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Australia

WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Australia.

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AUSTRALIA
WHITE COLLAR CRIME

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

Australia has enacted a comprehensive statutory framework to criminalise financial misconduct and abuse. The primary statutes in this framework are the Criminal Code Act 1995 (Cth) (Criminal Code) and the Corporations Act 2001 (Cth) (**Corporations Act**).

The Criminal Code is the primary federal statute criminalising financial crime offences.

- Tax offences are contained in sections 134 and 135 of the Criminal Code. Offences include obtaining property by decision, obtaining a financial advantage by deception and conspiracy to defraud. The Taxation Administration Act 1953 (NSW) (TAA Act) also criminalises tax offences. A person will commit an offence if they knowingly give false or misleading information, deliberately omitting information and failing to lodge relevant documents.
- Money laundering offences are covered in Part 10.2 of the Criminal Code, which prescribes it as an act that conceals the fact that money is the proceeds of crime. The Criminal Code prescribes that a person commits this offence if they knowingly deal with the proceeds of crime.
- Fraud is covered in Part 7.3 of the Criminal Code. Fraud offences involve the use of deception or dishonesty to obtain an unjust advantage at the expense of another person. Fraud can be charged where a person by any deception or dishonestly, obtains property belonging to another or obtains any financial advantage or causes any financial disadvantage. Common fraud offences relating to financial crime include cyber fraud, bank fraud, credit card fraud and insurance fraud.

The Corporations Act, which regulates corporations and other business entities in Australia, includes several financial crime provisions.

Part 7.10 of the Corporations Act covers market manipulation and insider trading offences.

- Market manipulation is prohibited by section 1041A of the Corporations Act. The Corporations Act defines market manipulation as conduct that has or is likely to have, the effect of creating or maintaining an 'artificial price' for trading in various financial products, including shares and futures. Section 1041A states that market manipulation occurs when a person takes part in or carries out a transaction that has or is likely to have, the effect of creating an artificial price for trading in financial products on a financial market operated in Australia or maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction.
- Insider trading is a type of white-collar crime where a person or company utilises information that is not generally available to the public to obtain an advantage for themselves or others through trading financial products. Inside information is information that is not generally publicly available, and if it were publicly available, a reasonable person would expect it to have a material effect on the price or value of particular financial products. Section 1043A of the Corporations Act provides that if a person or company possesses inside information, and the Insider knew or ought reasonably to have known that the information was insider information, the Insider must not apply for, acquire, or dispose

of, relevant financial products.

These statutes are supported by other federal legislation which regulates specific financial activities and conduct and criminalises specific financial crime offences, such as the Competition and Consumer Act 2010 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**).

At the state/territory level, each state and territory's criminal legislation also addresses financial crime offences. For example, New South Wales's (**NSW**) Crimes Act 1900 (NSW) contains provisions criminalising money laundering and fraud.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

The Criminal Code provides a statutory framework for corporate criminal responsibility and prescribes that the Criminal Code applies to corporations in the same way it applies to individuals.

Direct liability occurs where both the physical element and the fault element are established. Regarding the physical element, a company is criminally liable when the offence is committed by its directing mind and will. A company can act through its officers or agents, provided they have the requisite authority. Under section 12.2 of the Criminal Code, when agents have actual or apparent authority, their actions that are within the scope of their authority bind the company.

The fault element, being intention, knowledge or recklessness, may be attributable to a company if the company expressly, tacitly or impliedly authorises or permits the commission of the offence as per section 12.3 of the Criminal Code. This authorisation or permission of the commission of the offence can be established if, among other things, the corporation's board of directors or high managerial agents intentionally or knowingly engaged in the relevant conduct, or there was a corporate culture that directed, encouraged, tolerated or led to non-compliance with the relevant provision.

Where the offence is one of strict liability, there is no requirement to prove the fault element. Strict liability offences can be defined as those offences that do not follow the common law presumption that the fault element (or mens rea) is an essential element of the offence.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

Commonly prosecuted financial crime offences personally applicable to company directors and officers include failing to keep correct financial records, falsifying accounting records, insider trading offences and manipulation of the market in relation to the Australian stock exchange securities trading.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

Public Prosecutors (CDPP and DPPs)

The Australian public prosecutors are the Commonwealth Director of Public Prosecutions (CDPP). The CDPP is responsible for criminal prosecutions of offences in breach of Commonwealth laws. The CDPP does not investigate cases. The CDPP works collaboratively with government agencies that may refer matters to the CDPP for prosecution following investigations.

There are also State and Territory Directors of Public Prosecutions (DPP). The State and Territory DPPs pursue prosecutions for offences under State and Territory laws.

Australian Federal Police (AFP)

The Australian Federal Police (AFP) is responsible for the investigation of offences under the Criminal Code. As part of their investigations, the AFP can undertake duly executed search warrants to obtain evidence in criminal investigations. The AFP also has the power to make arrests when persons are charged with a criminal offence.

Australian Securities and Investments Commission (ASIC)

ASIC is Australia's corporate regulator and has responsibility for enforcing (including bringing criminal prosecutions under) the Corporations Act.

ASIC has wide-ranging investigative powers, including compelling the production of documents and conducting compulsory interviews of persons in relation to its investigations.

ASIC is also authorised to prosecute generally minor regulatory offences, though it will typically refer matters to the CDPP.

Australian Competition and Consumer Commission

(ACCC)

The ACCC is responsible for regulating and enforcing the Competition and Consumer Act 2010 (Cth). This includes bringing criminal prosecutions for cartel conduct (as well as other litigation, such as civil penalty proceedings). The Competition and Consumer Act 2010 (Cth) gives the ACCC the power to compel the production of information/documents as well as compulsorily examine witnesses. Safeguards include that evidence given by a person to the ACCC under compulsion is not admissible in a criminal prosecution against that person.

The ACCC can refer matters to the CDDP for prosecution.

Australian Taxation Office (ATO)

The ATO is responsible for administering Australia's taxation legislation. The ATO is also responsible for investigating tax crimes, including large-scale tax fraud and tax evasion, often involving international elements.

The ATO also leads the multi-agency Serious Financial Crime Taskforce (SFCT). The Australian Government established the taskforce in 2015 to identify and respond to the most serious and complex forms of financial crime in Australia.

Under the Tax Administration Act 1953 (Cth), the ATO also prosecutes a range of summary offences and may refer more serious matters to the CDPP to consider prosecution.

Australian Criminal Intelligence Commission (ACIC)

The ACIC has an intelligence mandate, primarily directed at serious organised crime (including financial crime). The ACIC's investigative powers are extensive and include the conduct of in-secret compulsory examinations, with document production requirements on examinees. However, safeguards are afforded against the direct use of material from ACIC examinations in any criminal prosecution of the examinee. The ACIC also works extensively with domestic and international partner agencies in the conduct of its investigations.

5. Which courts hear cases of financial crime? Are trials held by jury?

Financial crime cases are heard at the federal courts, and state or territory's local, district and supreme courts.

The court that will hear the case will depend on whether the statute is a federal, state or territory law, the complexity and seriousness of the offence, as well as the pecuniary cost of the offence.

For federal offences, trials are often tried by jury. However, under certain statutes, indictable offences may be heard summarily before a Magistrate alone as the maximum penalty is significantly moderated.

Similarly, at the state and territory level, trials are commonly held by jury. However, a defendant may elect to be tried by a judge alone under certain circumstances.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

ASIC

ASIC commences an investigation where it has reason to suspect a breach of the Corporations Act.

ASIC has wide-ranging investigative powers, including compelling the production of documents and conducting compulsory interviews of persons in relation to its investigations. ASIC can apply for a search warrant under section 3E of the Crimes Act 1914 (Cth) (Crimes Act), which is granted where an authorised officer is satisfied that there are reasonable grounds to suspect there is or will be evidential material at the relevant premises.

Under the Australian Securities and Investments Commission Act 2001 (ASIC Act), ASIC can also issue production notices, though it cannot compel the production of documents protected by legal professional privilege beyond seeking voluntary disclosure. ASIC can also search and seize evidential materials, extending to anything relevant to the commission of an indictable offence, and can use the seized materials in either administrative, civil or criminal proceedings.

AFP

The AFP has a wide range of investigative powers under the Australian Federal Police Act 1979 (Cth) (AFP Act). The AFP has the power to compel mandatory interviews, search and seize properties, perform raids, use technical surveillance, complete arrests and has the power to charge persons. Chapter 3 of the AFP Act provides for information-gathering powers and processes in relation to proceeds of crime matters. These are powers relating to: examinations; production orders; notices to financial institutions; monitoring orders; and search and seizure powers.

ATO

The ATO conducts audits to ensure that businesses and

taxpayers and compliant with tax laws, and has wide investigative powers, contained in the TAA Act. Where the ATO cannot obtain the documents it requires to support an audit under a cooperative approach or where it suspects tax fraud or tax evasion has occurred, the ATO may use its formal powers to access documents and evidence. The ATO has the power to issue notices requiring the provision of information and documents, as well as the giving of evidence in the initiation process of an investigation. The ATO has broad powers to access premises for the purpose of administering the taxation laws. The power is principally to obtain copies of documents and evidence.

AUSTRAC

AUSTRAC has a range of investigative powers. It has broad power to issue a notice compelling production of information and/or documents relevant to the operation of the AML/CTF Act. Under this statute, the issuance of a section 167 notice is not an indication that AUSTRAC is intending to undertake enforcement action against the recipient, rather, it is an investigative tool that allows AUSTRAC to assess potential compliance issues.

7. What powers do the authorities have to conduct interviews?

See Answer to Q6.

Over time, several authorities, including ASIC and the ATO, have obtained compulsory examination powers through legislative amendments.

When ASIC is investigating a matter, it can issue a written notice requiring a person to give all reasonable assistance in connection with the investigation and to appear for examination on oath and answer questions.

A person is legally obligated to attend an ATO-issued notice to attend. Further, the ATO's wide investigative powers enable it to issue notices requiring the provision of information and documents.

The ACIC also has the power to conduct examinations to assist its partner agencies. An extension of this power is the ability to issue a summons requiring a person to attend an examination. This will often be to either give evidence under oath or produce a document. Failure to comply with a summons is punishable by fines or imprisonment.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

Generally, for non-compulsory examinations, an interviewee does not have to attend a recorded cautioned interview unless they have been formally arrested. Whether the interviewee attends voluntarily or after being arrested, they have the right to remain silent during the interview and do have the right to have their lawyer present. Ultimately, the interviewee does not have to answer any questions posed by the authorities during the interview. The law enforcement authorities must also clearly explain the interviewee's rights to them, including their right to contact a lawyer and their right to silence.

The rights afforded to an interviewee may be limited in compulsory examinations. Depending on the statute, the interviewee may not have a right to silence and may not refuse/fail to provide information to ASIC on the basis of claiming privilege against self-incrimination. However, where the examinee claims the privilege before answering, the information cannot be used as evidence against the examinee in criminal proceedings or in proceedings for the imposition of a penalty against the examinee. The interviewee will have the right to be represented by their legal representative and be accompanied by interpreters. These interviews are recorded and transcribed.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

The Criminal Code's extended geographical jurisdiction provision provides extraterritorial effect to its financial crime offences. The Criminal Code's section 15.4 contains its extended geographical jurisdiction provision, allowing certain offences to capture persons or entities if the offence's conduct occurs in Australia, or the offence's result occurs in Australia, or the conduct and offence occur overseas but the person is an Australian citizen or the entity is incorporated in Australia.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

Mutual Legal Assistance

Australia's mutual assistance system is governed by the Mutual Assistance in Criminal Matters Act 1987 (Cth), which regulates the provision of international assistance in criminal matters when a request is made by a foreign country and facilitates obtaining international assistance in criminal matters. Australia has over 25 bilateral mutual legal assistance treaties with other countries, creating a diplomatic channel for direct communication on transnational financial crime investigations.

ASIC

ASIC works closely with a range of international organisations, foreign regulators and law enforcement agencies. ASIC makes and receives international requests in relation to investigations, compliance and surveillance and general referrals. ASIC is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding, IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information and IOSCO Administrative Arrangement as well as numerous Memorandums of Understanding and other international agreements. These documents outline the relationship between the signing parties with regard to mutual assistance and the exchange of information for the purpose of enforcing and regulating the respective laws and regulations of the signing authorities. Where authorised, ASIC uses the Mutual Assistance in Business Regulation Act 1992 to exercise compulsory powers to obtain documents, information or testimony on behalf of foreign regulators.

ATO

The ATO cooperates with foreign authorities to combat tax evasion and crime on a global scale. The ATO participates in information sharing, intelligence gathering, investigations and audits with tax administrations using Australia's bilateral tax treaties and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The ATO also enters into information exchange agreements and obtains information from countries previously regarded as secrecy jurisdictions. Further, the ATO works internationally with the Joint Chiefs of Global Enforcement to gather information, share intelligence and conduct joint operations in relation to cybercrime, cryptocurrency fraud and enablers and facilitators of offshore tax crime. The ATO works with other 'Organisation for Economic Co-operation and Development' networks like the 'Joint International Taskforce on Sharing Intelligence and Collaboration' to share information relating to tax avoidance and evasion.

AFP

The AFP is the first point of contact for Australian law enforcement agencies in relation to overseas law enforcement enquiries globally, international cooperation and international coordination arrangements. The AFP sources information from its international operations, Interpol and Europol. The AFP is authorised to provide police services and police support services for the purpose of assisting or cooperating with foreign law enforcement agencies in accordance with the AFP Act and its Ministerial Direction. Additionally, United Nations Conventions, to which Australia is a signatory, support the processes of conducting international police cooperation.

AUSTRAC

AUSTRAC is a member of the Egmont Group, a body of 167 financial intelligence units (state bodies bridging the gap between private entities and law enforcement in a nation) established with the aim of the secure exchange of expertise and financial intelligence in the goal of combating money laundering and terrorism financing.

11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

In Australia, government agencies such as the AUSTRAC, ASIC, the Australian Competition and Consumer Commission, ATO and the ACIC may issue notices requiring individuals or corporations to produce documents or provide information. However, legal professional privilege can be claimed.

The two kinds of legal professional privilege are litigation privilege and advice privilege contained under uniform evidence legislation.

Litigation privilege protects confidential communications between the client and their lawyer, including through agents, and between the lawyer or client and third parties, for the dominant purpose of use in existing or anticipated litigation. The litigation must be existing or reasonably anticipated.

Advice privilege protects confidential communications between the client and their lawyer, including through agents, and between the lawyer or client and third parties, for the dominant purpose of a client obtaining, or the lawyer providing legal advice.

Legal professional privilege belongs to the client and

cannot be waived by their lawyer or a third party. To ensure communications are protected, practices should be adopted to ensure confidential communications are clearly labelled and that communications between the client and a third party are conducted through a lawyer.

Communications between a client and lawyer that are in furtherance of fraudulent or other illegal purposes are not privileged.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

The AML/CTF Act places obligations upon businesses, including customer due diligence, mandatory reporting to AUSTRAC and record keeping. Personal data collected pursuant to these obligations is subject to the Privacy Act 1988 (Cth) and the Australian Privacy Principles, which are contained in Schedule 1 of the Act. Generally, corporations are not permitted to provide personal data to third parties without obtaining the consent of the data subject and must take reasonable steps to protect the information from misuse, unauthorised access or disclosure, as stated in Australian Privacy Principle 11.

The rights of companies and individuals can be limited by the intelligence-gathering capabilities of authorities and organisations such as the ACIC. Under the Australian Crime Commission Act 2002 (Cth), ACIC may use coercive powers to obtain information. Exceptions to privacy or data protection rights may apply where disclosure is needed to establish, exercise or defend a legal or equitable claim.

Agencies and organisations subject to the Australian Privacy Principles are required to have a clear and up-to-date privacy policy that is made available free of charge and usually available on the organisation's website, per Australian Privacy Principles 1.3 and 1.5.

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

Generally, there is no doctrine of successor criminal liability in Australia and so corporations will typically not be held liable for criminal acts of transferor companies.

Specific arrangements for the transferring of liabilities can be ordered by the court under section 413 of the Corporations Act.

Corporations that continue to engage in criminal conduct can be held criminally liable under state and federal laws.

14. What factors must prosecuting authorities consider when deciding whether to charge?

The CDPP prosecutes in accordance with the Prosecution Policy of the Commonwealth. As the authority responsible for prosecuting crimes against federal law, the CDPP is required to be satisfied that there is sufficient evidence to prosecute and that the prosecution would be in the public interest taking into account the facts of the case and all surrounding circumstances.

When the CDPP is determining whether there is sufficient evidence to prosecute a case, the CDPP must be satisfied that there is prima facie evidence of the elements of the offence and a reasonable prospect of obtaining a conviction. The existence of a prima facie case is not sufficient.

15. What is the evidential standard required to secure conviction?

The prosecution carries the burden of proof and must prove the charges beyond a reasonable doubt to secure a conviction. The burden of proof shifts to the defendant when they decide to argue any affirmative defences whereby the standard of proof is the balance of probabilities.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

Limitations to enforcing or prosecuting criminal matters are prescribed under the legislation and will usually be determined by the type of crime and penalty involved.

Generally, the statute of limitations does not apply for indictable criminal matters, however, a limitation period will apply to summary offences. Where limitation periods apply, the time cannot be stopped.

There is no limitation period for prosecution of federal offences under the Crimes Act committed by corporations where the maximum penalty exceeds AU$ 31,500. Neither is there a limitation period applied to charges of conspiracy to commit a serious offence.

17. Are there any mechanisms commonly

used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Deferred prosecution and non-prosecution agreements are not currently available in Australia.

On 2 December 2019, the former federal government introduced the Crimes Legislation Amendment (Combatting Corporate Crime) Bill into Parliament. The Bill sought to address issues in Australia's anti-foreign bribery framework and included, inter alia, implementing a deferred prosecution agreement scheme for specific serious corporate crimes, similar to schemes in the US and the UK. However, the bill lapsed in July 2022 and the Australian Government has not indicated whether it intends to revive the Bill.

Federal agencies such as AUSTRAC, ASIC and the ACCC accept enforceable undertakings from reporting entities in place of civil or criminal action for breaches of their respective statutes. These agencies can also issue infringement notices, fines or both for particular breaches. Additionally, the agencies can also require an entity to perform specific actions, such as undertaking risk assessments and suspending or cancelling the registration of remittance providers.

18. Is there a mechanism for plea bargaining?

Plea bargaining is not officially recognised in Australia; however, the defence and prosecution can engage in charge negotiation or charge resolution which is governed by the Prosecution Policy of the Commonwealth. States also allow for charge negotiation, which in the case of NSW, is governed by Chapter 4 of the NSW Office of the Director of Public Prosecutions Prosecution Guidelines.

Charge negotiations/charge resolutions can be initiated by the prosecution and are encouraged where appropriate, due to their role in promoting the effective and efficient conduct of prosecutions.

These negotiations may result in a defendant pleading guilty to lesser or fewer charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

19. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any guidance?

Certain corporations are required to report actual or suspected breaches of legislative or regulatory requirements imposed by authorities, such as in the case of holders of Australian Financial Services (AFS) licensees or reporting entities under the AML/CTF Act. Holders of AFS licenses are required to make a report in writing to ASIC within 30 days of cases of gross negligence or serious fraud.

ASIC and ATO have cooperation policies which in certain cases may lead to immunity from prosecution in extraordinary circumstances, settlement or reduced penalties for taxation offences. However, voluntary disclosure does not guarantee that authorities will not take enforcement action against a corporation. The CDPP will ultimately decide the extent to which voluntary disclosures affect their decision-making but can consider the recommendations of relevant regulatory bodies.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

There are legislative regimes that judges are required to follow when imposing sentences, including section 16A of the Crimes Act for federal offences. Regard must be had to aggravating and mitigating factors.

When a corporation is convicted of a federal offence, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the maximum amount that could be imposed by the court on a natural person convicted of the same offence under section 4B(3) of the Crimes Act.

Corporations that make voluntary disclosures in a timely manner and cooperate with regulatory bodies may receive a discounted sentence. Wigney J of the Federal Court, in Commonwealth Director of Public Prosecutions v Nippon Yusen Kabushiki Kaisha [2017] FCA 876, stated where a corporation has engaged in multiple contraventions, 'the more objectively serious the offence is likely to be'. In these circumstances, the court will have regard to the whole of the relevant conduct. General and specific deterrence will be taken into account, although specific deterrence is afforded less weight where corporations can show they have taken extensive steps to minimise the risk of the offending

conduct from reoccurring.

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

Under the Criminal Code, a corporation's compliance procedures will be relevant to corporate criminal liability. It may also be relevant for other statutory regimes.

The requirements or recommended elements of any corporate compliance programme are dependent on the statutory regime. For example, the AML/CTF Act requires 'reporting entities' to have an anti-money laundering and counterterrorism financing compliance programme specifying how they comply with the relevant legislation and how they identify, mitigate and manage the risk of products or services being used for money laundering or terrorism financing.

Under the Criminal Code, liability for some offences can be established on the basis that the corporate impliedly authorised the offending conduct by failing to create and maintain a culture that required compliance with the relevant provision. While the existence of a compliance programme can be relevant to discharging liability by proving that the corporate exercised due diligence to prevent the conduct, or the authorisation or permission.

Further, corporations may rely on the defence of mistake of fact under section 9.2 of the Criminal Code. To do so, the corporate must prove that it exercised due diligence, in which case, a compliance programme may be a relevant consideration.

When considering what action to take, prosecuting authorities are very likely to consider whether a company has sufficient control mechanisms in place to prevent wrongdoing when considering what action to take. Therefore, the impact of a robust and appropriately tailored compliance system can be significant.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

Courts may impose criminal or civil penalties on individuals and corporations in relation to the key offences listed in the Answer to Q1.

The key offences found under the Criminal Code attract criminal penalties, which vary depending on the seriousness of the offence and the offender's degree of knowledge i.e. intentional or reckless. Individuals are subject to imprisonment and/or fines, while corporations are subject to fines.

For example, the maximum penalty for money laundering varies based on the value of the money or property and the offender's degree of knowledge. The maximum penalty for individuals is life imprisonment and a fine of AU$ 550,000 (i.e. 2,000 penalty units). For corporates, the maximum penalty for the same offence is a fine of AU$ 2,750,000 (i.e. 10,000 penalty units), under section 4B of the Crimes Act.

Under some statutes, such as the Corporations Act, individuals and corporates may be subject to criminal or civil penalties. Some offences attract both criminal and civil penalties. For example, under section 1043a of the Corporations Act, which criminalises insider trading, an individual may be subject to a criminal or civil penalty. The criminal penalty for insider trading for an individual is 10 years imprisonment, while the civil penalty is and/or the greater of AU$ 495,000 or three times the profit gained, or loss avoided. While corporates are only liable for the civil penalty which is greater than AU$ 4.95 million, three times the profit gained, or loss avoided or 10 per cent of the company's annual turnover in the relevant period.

Other civil penalties under these statutes include injunctive relief and compensation to affected parties.

23. What rights of appeal are there?

If convicted of criminal offences, both natural persons and corporations have the right of appeal for conviction and sentence. Ordinarily, this first lies in a state Court of (Criminal) Appeal. From there, parties can seek special leave to appeal to the High Court of Australia, which sits at the apex of the Australian judicial system.

In deciding whether to grant special leave, the court considers whether the proceedings involve a question of law that is of public importance, whether it is necessary to resolve differences of opinion between different courts, or within the same court, as to the state of the law and whether the interests of the administration of justice, whether generally or in the particular case, require consideration by the High Court of the judgment.

24. How active are the authorities in tackling financial crime?

In the last few years, Australian authorities have ramped up efforts to tackle financial crime. The increased efforts have been led by the SFCT.

The SFCT's work has resulted in 1,770 audits and reviews, 21 individuals being sentenced, over AU$ 1.6 billion in liabilities being raised and the collection of more than AU$ 652 million.

As discussed below in the Answer to Q27, the establishment of the National Anti-Corruption Commission demonstrates the growing appetite to combat corruption and financial crime at the national level.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

The Australian regulatory framework has had to address various trends and obstacles due to COVID-19, and developments in technology, geopolitics and the economy. Two notable focuses have been developments in Australian sanctions law and the regulatory focus on the casino and gambling industry.

Sanctions law

Regarding Australian sanctions law, the Russia-Ukraine conflict saw the Australian Government impose economic sanctions against Russia, congruently with the US, UK and EU. Australia introduced a series of measures that targeted persons and entities of strategic and economic significance to Russia. These measures include prohibitions on the importing or purchasing of Russian-origin oil, gas and other energy products, the exporting of aluminium ores and related products to Russia; and targeted sanctions and travel bans on Russian individuals and entities. Australian individuals and entities in breach of these sanctions may be liable to criminal and civil penalties.

Casino and gambling industry

In 2019, AUSTRAC launched an industry-wide casino compliance campaign. This signalled the general shift of Australia's regulator's focus on the casino and gambling industry.

AUSTRAC's anti-money laundering/counter-terrorism financing (AML/CTF) investigations into the casino and gambling industry followed its December 2020 report discussing its first risk assessment program. This programme focused on the banking, remittance and gambling services sectors associated with the examination of junket tour operations (JTO) in Australia to identify, mitigate and manage risks of exposure to financial crime. AUSTRAC expressed concern over the high money-laundering/terrorism-financing risks faced by the JTO sector and detected that the Star, one of Australia's leading casinos maintained ongoing ties with many junkets linked to organised criminal groups in Asia.

The report also revealed that Australian regulators had identified that casino accounts were being misused to make political donations to expand foreign influence. As a result of these risks, AUSTRAC launched 'Operation Slalom' for enhanced compliance investigations and enforcement actions against the casino and gambling industry.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

A landmark development has been the Australian authority's regulatory investigation and litigation against casino operators, namely Crown Resorts Limited (Crown). On 30 May 2023, AUSTRAC and Crown, Australia's largest gambling and entertainment group, agreed to an AU$ 450 million fine over money-laundering breaches. This was a result of AUSTRAC's industry-wide casino compliance campaign, as discussed in the Answer to Q25.

In March 2022, AUSTRAC announced proceedings in the Federal Court of Australia against Crown Melbourne and Crown Perth after an investigation found poor governance, poor risk management and failure to maintain a compliant AML/CTF programme at Crown. The proceedings were for alleged serious and systemic non-compliance with Australia's AML/CTF laws. These proceedings are now settled as the Federal Court approved the AU$ 450 million, which made it the third-largest fine in Australian corporate history.

In November and December 2022, AUSTRAC also commenced proceedings in the Federal Court against Star Entertainment Group entities and SkyCity Adelaide Pty Ltd for similar reasons.

27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

Two key developments include the establishment of the National Anti-Corruption Commission (NACC) and the review of Australia's legal framework for autonomous sanctions.

On 12 December 2022, the Australian Government enacted the National Anti-Corruption Commission Act 2022 (Cth). This statute established the long-awaited NACC, which is an independent Australian Government agency that detects, investigates and reports on serious

or systemic corrupt conduct in the Australian Government's public sector. The NACC will have broad powers, including conducting retrospective investigations and receiving public referrals.

While investigations and hearings will need to relate to the public sector (including companies contracting with the Commonwealth and its agencies), the Commission's inquiries will naturally extend to any private actors and businesses that are involved in alleged corrupt conduct. Possible ways corporates can be affected include staff being compelled to give evidence and/or produce documents, premises being searched, publication of confidential material and reputational risk.

On 30 January 2023, the Department of Foreign Affairs and Trade announced that the Australian Sanctions Office, Australia's sanctions regulator, will lead a comprehensive review of Australia's legal framework for autonomous sanctions. The review will evaluate Australia's current sanctions framework and suggest potential improvements to enhance administrative and regulatory efficiency and ensure compliance with sanctions. The review was due to be completed by 30 June 2023 and is likely to result in noteworthy changes to the sanctions framework.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

The Australian Government has introduced legislative amendments to address the deficiencies that had been identified in the periodic evaluations conducted by the Financial Action Task Force (FATF), including the lack of a requirement in Australia for entities to manage and mitigate the money laundering and terrorist financing risks posed by new technologies.

As discussed in the Answer to Q17, the lapse of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill saw Australia miss an opportunity to strengthen its toothless anti-bribery framework. The Bill sought to address issues in the framework by introducing a new 'failure to prevent' foreign bribery offence, broadening the existing offence of bribery of foreign public officials, and implementing a deferred prosecution agreement scheme. The Bill would have brought Australia's anti-foreign bribery laws closer to international standards and improved its ability to prevent, investigate and prosecute cases of bribery and corruption.

Several of these reforms, including deferred prosecution agreements have already been implemented successfully in the United States and the United Kingdom, and given the similarities in the legal systems, will likely enable a more effective resolution of bribery and corruption matters, while encouraging increased self-governance and regulation by corporations. However, the Australian Government has not yet indicated whether it intends to revive the Bill.

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