



31 January 2020

Australian Law Reform Commission

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Dear Australian Law Reform Commission

RE: Corporate Criminal Responsibility Discussion Paper

CHOICE appreciates the opportunity to comment on the Australian Law Reform Commission's Corporate Criminal Responsibility Discussion Paper. As Australia's largest consumer advocacy organisation, CHOICE has an interest in how changes to the national corporate criminal responsibility regime affect victims of such behaviours. We support reforms that either benefit or protect consumers from the ill effects of corporate wrongdoing. For this reason, our comments will be focussed on Part 10: Sentencing Corporations, specifically Proposal 20 and Question H, and Part 11. Illegal Phoenixing Activity in the Discussion Paper.

Facilitating victims of compensation - Question H

CHOICE supports reforms to court powers to better facilitate the compensation of victims of criminal conduct and civil penalty provision contraventions by corporations. Provision of compensation in these types of matters is consistent with the principle of restitution. Where it has been established through criminal or civil penalty proceedings that conduct has caused harm to individuals, it will also be of benefit to the efficiency of the justice system for compensation to flow without the need for victims to establish the key facts through separate legal proceedings. It is also important to note that in some matters, victims may lack the resources to pursue civil proceedings, and that legal aid is only available for civil proceedings in very limited circumstances.

However, while the court may have established that misconduct has caused harm, in most cases it will not have established the quantum of loss for individual victims. In these circumstances, the court will be unable to make specific orders in relation to compensation. It may be more appropriate for the court to make orders requiring the establishment of a collective redress scheme. CHOICE notes that in the

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past, some collective redress schemes established as a result of enforceable undertakings have been subject to significant delays. It is therefore important that there is appropriate oversight of such schemes, once established, to ensure that they operate as intended by the court. This would require either ASIC or the court to have the power to undertake such oversight. This could include the ability of the court to recall a matter and make further orders where a scheme is not operating as intended in the original orders.

Victim impact statements - Proposal 20

CHOICE also supports the proposal to amend sections 16AAA and 16AB of the *Crimes Act 1914* (Cth) to permit courts, when sentencing a corporation for a Commonwealth offence, to consider victim impact statements made by a representative on behalf of a group of victims and/or a corporation that has suffered economic loss as a result of the offence. CHOICE notes that where a significant number of victims has been affected, it may not be practicable for victims to formally appoint a representative. It is therefore important for any provisions allowing for victim impact statements to be broadly framed, to allow the Court to appoint a representative (such as a consumer advocacy organisation or community legal centre) that has expertise to speak to the impact on victims.

The case studies from individual victims of financial misconduct that were included as part of the Hayne Royal Commission are an exemplary demonstration of how effective such evidence can be in demonstrating the human consequences of corporate ill-behaviour. Not only can victim impact statements function as an effective sentencing tool, they also provide people with an official legal forum in which to outline how corporate misconduct has affected them. This can be beneficial for the affected individual as well. In short, there is no downside to including victim impact statements when sentencing a corporation.

Illegal Phoenixing Activity

CHOICE notes that the *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* referred to in the Discussion Paper has now been passed by Parliament. We support the enhancement of the measures in this legislation by the introduction of a formal system of director identification numbers, as

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recommended by a number of former reviews. In order for the proposed stronger enforcement model to operate successfully, ASIC needs to be appropriately resourced.

For further information please contact CHOICE on jsteward@choice.com.au.

Yours sincerely,

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