

16th March 2016

The Chair
Economics References Committee
Senate Standing Committees on Economics
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Senator,

RE : INQUIRY INTO THE PENALTIES FOR WHITE COLLAR CRIME

I'm writing to you to make a submission to the Inquiry into the Penalties for White Collar Crime as announced 25 November 2015 under Item G of the Terms of Reference.

While I understand that this Inquiry has been bought about by conduct (or indeed alleged misconduct) within the Finance & Banking Industries, I believe it is highly prudent to remind the Committee that the matters referred to in the Terms of Reference moved beyond just one sector of the Australian economy.

I would contend that the penalties, evidentiary standards and administrative penalties are appropriate. The law is already in place. The penalties are already in place. In my experience as a victim of white collar crime, the issue is not the law or the penalties, but the inaction of the relevant regulatory agencies to enforce and give effect to the law.

On 26 June 2014, this Committee tabled a report to the Senate on the Inquiry into the performance of the Australian Securities & Investments Commission. In that Inquiry, the Committee reported that it was not reasonable for ASIC to pursue each and every case.

While I agree with this, what concerns me is how many times do regulators have to be informed of a matter before they do act?

Regardless of this, the crimes in question go beyond the jurisdiction of ASIC. If the crimes occurred within the public sector, it would be simple enough to report the matter to the Australian Public Service Commission, or at a state level, to the relevant anti-corruption body (ICAC in NSW, CCC in WA etc).

Problems arise because we're referring to the private sector and matters regularly become multi or cross jurisdictional. Is the matter a State Police Fraud issue, a Federal Fraud issue, an ASIC issue or an ATO issue and so on and so forth.

A classic example of if this is Phoenix Activity – the intentional and deliberate cyclic liquidation of related trading entities to avoid Super, PAYG, GST Employee Entitlements and other obligations.

The absconding of monies owed to employees, creditors & regulators could reasonably be considered;

- fraud (State or Federal Police),
- a glaring breach of duties & responsibilities as a Company Office Holder (ASIC),
- a breach of Taxation Legislation (ATO)
- a breach of Employment Law (Dept of Employment).

There may also be Payroll tax liabilities (State OSR), non-payment of Child Support obligations (DHS) and also may very well extend to other agencies, such as the Dept of Environment, Clean Energy Regulator, Dept of Immigration and so and so forth.

As a Consumer or Employee – who am I supposed to report this crime to? My experience tells me that I have to report the crime about a dozen different times.

One very effective step forward was the Inter Agency Phoenix Forum and the subsequent Inter Agency Phoenix Taskforce. A powerful opportunity to harness the collective resources of a plethora of agencies to combat the problem of phoenix activity.

With regard to the Terms of Reference of this Inquiry, I would most emphatically recommend that, rather than focussing on the legislation as it stands, a focus on the effectiveness and efficiency of the bodies responsible for enforcing and giving effect to said legislation.

The departments in question have sizeable budgets and sizeable workforces. Surely, collectively, they would be able to more effectively pursue white collar crime.

Sincerely,

Mr Peter Leech
Perth, WA