



Australian Government

Australian Government response to the
Senate Economics References Committee Report:

*'Lifting the fear and suppressing the greed':
Penalties for white-collar crime and corporate and financial
misconduct in Australia*

March 2018

Economics References Committee***'Lifting the fear and suppressing the greed':
Penalties for white-collar crime and corporate and financial misconduct in Australia***Government Response**Recommendation 1**

The committee recommends that the government consider reforms to provide greater clarity regarding the evidentiary standards and rules of procedure that apply in civil penalty proceedings involving white-collar offences.

- The Government does not support this recommendation at this time.
- The Government notes the concerns highlighted in the Committee's report around the difficulty in proving some white-collar offences (including in civil proceedings). However, the Government supports the Committee's observation that difficulty in proving certain civil offences does not necessarily mean evidentiary standards should be lowered. Furthermore, the Government notes the Full Federal Court's decision in the matter of *ASIC v Whitebox Trading Pty Limited & Anor*, has provided some clarity around the standard of proof and the application of 'fault' elements in civil proceedings.
- The Government does not consider this perceived lack of clarity sufficient to warrant reforms at this time, but will keep the matter under review should new developments emerge. Should any reform be considered appropriate in future, the Government notes that the *Evidence Act 1995* is part of the uniform evidence legislation and any changes would need to be considered and agreed by NSW, Victoria, the ACT, Tasmania, the Northern Territory and Commonwealth jurisdictions.

Recommendation 2

The committee recommends that the Australian Securities and Investments Commission consider ways in which the accessibility and usability of the banned and disqualified register might be enhanced, in order to create greater transparency regarding banning and disqualification orders.

- The Australian Government notes this recommendation.
- The Banned and Disqualified Register on Australian Securities and Investments Commission (ASIC) Connect - is a publicly available, automated search tool, ranging across ASIC's administrative and external court order bannings and disqualifications.
- Since 2016, ASIC has also made available a monthly snapshot of banning and disqualification data on data.gov.au, a Commonwealth data access and sharing website. This monthly snapshot has different uses as names in the Banned and Disqualified Register can be viewed without searching for a specific name.
- The Government is currently considering the modernisation of Business Registers, including ASIC registries. This modernisation process will potentially include technology and service upgrades that may lead to improvements in the accessibility of the registers. The modernisation work is jointly led by the Department of the Treasury and the Department of Industry, Innovation and Science.

Recommendation 3

The committee recommends that the government consider making infringement notices available to the Australian Securities and Investments Commission to respond to breaches of the financial services and managed investments provisions of the Corporations Act.

- The Australian Government accepts this recommendation.
- The ASIC Enforcement Review Taskforce (Taskforce) considered the expansion of infringement notices in its review of available regulatory pathways.
- The Taskforce established a set of principles to determine whether infringement notices should be made available. The Taskforce recommended approximately 70 additional infringement notice provisions of the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (Credit Act), including for breaches of certain financial services laws.
- The Government accepts this Taskforce recommendation to make infringement notices available to these provisions, as outlined in its Government response to the Taskforce's Report.

Recommendation 4

The committee recommends that the government amend the Corporations Act 2001 to increase the current level of civil penalties, both for individuals and bodies corporate, and that in doing so it should have regard to non-criminal penalty settings for similar offences in other jurisdictions.

Recommendation 5

The committee recommends that the government provide for civil penalties in respect of white-collar offences to be set as a multiple of the benefit gained or loss avoided.

- The Australian Government accepts recommendations 4 and 5.
- The Government established the Taskforce to consider the adequacy of civil and criminal penalties for serious contraventions relating to the financial system.
- The Government accepts that civil penalties should be increased and should be set as a multiple of the benefit gained or loss avoided. The Government has also considered the recommendations of the Taskforce and proposes to set the civil penalties in ASIC-administered legislation at:
 - the greater of 5,000 penalty units (currently \$1.05 million) or three times the value of benefits obtained or losses avoided for individuals, and
 - the greater of 50,000 penalty units (currently \$10.5 million) or three times the value of benefits obtained or losses avoided or 10% of annual turnover in the 12 months preceding the contravening conduct (but not more than 1 million penalty units (\$210 million)) for corporations.

Recommendation 6

The committee recommends that the government introduce disgorgement powers for the Australian Securities and Investments Commission in relation to non-criminal matters.

- The Australian Government accepts this recommendation.
- In its report to Government, the Taskforce recommended disgorgement remedies be available for civil penalty proceedings brought by ASIC under the Corporations Act, Credit Act and the *Australian Securities and Investments Commission Act 2001*.
- The Government accepts and proposes to implement the Taskforce's recommendation, as outlined in the Government response to the Taskforce's report.