

## **Additional Comments by the Australian Greens**

1.1 The Australian Greens agree with the vast majority of recommendations and direction taken by the committee's inquiry into the performance of the Australian Securities and Investment Commission (ASIC).

1.2 It is important to note that the inquiry's recommendations call for an increase in activity by ASIC across their roles and responsibilities. This inquiry report comes after the recent Federal Budget which cut funding to ASIC. The Government should implement most of the recommendations in the report and ensure ASIC is appropriately resourced.

1.3 The Australian Greens are keenly interested in the results of the Government's scoping study into privatisation of ASIC's company registry. The Greens will not support any registry model which limits transparency and makes it more difficult and expensive to search a company's shareholders and directors and in the case of public companies, access financial details in annual returns loans and offer documents.

1.4 The Australian Greens disagree with recommendation 41 concerning the commissioning of an inquiry into the current criminal and civil penalties available across the legislation ASIC administers. This inquiry into the performance of ASIC has been extensive and it is clear from ASIC's evidence that they believe penalties are insufficient. On 20 March 2014, ASIC released a comparison of penalties available to ASIC and those available to its foreign counterparts, other Australian regulators and across the legislation ASIC administers. It concluded that:

- while ASIC's maximum criminal penalties are broadly consistent with those available in other countries, there are significantly higher prison terms in the US, and higher fines in some overseas countries for breaches of continuous disclosure obligations and unlicensed conduct—for example, the fine for individuals for unlicensed conduct in Australia is \$34,000, whereas in Hong Kong it is \$720,000; in Canada it is \$5.25 million; in the United States it is \$5.6 million; and in the United Kingdom there is no limit on the maximum fine;
- there is a broader range of civil and administrative penalties in other countries, and the penalties are higher (see Table 23.1);
- the maximum civil penalties available to ASIC are lower than those available to other Australian regulators and are fixed amounts, not multiples of the financial benefits obtained from wrongdoing; and
- across ASIC's regime there are differences between the types and size of penalties for similar wrongdoing (for example, ASIC noted that providing

credit without a licence can attract a civil penalty up to ten times greater than the criminal fine for providing financial services without a licence).<sup>1</sup>

### **Recommendation 1**

**1.5 The Australian Greens believe a new inquiry across the current criminal and civil penalties is not needed; instead the government should immediately consult with ASIC and bring forward legislation that strengthens Australia's civil and criminal penalties which at minimum should bring them into line with global benchmarks.**

**Senator Peter Whish-Wilson**

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1 ASIC, 'ASIC reports on penalties for corporate wrongdoing', *Media Release*, no. 14-055, 20 March 2014; ASIC, Report 387, pp. 16–17.