted nature over many years of trying to extract from the ordeal, on top of next to no accountability required of the culprits, far less avenues

18 Mr Greg Medcraft, Chairman, Australian Securities and Investments Commission, *Committee Hansard,* 19 February 2014, p. 2.

19 HNAB Action Group, *Submission 41*, p. 15.

> for justice and restitution, exacerbate the intense and profound trauma experienced by the victims.[20]

1.25 The AFP also emphasised the costs of white-collar crime on both individual victims and on society as a whole:

> Serious financial crimes including white-collar crimes are not, contrary to some perceptions, 'victimless' crimes. They have a real and significant impact on individuals and society as a whole even when there are no complainants coming forward to report their losses or harm suffered. Such crimes can facilitate or hide the commission of other serious criminal activity, including organised crime and terrorism, deprive people and communities of valuable resources and assets, and distort the legitimate economy.[21]

1.26 Some inquiry participants, such as Professor Fiona Haines, also noted the damage white-collar crime and misconduct can cause in terms of market integrity. For instance, with regard to insider trading, people may choose not to invest because they believe that only insiders are in a position to benefit.[22]

Recent inquiries and reports regarding the penalties issue

The committee's inquiry into the performance of ASIC

1.27 The committee's inquiry into the performance of ASIC, which commenced in June 2013 and reported in June 2014, included a consideration of the adequacy of existing penalties for financial or corporate misconduct. In particular, the report considered potential inadequacies in the penalties currently available for contraventions of the legislation ASIC administers.

1.28 In its final report, the committee emphasised the importance of appropriate penalties in supporting ASIC's work, and concluded that there was a need for a review in this regard. The committee expressed the view that it is:

> …important that the penalties contained in legislation provide both an effective deterrent to misconduct as well as an adequate punishment, particularly if the misconduct can result in widespread harm. Insufficient penalties undermine the regulator's ability to do its job: inadequately low penalties do not encourage compliance and they do not make regulated entities take threats of enforcement action seriously. The committee considers that a compelling case has been made for the penalties currently available for contraventions of the legislation ASIC administers to be

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20 HNAB Action Group, *Submission 41*, p. 6.

21 Australian Federal Police, *Submission 54*, p. 4.

22 Professor Fiona Haines, Private capacity, *Proof Committee Hansard*, 6 December 2016, p. 28. A contrary view, questioning the impact of white-collar crime on market integrity, was offered by Professor Bagaric. Professor Mirko Bagaric, Professor of Law, Swinburne University of Technology *Proof Committee Hansard*, 6 December 2016, p. 27.

> reviewed to ensure they are set at appropriate levels. In addition, consideration should be given to designing more responsive monetary penalties, such as multiple of gain penalties or penalties combined with disgorgement.[23]

1.29 Recommendation 41 of the report also called for the government to commission an inquiry into the 'current criminal and civil penalties available across the legislation ASIC administers'.[24] The committee recommended that this inquiry should consider:

- the consistency of criminal penalties, and whether some comparable offences currently attract inconsistent penalties;
- the range of civil penalty provisions available in the legislation ASIC administers and whether they are consistent with other civil penalties for corporations; and
- the level of civil penalty amounts, and whether the legislation should provide for the removal of any financial benefit.[25]

1.30 The government response to the committee's report was tabled in October 2014. The government noted recommendation 41 and indicated that the issue would be considered more fully in conjunction with its response to the Financial System Inquiry (FSI).[26]

ASIC's Report 387 on penalties

1.31 In preparing its submission to the FSI (discussed further below), ASIC prepared and in March 2014 released a report on penalties, *Report 387: Penalties for corporate wrongdoing*. The report considered whether penalties in Australia are proportionate and consistent, and compared penalties available to ASIC with:

- those in other countries;
- those of other Australian regulators; and

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23 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission* (June 2014), pp. 367–368. 'Disgorgement', as ASIC explained in its submission, is 'the removal of financial benefit (such as profits illegally obtained or losses avoided) that arises from wrongdoing, or the act of paying these monies, on demand or by legal compulsion. For example, any profit made by wrongdoing is "disgorged" from those involved in the wrongdoing in addition any penalties that are imposed.' Australian Securities and Investments Commission, *Submission 49*, p. 10.

24 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission* (June 2014), p. 368.

25 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission* (June 2014), p. 368.

26 Australian Government, *Response to the Senate Economics References Committee Report: Performance of the Australian Securities and Investments Commission* (October 2014), p. 21.

- across ASIC's regime.[27]

1.32 The key findings of *Report 387* were that:

- on the international comparison —
    - while our maximum criminal penalties—jail and fines—are broadly consistent with those available in other countries, there are significantly higher prison terms in the [United States], and higher fines in some overseas countries for certain offences;
    - there is a broader range of civil and administrative penalties in other countries, they are higher, and they include the ability to remove financial benefit from wrongdoing (i.e. disgorgement);
- on the comparison with other Australian regulators—
    - the maximum civil penalties available to ASIC are lower than those available to other regulators and are fixed amounts, not multiples of the financial benefits obtained from wrongdoing; and
- on the comparison across ASIC's regime—
    - there are differences between the types and size of penalties for similar wrongdoing. For example, providing credit without a licence can attract a civil penalty up to ten times greater than the criminal fine for those who provide financial services without a licence.[28]

1.33 *Report 387* informed ASIC's subsequent submission to the FSI inquiry (discussed further below).[29]

Financial System Inquiry (FSI)

1.34 The FSI (commonly known as the 'Murray Review') was the most significant inquiry into the financial industry since the Wallis inquiry in 1996–97. Announced in December 2013, the overall aim of the FSI was to 'examine how the financial system could be positioned to best meet Australia's evolving needs and support Australia's economic growth'.[30] As part of its work, the inquiry considered various issues related to penalties for misconduct in the financial system, as summarised below.

1.35 The FSI Interim Report, released in July 2014, noted (as ASIC's own submission to the FSI had) that criminal penalties in Australia in relation to market

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27 ASIC, media release, 'ASIC reports on penalties for corporate wrongdoing', 20 March 2014, http://asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-055mr-asic-reports-on-penalties-for-corporate-wrongdoing/ (accessed 2 December 2012).

28 ASIC, media release, 'ASIC reports on penalties for corporate wrongdoing'.

29 ASIC, media release, 'ASIC reports on penalties for corporate wrongdoing'.

30 Financial System Inquiry, 'The inquiry's terms of reference', http://fsi.gov.au/terms-of-reference/ (accessed 20 June 2016).

conduct and disclosure are broadly consistent with those available in major foreign jurisdictions, but civil and administrative penalties are comparatively low. The FSI Interim Report further observed:

> ASIC's mandate also has important gaps when compared to major domestic and international jurisdictions. For non-criminal proceedings, ASIC does not have the power of disgorgement available in Canada, Hong Kong, the United Kingdom and the United States. ASIC cannot impose fines on [Australian Financial Services Licence] holders, although it can suspend or revoke their licence. Penalties available to the [Australian Competition and Consumer Commission] are higher than those available to ASIC.[31]

1.36 The FSI Final Report, released in December 2014, included a number of findings and recommendations relevant to ASIC's enforcement powers and other matters relevant to this inquiry. In particular, the FSI Final Report found that:

> …the maximum penalties in Australia for contravening laws governing financial sector conduct are low by international standards. For example, ASIC cannot seek disgorgement of profits in relation to civil contraventions. As such, current penalties are unlikely to act as a credible deterrent against misconduct by large firms.[32]

1.37 The FSI Final Report recommended strengthening the Australian Credit Licence and Australian Financial Services Licence (AFSL) regimes 'so ASIC can deal more effectively with poor behaviour and misconduct'. The Final Report also stated:

> The maximum civil and criminal penalties for contravening ASIC legislation should be substantially increased to act as a credible deterrent for large firms. ASIC should also be able to seek disgorgement of profits earned as a result of contravening conduct.[33]

1.38 However, while the FSI Final Report recommended substantially higher penalties, it qualified this recommendation by noting that Australia should not:

> …introduce the extremely high penalties for financial firms recently seen in some overseas jurisdictions. This practice risks creating inappropriate incentives for government and regulators unless revenue is separated and used for social or public purposes.[34]

1.39 The government released its response to the FSI Final Report in October 2015. It indicated, among other things, that by the end of 2016 the government would:

- develop legislation to give ASIC the power to ban individuals from managing financial firms;

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31 Financial System Inquiry, *Interim Report* (July 2014), p. 3-125.

32 Financial System Inquiry, *Interim Report* (July 2014), p. 252.

33 Financial System Inquiry, *Final Report* (December 2014), p. 250.

34 Financial System Inquiry, *Final Report* (December 2014), p. 252.

- consult on strengthening ASIC's enforcement tools in relation to the financial services and credit licensing regimes.[35]

1.40 The government response also noted that it had already commenced an ASIC Capability Review, and would 'review ASIC's enforcement regime to ensure it provides a credible deterrent for poor behaviour and breaches of financial services laws'.[36]

ASIC Capability Review

1.41 The government announced the ASIC Capability Review in July 2015 as part of its response to the FSI. The review was completed in December 2015.

1.42 The Capability Review was led by an Expert Panel and considered ASIC's regulatory and enforcement toolkit. However, the final report did not address the adequacy or consistency of penalties available to ASIC.[37] In its response to the review, ASIC noted that the final report was silent on the 'significant inconsistencies in ASIC's penalty regime'.[38]

ASIC Enforcement Review Taskforce

1.43 On 19 October 2016, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, announced the terms of reference for an ASIC Enforcement Review Taskforce. Ms O'Dwyer indicated that the terms of reference 'allow for a thorough but targeted examination of the adequacy of ASIC's enforcement regime, including in relation to industry Codes of Conduct, to deter misconduct and foster consumer confidence in the financial system'.[39]

1.44 The Taskforce is led by a core panel chaired by Treasury, and includes senior representatives from ASIC, the Attorney-General's Department, and the office of the Commonwealth Director of Public Prosecutions (CDPP). An Expert Panel drawn from

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35 Australian Government, *Improving Australia's financial system: Government response to the Financial System Inquiry* (October 2015), p. 8.

36 Australian Government, *Improving Australia's financial system: Government response to the Financial System Inquiry* (October 2015), p. 8.

37 The Capability Review terms of reference indicated that the review could 'provide observations, but not make recommendations on ASIC's regulatory framework and powers'. Australian Government, *Fit for the future: A capability review of the Australian Securities and Investments Commission* (December 2015) [hereafter 'ASIC Capability Review'], p. 1.

38 *ASIC Capability Review*, Appendix E: ASIC's Response to the Panel's Report to Government, p. 181.

39 The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, media release, 'ASIC Enforcement Review Taskforce', 19 October 2016, http://kmo.ministers.treasury.gov.au/media-release/095-2016/.

peak industry bodies, consumer groups and academia is supporting the Taskforce. The Taskforce is due to report to the government in March 2017.[40]

1.45 The terms of reference for the Taskforce include an examination of legislation dealing with corporations, financial services, credit and insurance as to:

> The adequacy of civil and criminal penalties for serious contraventions relating to the financial system (including corporate fraud);
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> The need for alternative enforcement mechanisms, including the use of infringement notices in relation to less serious contraventions, and the possibility of utilising peer disciplinary review panels (akin to the existing Markets Disciplinary Panel) in relation to financial services and credit businesses generally;
>
> The adequacy of existing penalties for serious contraventions, including disgorgement of profits;
>
> The adequacy of enforcement related financial services and credit licensing powers;
>
> The adequacy of ASIC's power to ban offenders from occupying company offices following the commission of, or involvement in, serious contraventions where appropriate; …[41]

1.46 The terms of reference also provide for an examination into legislation as it relates to other matters directly or indirectly relevant to this inquiry, including: ASIC's information gathering powers; the adequacy of ASIC's powers in relation to licensing of financial services and credit providers, including its coercive powers in this regard; the adequacy of frameworks for notifying ASIC of breaches of the law; and any other matters that arise during the course of the inquiry and which appear necessary to address any deficiencies in ASIC's regulatory toolkit.[42]

Structure of this report

1.47 This report considers the adequacy and consistency of existing penalties for white-collar crime and misconduct across six chapters, including this introductory chapter. Of the remaining chapters:

- chapter 2 provides an overview of the current penalty framework, including the division of regulatory and enforcement responsibilities, and considers evidence received on the general adequacy and consistency of that framework;
- chapter 3 explores some of the challenges involved in investigating and prosecuting white-collar crime and misconduct, and questions related to proving civil and criminal offences. Chapter three also considers certain

40 Ms O'Dwyer, 'ASIC Enforcement Review Taskforce'.

41 Ms O'Dwyer, 'ASIC Enforcement Review Taskforce'.

42 Ms O'Dwyer, 'ASIC Enforcement Review Taskforce'.

recommendations made during the inquiry for improving corporate cooperation and compliance;

- chapter 4 examines the underlying purpose of penalties for white-collar crime and misconduct, and considers the role of custodial penalties in relation to white-collar crime;
- chapter 5 discusses the role of banning and disqualification orders in relation to white-collar crime and misconduct, along with ASIC's use of infringement notices;
- chapter 6 considers the adequacy and consistency of monetary penalties for white-collar crime and misconduct, and considers recommendations for introducing disgorgement powers in relation to civil offences.