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Abstract | Government and public concern about corporate wrongdoing in Australia is arguably at an all-time high. However, the extent and nature of corporate crime is largely unknown; it is concealed by regulatory agency reporting practices and the absence of a single data source which combines data across all regulators. This study addresses the problem by examining corporate offending by 33 of the country's top companies, and their wholly owned subsidiaries, over a five-year period. The results indicate that corporate offending is patterned and unevenly distributed across the business community. Drawing on the findings and on their experience of conducting the research, the authors make recommendations for improving policy and practice, including the establishment of a national database of corporate offending.

Corporate crime in Australia: The extent of the problem

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Crimes committed by or on behalf of corporations are an increasingly prominent concern for governments, the media and the public. In Australia, the 2018 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Banking Royal Commission), appointed only after intense media and public agitation, has exposed the extent of wrongdoing in the financial services sector. Prior studies and inquiries have revealed other corporate crimes including cartels, money laundering, foreign bribery, abuse of consumer rights, tax avoidance, non-payment of worker entitlements, and environmental harms, among many other types of malfeasance (see generally Grudnoff et al. 2016). Submissions to the Senate inquiry into civil, criminal and administrative penalties for white-collar crime depicted a growing 'epidemic of corporate crime in Australia' (Senate Standing Committee on Economics 2017: 3).

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Scholars have long noted corporate crime's capacity to cause extensive harms at global, societal and individual levels, yet research on the subject remains relatively scarce, and most criminological research continues to focus on traditional criminal violations (Rorie et al. 2018). Much of the literature that does exist on corporate crime is confined to single cases or narrative accounts (Schell-Busey et al. 2016). In Australia some pioneering studies of corporate crime and regulation from the 1980s and 1990s focused mostly on regulator behaviour, including Grabosky and Braithwaite's groundbreaking study *Of manners gentle* (1986). There have been far fewer studies on the offending behaviours of corporations.

Reasons for the lack of focus on corporate offenders include the limited funding for research, the ability of corporations to influence lawmakers to evade regulation, and the lack of centralised databases to track corporate behaviours (Barak 2012; Rorie et al. 2018). The lack of centralised corporate crime databases makes research particularly problematic. For traditional offences, police collect and maintain aggregate offending statistics, and courts or justice departments maintain conviction and sentencing records. But responsibility for corporate regulation and offending is spread across multiple regulatory agencies responsible for various aspects of corporate behaviour.

In Australia this includes federal-level regulators such as the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC), the Australian Prudential Regulation Authority, the Australian Taxation Office (ATO), the Fair Work Commission (FWC) and Fair Work Ombudsman (FWO) and many others. States and territories have agencies for consumer protection, environmental protection, workplace safety, liquor regulation and many other areas where corporations may potentially breach the law. There is no centralised collation of these records, making it almost impossible to measure the true prevalence of corporate offending across these multiple domains (Grudnoff et al. 2016). As such, it is not known, for example, whether some corporations are particularly prolific, offending across multiple areas of regulation, or whether corporate offending is particularly problematic in some industrial sectors.

In the international context, most studies attempting to measure corporate offending and deterrence have focused on specific industries and have relied on publicly available data sources to build their databases (Karpoff, Lott & Wehrly 2005; Rorie et al. 2018). Simpson and Yeager recently assessed the strengths and weaknesses of currently available data on white-collar violations of administrative, civil, and criminal law in the United States (Simpson & Yeager 2015). They noted that the quantity, consistency and mix of reported data varies across regulatory agencies. They argue for a consolidated database across regulators in order to accurately capture and examine the occurrence of offending and resulting regulatory responses.

In Australia, Grudnoff et al. (2016) attempted to respond to this need by consolidating administrative data about corporate offending across five federal regulators: the ACCC, ASIC, the ATO, the FWO and the FWC. Their study was innovative to the extent that it examined multiple regulatory domains. However, it was limited in that it did not track offending behaviour by corporations across those domains to examine the extent to which corporations might be versatile offenders, breaching different types of regulations. Their study helps establish the extent of corporate wrongdoing in Australia, but further research is needed that focuses specifically on the offending behaviour of particular corporations.

Additionally, some scholars argue that in developing a consolidated database of corporate offending it is important to link parent and subsidiary corporations. In the existing literature few studies have measured parent and subsidiary companies as one entity. Ting (2014) supports the importance of treating both parent and subsidiary companies as one entity to produce effective measures of corporate offending.

Study aims

The current study is the first to comprehensively examine the frequency, nature and context of offending by Australian corporations. While similar studies have been conducted in other countries, particularly the United States, the extent to which Australian corporations offend—and whether they do so across multiple regulatory domains—has not previously been explored. Additionally, by treating parent and subsidiary companies as one entity, we seek to assess the prevalence and characteristics of offending by corporate groups.

Methodology

This cross-sectional study examines offending and regulatory action against Australia's largest publicly listed corporations over the period from 1 January 2010 to 31 December 2015. The scope of offending examined in this study is limited to publicly available information for offences regulated by one of the four primary federal business regulators, along with any offences or regulatory action identified as being within the remit of other federal or state-based regulators. The four primary national regulators are ASIC, the ACCC, the ATO and the FWC/FWO.

Most if not all of the corporations in the sample are regulated by all four of these primary business regulators. Each corporation by virtue of its business structure is regulated by ASIC, which is also the financial services industry regulator. Similarly, each corporation is subject to the competition provisions of legislation administered by the ACCC, with additional consumer protection obligations placed upon corporations which directly provide goods or services to the public. All corporations are also subject to the national taxation regime administered by the ATO, who is also the regulator for the national compulsory superannuation scheme for employees. For corporations with employees, the majority are within the remit of the FWC/FWO.

Sampling frame

The sampling frame for the study consists of publicly listed corporations in the Australian Securities Exchange's ASX200 index at as June 2015 and their wholly owned Australian subsidiary corporations. The ASX200 contains the 200 largest public companies by market capitalisation listed on the Australian Securities Exchange.

Based on market value, the top three ASX200 corporations in each of the 11 Global Industry Classification Standard sectors comprised the study's sample of 'parent corporations'. The sample was augmented with their wholly owned subsidiary corporations. The inclusion of wholly owned subsidiaries is important, as companies may structure their affairs to locate higher-risk activities in subsidiary companies in order to protect the parent company. Wholly owned subsidiary corporations were identified through the 2011 and 2015 annual reports of each parent corporation. Where an annual report listed corporations in which the parent corporation has a significant interest rather than listing wholly owned subsidiary corporations, those companies were included in the sample as if they were a wholly owned subsidiary. This was done on the basis that some would be wholly owned subsidiaries, and others would be subject to substantial influence on their operations by the parent corporation, due to its significant interest in them. There was variation between parent corporations, and in some cases within the same parent corporation, in how they reported their wholly owned or significant interest subsidiaries in 2011 and 2015. This limited the ability to sample only those subsidiaries which were listed in both 2011 and 2015. Moreover, restricting subsidiaries to only those owned or controlled in both 2011 and 2015 would mean that new subsidiaries registered or acquired through mergers during that period would be excluded. Similarly, those deregistered during that time would also be excluded. Therefore, for a wholly owned subsidiary corporation to be included in the sample it had to be owned by the parent corporation in either 2011 or 2015.

The final sample contained 1,941 corporations (33 parent corporations and 1,908 subsidiary corporations). Together each of the 33 parent corporations and their respective wholly owned subsidiary corporations form a 'corporate group'. It is these 33 corporate groups which are the focus of this study.

Data collection

A process of triangulating publicly available data was used to identify offences and resulting outcomes for each corporation over the study period. Data regarding offending and regulator enforcement action were obtained from:

- regulator sources—for each of the four regulators, enforcement information was sourced from their publicly available infringement notice registers, enforceable undertaking registers and media releases. For the purpose of this study, where regulatory action was finalised on a 'no admissions' and/or a 'without prejudice' basis, the subject behaviour has been counted as an offence;
- the Australian Legal Information Institute database (AustLII)—the name of each parent corporation and each of their wholly owned subsidiaries was searched in AustLII to identify:
  - details of offences prosecuted by ASIC, the ACCC, the ATO and the FWC/FWO not identified through regulator sources; and
  - any other offences, with a specific focus on state-based workplace health and safety and environmental offences;
- Factiva—global news database Factiva was searched, using the same process outlined for AustLII, to identify instances of offending, or specific details of relevant offences not captured through AustLII and regulator sources but which may have been disclosed in media sources; and
- company annual reports—annual reports of parent corporations were also examined to identify any disclosures of offending and prosecution action which may have been initiated or finalised during the study period.

Data from the four sources were triangulated to obtain the variables required for the study. Where any inconsistency existed between data sources, the most authoritative data source was used, typically court decisions or material published by the regulator.

Results

In reporting the results we have replaced corporation names with unique identifiers so as to keep the focus upon corporate offending broadly without diverting attention to specific corporations.

Where an offending episode commenced before 1 January 2010 and extended past that date, it was treated as offending having occurred in the period 1 January 2010 to 31 December 2015. In all instances where that occurred, the number of offences within the offending episode was not able to be ascertained. The offending episode was therefore counted as a single offence. This will necessarily result in a significant undercounting of offences committed by those corporations.

Offending corporation characteristics

Over the period 1 January 2010 to 31 December 2015, 27.2 percent of corporate groups (parent corporations and the subsidiaries) offended at least once. All offending corporate groups traded in one of only four industry sectors: financials, utilities, communication services and consumer staples. That is, 36.4 percent of industry sectors had at least one corporate group where offending was identified for the five-year period.

Examining offences by industry sector found significant differences between industries. Of the four industry sectors in which offending occurred, the financial services sector was the only industry sector where all three of the largest corporate groups in the sector had offended during the study period.

In total, offences were recorded for 21 corporations (six parent corporations and 15 subsidiary corporations). There was substantial variation across industries and corporate groups in terms of whether offending was committed by parent corporations or subsidiaries, and in the number of subsidiaries which offended (Table 1).

Almost half (44%) of offending corporate groups had offences committed by both the parent corporation and at least one subsidiary corporation. For all financial services sector corporations, offending was distributed across the parent corporation and at least one subsidiary. For 33 percent of parent corporations, offending was limited to offending by a subsidiary corporation only.

Table 1: Offending by parent and subsidiary corporations by industry			
Industry sector	**Parent corporation**	**Parent corporation offended**	**Number of offending subsidiaries**
Financials	F1	Y	4
	F2	Y	1
	F3	Y	1
Utilities	U1	Y	3
	U2	N	2
Communication services	T1	Y	0
	T2	N	1
Consumer staples	C1	Y	0
	C2	N	3

Offending behaviour

During the study period a total of 161 offences were identified. For those parent companies which offended, the number of offences ranged from one to three offences. Across all corporate groups (parent corporations and their subsidiaries) the number of offences ranged from one to 52 offences (*M*=8, *SD*=13.2).

Three corporate groups (F1, U1 and C2), or 33.3 percent of offending corporate groups, accounted for 76.4 percent of offences (Table 2). Almost all (92.5%) offences by corporate groups were committed by subsidiary corporations.

Table 2: Number of offences by parent corporation and subsidiary, by industry sector			
Industry sector	**Parent corporation**	**Number of parent corporation offences**	**Number of subsidiary corporation offences**
Financials	F1	3	57
	F2	2	2
	F3	2	2
Utilities	U1	1	37
	U2	0	17
Communication services	T1	1	0
	T2	0	9
Consumer staples	C1	3	0
	C2	0	25
Total		**12**	**149**

There were 38 identified unique offending episodes. The number of offending episodes per corporate group ranged from one to 12 (*M*=4, *SD*=3.3). Examining offending episodes by industry sector revealed that the majority (52.6%) of offending episodes were in the financials sector (20 episodes), followed by consumer staples (nine episodes), utilities (seven episodes) and communication services (two episodes). Table 4 shows that two of the nine corporate groups (F1 and C2) account for almost half (47.4%) of offending episodes, with one financial services sector corporate group accounting for almost a third (31.6%) of offending episodes.

Table 3: Offending episodes by corporate group and industry sector		
Industry sector	**Parent corporation**	**Offending episodes per corporate group**
Financials	F1	12
	F2	4
	F3	4
Utilities	U1	3
	U2	4
Communication services	T1	1
	T2	1
Consumer staples	C1	3
	C2	6

Offending largely fell into one of three broad categories:

- breaches of market integrity (including cartel offences);
- misleading or deceptive conduct (including making false or misleading representations); and
- unconscionable conduct.

Together these three categories of offending accounted for 78.8 percent of identified offences.

Breaches of market integrity accounted for 35.4 percent of all offences, including three cartel-related offences. Both consumer staples corporate groups had a cartel offence, as did one utilities sector corporate group. The remaining fifty-five offences related to stock trading, with 52 of the offences committed by a single corporate group (F1).

Eight of the nine offending corporate groups, or 24.2 percent of all corporate groups studied, had engaged in conduct which was misleading or deceptive, or had made false or misleading representations.

Two of the nine corporate groups, or 6.1 percent of all corporate groups studied, had engaged in unconscionable conduct. The corporate groups were in the consumer staples and utilities sectors, with the consumer staples corporate group accounting for 94.1 percent of unconscionable conduct offences.

Five of the nine corporate groups, or 15.2 percent of the all corporate groups studied, had engaged in other forms of offending. All offending corporate groups in the consumer staples and utilities sectors, and one of the three financial services sector corporate groups, had engaged in other offences. There was a wide variety of offences within that category; however, most related to sales and marketing tactics and honouring agreements with customers.

Enforcement action for offending

A range of enforcement actions were taken by regulators in response to offending by corporate groups. Given the frequent use of cumulative penalties for offending episodes, enforcement actions were analysed for offending episodes (each of which may incorporate a number of related offences). In a number of cases, particularly where civil court proceedings were initiated, offending episodes were finalised through multiple sanctions, for example, a monetary penalty and an enforceable undertaking.

For the 39 offending episodes, enforcement action was taken in 89.5 percent of episodes, with no enforcement action taken in the remainder; however, in those episodes the corporation either refunded customers or took other remedial action (Table 4). In cases where the regulator took enforcement action (n=34) the number of enforcement actions taken per offending episode ranged from one to five (M=1.8, SD=1.2). In 61.8 percent of offending episodes, a single enforcement action was taken. A Kruskal–Wallis test shows a significant difference between industry sectors ($\chi^2(3)=9.52$, p=0.023), with financial services having a mean 1.3 enforcement actions per offending episode compared with 3.0 in the utilities sector.

Civil court proceedings were initiated against the majority (55.5%) of offending corporate groups. The financial services sector was the only industry sector without at least one corporate group being subject to civil court proceedings during the study period. Civil court proceedings resulted in a pecuniary penalty in 76.9 of cases. These monetary penalties ranged from $35,000 to $3.1 million. The remaining 23.1 of civil court proceedings were finalised through enforceable undertakings (15.4%) or declarations as to the unlawfulness of the conduct in question.

Ten percent of offending episodes were finalised through no enforcement action. Two corporate groups in the financial services sector and one in the consumer staples sector had offending episodes finalised in this manner. In those cases the corporation resolved the matters by refunding or otherwise remediating affected customers, or by negotiating an outcome with the regulator.

The majority (77.7%) of corporate groups committed offences within the jurisdiction of a single regulator. More than half (56.5%) of offences were within the jurisdiction of the ACCC. Two of the nine offending corporate groups had offences spanning more than one regulator. Interestingly, both of these corporate groups were in the consumer staples sector.

Table 4: Offending episodes by most serious enforcement method			
Parent corporation	**Number of offending episodes**	**Offending episode enforcement method (most serious outcome)**	**%**
Financials sector			
F1	12	**No action**	**8.3**
		Remedial/refund	
		Administrative action	**91.6**
		Infringement notice	41.6
		Enforceable undertaking	16.7
		Licence condition	33.3
F2	4	**Administrative action**	**100**
		Infringement notice	
F3	4	**No action**	**50**
		Remedial/refund	
		Administrative action	**50**
		Infringement notice	
Utilities sector			
U1	3	**Civil court proceedings**	**100**
		Monetary penalty	
U2	4	**Civil court proceedings**	**100**
		Monetary penalty	
Communication services sector			
T1	1	**Administrative action**	**100**
		Infringement notice	
T2	1	**Civil court proceedings**	**100**
		Monetary penalty	
Consumer staples sector			
C1	3	**No action**	**33.3**
		Negotiated change of practice	
		Civil court proceedings	**66.6**
		Declaration	33.3
		Enforceable undertaking	33.3
C2	6	**Administrative action**	**50**
		Enforceable undertaking	
		Civil court proceedings	**50**
		Enforceable undertaking	16.6
		Monetary penalty	33.3

Timeliness of enforcement

Due to paucity of data in relation to the dates when offending episodes ended and enforcement action was initiated, timeliness of enforcement has been analysed as the number of months between the commencement date of the offending episode (or an approximation) and the date the matter was finalised. Where only the month of commencement was known, the date was calculated as the first day of that month. Similarly, in cases where the finalisation date was only given as a month, the finalisation date was calculated as the last day of that month.

On average, infringement notices were the most timely means of enforcement, ranging from two months to 56 months after the offending episode commenced (*M*=16.9, *SD*=14.5). All infringement notices with the exception of one were issued to financial services sector corporations. The single infringement notice to a communication sector corporation was issued within two months of the offending episode commencement date.

For matters finalised by enforceable undertaking, there was substantial variation in the timeliness of the enforcement action depending upon the duration of the offending episode and on whether the enforceable undertaking was an administrative action or part of the finalisation of a civil court proceeding. Corporate groups within the consumer staples sector had the majority of enforceable undertakings, 60 of which were entered into as administrative actions. The length of time for entering into an administrative action enforceable undertaking ranged from 14 months to 69 months (*M*=40.3, *SD*=27.3). Within the consumer staples sector, two enforceable undertakings were entered into, taking 15 months and 16 months respectively. In the financial services sector, there were two enforceable undertakings, taking two months and 98 months respectively to be finalised (*M*=53.5, *SD*=62.9).

Finalisation of civil court proceedings which resulted in a monetary penalty ranged between 24 months and 63 months (*M*=35.1, *SD*=11.9). Overall there was little variation between industry sectors in the timeliness of court proceeding finalisations.

Discussion

The results of this study indicate that corporate crime is patterned and not evenly distributed. Consistent with the findings of previous international studies of corporate crime, we find that corporate offending is concentrated in specific industry sectors, with a comparatively small number of corporations and corporate groups engaging in offending. Moreover, offending is largely concentrated in wholly owned subsidiary corporations rather than parent corporations. Additionally, a small number of corporate groups are offending in the regulatory sphere of more than one regulator.

The financial services, utilities and consumer staples sectors account for a disproportionate number of offences. This is in contrast to previous studies in the United States which have found that corporate offending is concentrated in the oil, automobile and manufacturing industries (Bradshaw 2015; Clinard & Yeager 1980). However, this finding may be an artefact of the study data, with the vast majority of offences being identified as being within the bailiwick of ASIC and the ACCC.

While variation was observed in the types of offences committed by corporate groups, the majority of offences related to market integrity and misleading and deceptive conduct (including making false or misleading representations). While, again, this may be an artefact of the study data, with most offences being from ASIC and the ACCC, it does tend to indicate issues with the general business strategies used by corporations, with misleading and deceptive conduct, general sales tactics and, to a lesser extent, unconscionable conduct being common among offending corporate groups.

Enforcement action taken in response to offending varied by industry sector. Consumer staples, communication services and utilities were the only industry sectors where civil proceedings were initiated in response to offending. This variation, however, is more a reflection of the different regulatory styles being applied to different industries.

Implications for policy and practice

In this section we first outline some policy implications arising from the research findings, before presenting the case for establishing a national database of corporate offending.

The high concentration of corporate offending in specific industries would tend to indicate that some industries provide greater opportunity structures for offending, and are therefore worthy of concerted regulator attention. However, while individual regulators may target specific high-risk corporations for regulatory attention, at the national level there appears to be little coordination of resources across regulatory agencies towards high-risk industries. Regulatory agencies are separately funded and set their own strategic and enforcement priorities. While some high-risk industries may be a focus for specific regulators, other regulators may be blind to the criminogenic nature of those industries. Given that the results have shown that some corporate groups offend across multiple regulatory spheres, a coordinated national approach to corporate regulation—which identifies and targets those industries and corporations with the greatest opportunity to offend—would most likely result in a significant decrease in corporate crime and associated harms.

The findings show that some corporate groups are recidivists for whom the norm is to receive a relatively low-level and delayed regulatory response, which is unlikely to deter further offending. There is some research evidence that the responsive regulation approach of having, and in specific cases applying, multiple enforcement options tailored to corporate offending can effectively prevent further wrongdoing (Benson & Simpson 2018). However, we found that in some industries, particularly the financial services sector, regulatory action tends to be limited to lower-level sanctions, even despite repeated offending by a corporation.

Deterrence theory holds that the severity, certainty (likelihood) and celerity (swiftness) of sanction determines whether the undesirable behaviour will be continued or repeated. In the corporate crime sphere, research on deterrence has tended to find mixed results. While some studies (eg Simpson & Koper 1992) have found that sanction severity is more important than certainty and celerity, industry characteristics are also a significant contributing factor as to whether offending will continue. In general, the law has been found to have a modest deterrent effect upon corporate crime, with punitive sanctions having limited utility (Simpson et al. 2014). Sparrow (2000) points out that regulatory practice is a craft, with Ayres and Braithwaite (1992) highlighting that it needs to be responsive to the context in which the offending is occurring. The answer, then, is not simply to ratchet up penalties. In practice, the results of this research highlight that opportunities exist to improve regulatory practice in much more sophisticated and theoretically driven ways.

In addition to improving regulatory practice around enforcement, regulators could focus attention on the opportunity structures present in specific types of commonly occurring offences. For example, the high incidence of misleading and deceptive conduct offences could be a specific target. Benson and Simpson (2018) highlight that regulatory strategies may be adopted to increase transparency and therefore make it more difficult to commit such offences. Through an analysis of the types of misleading and deceptive conduct offences which occur within specific industry sectors (eg those facilitated by telephone and door-to-door marketing and sales), regulatory measures could be put in place to reduce the likelihood of these kinds of offences being committed, and to increase the chances that, if they are committed, they will come to the attention of the regulator.

The high incidence of offending by wholly owned subsidiary corporations raises significant policy issues. From a commercial perspective, engaging in high-risk (and, it would appear, unlawful) activities through a wholly owned subsidiary corporation is logical as it protects the parent company both from any adverse publicity which may arise from the wrongdoing and from any prosecution action which may follow. In a criminological sense, the use of a subsidiary allows the parent corporation, its directors and executives to morally disengage from the offending by laying the blame upon the subsidiary. This is despite the fact that the parent company exercises, or has the ability to exercise, control over the subsidiary. If it were possible to hold a parent corporation wholly or partly responsible and liable for offences committed by a subsidiary corporation, this would reduce the benefits of using a subsidiary corporation for activities which are likely to result in offending behaviours.

Similar to the recent trend of holding directors personally liable for some offences committed by the corporation, holding the parent corporation liable places increased pressure upon that corporation to ensure it is appropriately discharging its obligations. This policy suggestion would require reforms to corporations legislation, which could take some time to achieve. In the interim period, regulators could, as a matter of practice, routinely and prominently highlight the parent corporation when publicising regulatory complaints or action taken against a wholly owned subsidiary corporation.

Aside from the policy and practice implications which arise directly from the findings, this research has highlighted the benefits of establishing a national database which combines information across regulatory agencies.

This study combined offending and enforcement data predominantly from a small number of large regulatory agencies. Extending that data collection to a broader range of federal and state/territory regulatory agencies would provide a richer exploration of the extent and nature of corporate offending in Australia. However, extensive work would undoubtedly be required in order to develop and administer a national database.

In recent years the increased public and political focus on corporate crime has led to a range of parliamentary inquiries and other fact-gathering activities to better understand the extent and nature of corporate offending. While the rich contextual data—from testimony provided by corporate executives, regulatory agency officials, and victims—is required to understand the context in which corporate offending occurs and harm is done, the ability to easily provide basic yet holistic offending data across industries, corporations and corporate groups is currently limited. Establishing minimum offence and enforcement action reporting standards, and, ideally, establishing a national database, would be important steps towards quantifying the extent and nature of corporate offending and, in turn, developing more informed public policy responses.

A national database of corporate offending could be used to improve the efficacy and effectiveness of regulator practice. Corporate regulators are typically under-resourced (Cameron 2002; Steen, McGrath & Wong 2016), and need to prioritise enforcement resources, including by targeting corporations that present the greatest risk of offending or harm to the community (Black 2010). The ability to identify corporate offending across a range of regulators provides agencies with an enhanced ability to assess the potential risk of offending and harm across multiple regulatory domains. For example, a range of big data analytic strategies could be employed to assess the risk posed by corporations and corporate groups operating across multiple sectors and regulatory jurisdictions. Applying the responsive regulation principle of networked regulation (Braithwaite 2006), the finite regulatory resources could then be applied to more efficiently target those corporations or offences which produce the greatest offending or harm.

Similarly, enforcement policies among Australian regulators are largely centred on responsive regulation, which entails both:

- selecting the appropriate regulatory tool/s to secure compliance; and
- escalating the severity of sanction when dealing with ongoing failure to comply (Ayres & Braithwaite 1992).

If regulators had access to a central database detailing a corporation's offence history, the intensity of enforcement actions imposed upon a corporation could be escalated over time to a more severe sanction—for example, court proceedings—rather imposing than a more lenient administrative sanction such as an infringement notice, having regard to the corporation's overall history of compliance with regulatory obligations.

On a related note, the absence of a central database of corporate crime may be undermining court-imposed regulatory sanctions. A principle of punishment is that continued offending will result in increasing severity of sanctions to deter offending (Ayres & Braithwaite 1992; Gunningham 2007). However, the absence of a central database recording all instances of corporate crime means that judicial decisions are made without knowledge of a corporation's history of offending under other regulatory regimes. The net result is that corporate reoffenders are likely to receive a more lenient sentence, thereby undermining regulator efforts to secure compliance.

A national database of corporate offending would also improve transparency and drive ethical business practices in Australia. There is an increasing focus on businesses operating ethically. For example, Australian government departments have implemented the Commonwealth Procurement Rules, which require corporations tendering for government contracts to disclose whether they have been subject to judicial decisions about employee entitlements, or engaged in practices that have been found to be dishonest, unethical or unsafe (Department of Finance 2017). A national database of corporate offending would enhance the ability of government and commercial partners to undertake due diligence in awarding contracts. Moreover, an increasing focus on supply chain risk (Zsidisin & Ritchie 2009) could mean an increased ability for corporations to complete due diligence on commercial partners, which could lead to more ethical business practices in Australia more generally. Potential commercial partners, employees and consumers in the United States now have the ability to examine the offending history of corporations and subsidiaries, with the introduction in 2016 of Violation Tracker (Good Jobs First 2016), a central database bringing together corporate offence data from a number of regulatory agencies.

A national database would also enhance performance monitoring of regulatory agencies, with benchmarking against similar regulators and across different jurisdictions. Benchmarking is a useful strategy for helping to drive performance (Kouzmin et al. 1999; Voss, Ahlstrom & Blackmon 1997). However, in the context of regulatory agencies it would need to be done carefully to ensure regulators continued to appropriately consider the context which they operate in, along with the corporations they regulate. Performance measures, such as time to recidivism, may therefore be more appropriate than offence counts or the proportion of particular enforcement actions undertaken. However, one benefit of consistently reporting and comparing specific enforcement actions taken against large corporations is that this may assist in reducing the likelihood of regulatory capture.

Overall then, the development of a central database of corporate offences across regulatory agencies would be significant both for corporate crime research and in advancing regulatory practice, strengthening corporate governance and, ultimately, reducing corporate offending in Australia.

Limitations

While the methodology used addresses some of the limitations identified in previous studies, three primary methodological limitations remain. First, the level of offending within the study sample may not reflect the broader pattern for all Australian corporations and industries. The sample contained the three largest corporations in each sector, who are likely to have substantial market share. Slapper and Tombs (1999) highlight the relationship between corporate crime and a corporation's profitability and market share. This is consistent with our finding that many offences related to obtaining or retaining market share, or marketing and sales strategies. However, it is not clear whether the corporations in the sample would be more or less likely to offend than smaller competitors.

Second, the methodology did not capture all of the offending reported to or finalised by regulators. Regulatory agencies and media outlets are selective in which matters they report, and their reports do not always contain sufficient detail to enable collection of the required data.

Third, well-resourced regulators may be more efficient in detecting and successfully processing corporate offenders than under-resourced regulators. This implies that, while results may indicate higher levels of offending in some spheres, in actual fact this may be the consequence of a well-resourced regulator engaging in higher levels of surveillance and enforcement.

Despite the broad data collection strategy, the data largely reflect offences regulated and enforcement action taken by ASIC and the ACCC. A small number of offences within the jurisdiction of the FWO were identified. However, there were also a number of civil actions taken by former employees that came within the jurisdiction of the FWO but were outside the scope of the study. None of the offences or enforcement actions against the corporations studied was identified as being initiated by the ATO or other regulators. Instances were identified where some corporations were in dispute with the ATO about whether they had met their legislative obligations. However, those matters were predominantly resolved through corporations initiating civil proceedings challenging the ATO. The results of this study may therefore be an artefact of the regulators from which data were drawn.

Conclusion

The research presented in this report is an important first step towards understanding and in turn effectively controlling corporate offending in Australia. While an array of parliamentary inquiries, previous research and a royal commission have identified offending by our nation's largest corporations, this is the first empirical study to systematically examine corporate crime across multiple industry sectors and multiple regulators and the first to include offending by subsidiary corporations. The results are important for painting a picture of corporate crime in the Australian landscape and considering how to address it. However, perhaps the most important findings of this study are the clear opportunities and benefits presented by establishing a national database of corporate offending.

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