ENSURING CORPORATE CRIMINAL RESPONSIBILITY IN THE 21st CENTURY

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I INTRODUCTION

Recent government inquiries in Australia have focused on financial wrongdoing,[1] and there is also awareness of physical harms caused by corporations and large organisations, including environmental harms,[2] injuries and deaths.[3] Despite long term recognition of the significant, widespread systemic harms that corporations cause,[4] prosecutions of corporations in Australia, relative to individuals, are extremely rare.[5] The ALRC recently undertook a review as to whether there needs to be more effective laws in response to corporate wrongdoing,[6] but there appears to have been little to no progress on the prosecution of corporations for widespread harms.

The lack of criminal prosecution of corporations is problematic on multiple levels. In theory, corporations are primarily controlled through responsive regulation, which favours responding to wrongdoing with persuasion and less coercive measures, holding out a threat of escalating to criminal sanctions for serious breaches of the law.[7] However, if criminal sanctions are rarely (or never) applied then the top of the pyramid is missing and rationally, corporations will continue with profitable wrongdoing.[8] Moreover, criminal law not only has a deterrent influence, it also serves an expressive function, that is, it communicates moral opprobrium.[9] The failure to criminalise corporate wrongdoing is thus a message corporate harms are simply a cost of doing business as opposed to something that is wrong.[10] This emboldens corporations to undertake a cost-benefit analysis as to harms, rather than prohibiting the harms. Civil measures are important, but while corporations might agree to (massive)

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[1] *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Final Report, February 2019) vol 2; Independent Liquor and Gaming Authority, *Inquiry under Section 143 of the Casino Control Act 1992 (NSW)* (Report, February 2021) vol 1.

[2] Jennifer Nielsen, 'Lawful Destruction, Native Title and Epistemicide' (2022) 2(1) *Legalities* 46.

[3] Thalia Anthony and Penny Crofts, 'The Dreamworld Deaths: Corporate Crime and the Slumber of Law' (2024) 36(2) *Current Issues in Criminal Justice* 197 ('Anthony and Crofts'); Health and Safety Executive, *Workplace Fatal Injuries in Great Britain, 2021* (Report, 2021) 32.

[4] For example, the East India Company was granted a royal charter in 1600, establishing a monopoly on all English trade in the East Indies as part of the colonial project of exploration and domination, resulting in horrific acts of trading slaves and destroying culture: William Dalrymple, *The Anarchy: The Relentless Rise of the East India Company* (Bloomsbury Publishing Plc, 2019).

[5] Australian Law Reform Commission, *Corporate Criminal Responsibility* (Report No 136, April 2020) 96 ('Australian Law Reform Commission'); George Gilligan and Ian Ramsay, 'Is There Underenforcement of Corporate Criminal Law? An Analysis of Prosecutions Under the ASIC Act and Corporations Act 2009-2018' (2021) 38(6) *Company and Securities Law Journal* 435.

[6] Australian Law Reform Commission (n 5).

[7] John Braithwaite, *To Punish or Persuade: Enforcement of Coal Mine Safety* (State University Of New York Press, 1985).

[8] Vicky Comino, 'The Challenge of Corporate Law Enforcement in Australia' (2009) 23(3) *Australian Journal of Corporate Law* 233.

[9] Dan Kahan, 'The Secret Ambition of Deterrence' (1999) 113(2) *Harvard Law Review* 413.

[10] Gregory Gilchrist, 'The Expressive Cost of Corporate Immunity' (2012) 64(1) *Hastings Law Journal* 1.

payouts, they do not require the corporation to admit any fault.[11] It also suggests that despite causing systemic harms, corporations can evade the law. This undermines the rule of law, a key tenet of which is that we are all subject to the law.[12]

II DO WE NEED LAW REFORM?

On any account, the massive systemic harms caused by corporations meet two of the major justifications for criminalisation, that of harmful consequences and public wrongs.[13] What then, are the barriers in the way of prosecuting corporations for widespread harms? In accordance with the theme of this volume, I will consider what law reforms, if any, need to occur to prosecute corporations for these harms. When discussing the im/possibility of prosecuting corporations for wrongs, some key themes emerge from the general public and scholars alike, and there is a tendency to slip from one theme to the next. I will respond to common concerns drawing upon a criminal legal doctrinal perspective to interrogate whether criminal law reform is needed or if we need to transform our cultural and legal imagination and apply existing criminal law to corporations. I am writing this article in a spirit of optimism and idealism – a belief in classic tenets of criminal law and the rule of law.[14]

III CORPORATIONS AS CRIMINAL LEGAL SUBJECTS

A key barrier to criminal prosecution is the failure to conceive of corporations as subjects of criminal law at all. This was exemplified in recent Australian Inquiries and Royal Commissions where despite articulating long term wrongdoing by corporations, prosecution of corporations was not suggested. For example, despite its terms of reference and title, the Royal Commission into Institutional Responses to Child Sexual Abuse did not suggest any prosecutions nor any law reforms to assist with the prosecution of corporations.[15]

It is clear that corporations can be charged with criminal offences. As Hallet J commented in *DPP v Kent and Sussex Contractors*,[16] it makes good sense and good law that a corporation should not escape the consequences that would follow an individual by showing that they are not a natural person. There are, however, some difficulties. Corporations can and do exploit existing doctrine such as the corporate veil to restructure to avoid legal responsibility for harms. An infamous example was the restructure of James Hardie Group in 2001, moving from Australia to the Netherlands, to minimise liabilities for asbestos-related claims.[17] It transpired that James Hardie NV had under-funded its

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[11] 3M Company, '3M Settlement with Public Water Suppliers to Address PFAS in Drinking Water Receives Final Court Approval', *3M* (Web Page, 1 April 2024) <https://investors.3m.com/news-events/press-releases/detail/1836/3m-settlement-with-public-water-suppliers-to-address-pfas>.

[12] There have recently been increases to maximum penalties under the *Competition and Consumer Act 2010* (Cth) and the *Corporations Act 2001* (Cth), which, under some circumstances, can amount to over $782 million. In *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450, the High Court held that proportionality is not a relevant factor. It is beyond the scope of this article, but it may well be that some of these penalties are so severe that they amount to a criminal sanction which serve both to deter and disgorge profits: Cam Truong and Luisa Alampi, 'Increased Civil Pecuniary Penalties – The "Cost of Doing Business" or an Effective Deterrent?' (2020) 28(2) *Australian Journal of Competition and Consumer Law* 101; Penny Crofts and Honni van Rijswijk, *Technology: New Trajectories in Law* (Routledge, 2021); Jennifer Hendry and Colin King, 'Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids' (2016) 11(4) *Criminal Law and Philosophy* 733.

[13] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press, 7th ed, 2013).

[14] I am of course aware of the impact of power on the construction and application of law, but I also believe that the ideals of law hold a power that we can draw upon to challenge inequalities and injustices.

[15] *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 6.

[16] *Director of Public Prosecutors v Kent and Sussex Contractors Ltd* [1944] KB 146.

[17] Matt Peacock, *Killer Company: James Hardie Exposed* (ABC Books, 2009) ('Peacock').

subsidiary foundation responsible for compensation by about $2 billion.[18] James Hardie asserted that it had undertaken all legal steps in relation to setting up the foundation and would not provide any further funds. It was only after a government inquiry, political and union pressure, that shareholders of the Dutch company voted to provide $4 billion over next 40 years to fund claims against the former subsidiaries. One response to restructures such as this and phoenix companies, is to apply criminal law categories of identity to corporations, rather than corporate law categories. In criminal law, even if an offender changes their identity this will not insulate them from prosecution for past wrongs. Why then, can corporations fudge their identities to avoid liability, but keep the profits from past wrongdoing?[19] This is an area that is recognised amongst scholars and the judiciary as ripe for analysis and reform.[20] Alternatively, this is an area where personal responsibility of corporate officers may be a better option.

Leaving aside issues of the corporate veil, there are far too many examples of corporate wrongdoing which do not have a complicated corporate identity, and yet there is still no suggestion of prosecution of those corporations. For example, the recent inquiries into Crown and Star casinos found long term money laundering and did not recommend criminal prosecution of either corporation. ASIC has pursued both corporations for civil penalties, but at the time of writing, despite the availability of strict liability criminal offences, no corporation has been prosecuted for money laundering in Australia.[21] These arguments are not intended to displace the possibility of prosecution of corporate officers, which may well be warranted – either in addition to, or instead of, the prosecution of corporations.[22]

IV AGENCY

Legally there is no barrier to prosecuting corporations, but then a key question arises of how can corporations think and act? That is, what kind of agency do corporations have? Responses to the question of corporate agency can be divided into nominalists and realists. Nominalists accept that corporations are legal entities but argue that they are nothing more than collectives of individuals. They can only act and intend through individual human beings. This reflects an individualistic bias that only individual humans can be agents. Despite philosophical analysis of group thinking,[23] on the whole, we still tend to think of agency in individualistic terms. This focus on individual human actors is reflected and reinforced in the criminal justice system and by scholars, particularly as the criminal law was constructed around the archetypal legal subject – the responsible, biological human being.[24] In contrast, realists argue that corporations are more than the sum of their parts and can act and be at fault in ways that are different from the ways in which their members can act and be at fault.[25]

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[18] Special Commission of Inquiry into the Medical Research and Compensation Foundation, *Report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation* (Final Report, September 2004).
[19] Penny Crofts and Honni van Rijswijk, 'Corporations as Haunted Entities: Conceptualising Responsibility for Historical Harm' in Penny Crofts (ed), *Evil Corporations: Law, Culpability and Regulation* (Routledge, 2024) 206.
[20] Gregory Allan, 'To Pierce or Not to Pierce? A Doctrinal Reappraisal of Judicial Responses to Improper Exploitation of the Corporate Form' (2018) 7 *Journal of Business Law* 559.
[21] Penny Crofts and Honni van Rijswijk, 'A Case Study of State-Corporate Crime: Crown Resorts' (2023) 35(1) *Current Issues in Criminal Justice* 139.
[22] John HC Colvin and Brendan Hord, 'Criminal Director Liability: A Bridge Now Too Far?' (2020) 35 *Australian Journal of Corporate Law* 187.
[23] Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press, 2011); Stephanie Collins, *Organizations as Wrongdoers: From Ontology to Morality* (Oxford University Press, 2023).
[24] Ngaire Naffine, 'Our Legal Lives as Men, Women and Persons' (2004) 24(4) *Legal Studies* 621.
[25] Stephanie Collins, *Organizations as Wrongdoers: From Ontology to Morality* (n 23); Stephanie Collins, 'Corporate Vice' in Penny Crofts (ed), *Evil Corporations* (Routledge, 2024) 47.

This realist / nominalist debate frames questions around how to establish the *mens rea* of corporations. The common law developed identification doctrine, which equates the corporation's mind with the individuals that are its 'directing mind and will'.[26] This approach has proven to be an obstacle to prosecution due to difficulties in identifying who the directing mind is (frequently the Board of Directors), and then what they knew and when, particularly for large corporations where knowledge and responsibility is diffuse. Identification doctrine and the American approach of vicarious liability (holding a corporation responsible for what its individual employees knew and intended) is consistent with the nominalist approach, that is, the idea that a corporation can only be at fault due to individual members of the collective. The underpinnings of identification doctrine have informed recent public inquiries, with the unexamined assumption that corporate wrongdoing can be regarded as a governance issue rather than that of criminality. For example, the Bergin Inquiry was scathing of Crown's 'problems' (including money laundering) and found that they stemmed from 'poor governance, deficient risk management structures and processes and a poor corporate culture'.[27] Thus, it is assumed that if some of the senior management are replaced, the 'problems' of the corporation will be resolved.

A variety of different ideas have developed to deal with the problem of corporate *mens rea* or *fault*. A very common approach is to bypass the requirement of proving *mens rea* altogether, for example with strict liability or failure to prevent offences.[28] Whilst these offences increase the likelihood of a successful prosecution they suggest that corporations are only committing 'quasi' criminal offences, rather than 'real' criminal offences which are more 'serious' wrongs.[29] One of the reasons why this distinction is asserted is because strict liability offences do not require proof of *mens rea*. This conflicts with the legally and socially dominant model of culpability as subjective, that is, that we can only be held responsible for intentional wrongdoing.[30] One rejoinder to this is that there are other, significant models of wickedness, including a negative model of wickedness, that is, of failure or lack. This negative model works really well for corporate wrongdoing,[31] but distracts from the actions and choices exercised by corporations across time. That is, a narrative of (culpable) failure contributes to the idea that corporations lack agency. For example, in response to four people being killed on the Thunder River Rapids Ride (TRRR) at Dreamworld Australia in October 2016, Ardent International plead guilty to three failures to fulfil safety duty offences. The deaths were framed as a result of failure:

> The failures of the defendants were not momentary. Nor were they confined to a discrete safety obligation. They encompassed failures in each of the following: the provision of maintenance of safe plant and structure. The provision of maintenance of safe system of work. The provision of information, training and instruction to staff.[32]

Rather than regarding this as failure, Anthony and I note that the coronial inquiry pointed to multiple breakdowns of the TRRR prior to the deaths, removing bits of the ride when they became

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[26] *HL Bolton Engineering Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159, 172.
[27] Independent Liquor and Gaming Authority Patricia Bergin, *Inquiry under Section 143 of the Casino Control Act 1992 (NSW)* (Report, 1 February 2021) vol 2, 568.
[28] Australian Law Reform Commission (n 5) 81.
[29] There is some basis for this distinction: see, eg, the failure to lodge returns on time: See generally Australian Law Reform Commission (n 5).
[30] Penny Crofts, *Wickedness and Crime: Laws of Homicide and Malice* (Routledge, 2013); Australian Law Reform Commission (n 5) 35. 'It is fault that should distinguish criminal conduct from prohibited conduct that is subject only to civil regulation.'
[31] Jonathan Clough, '"Failure to Prevent" Offences: The Solution to Transnational Corporate Criminal Liability' in Elise Bant (ed), *The Culpable Corporate Mind* (Hart, 2023) 395; Penny Crofts, 'Criminalising Institutional Failures to Prevent, Identify or React to Child Sexual Abuse' (2017) 6(3) *International Journal for Crime, Justice and Social Democracy* 104.
[32] *Guilfoyle v Ardent* [2020] QMC 13, [2].

waterlogged and not replacing them or analysing the effect of the modifications on the safety of the ride, and not fixing the emergency stop procedures despite being advised in 2001 that it needed to be fixed.[33]

Alternative, innovative approaches to determine corporate intention and to more accurately capture culpability have been proposed. This includes the much touted but almost never applied corporate culture,[34] whereby corporate knowledge and intention can be attributed to a corporation based on a 'corporate culture' that 'directed, encouraged, tolerated or led to non-compliance with the relevant provision'.[35] Corporate law scholar Elise Bant has proposed the idea of system intentionality, which conceptualises the state of corporate mind as manifested in its systems, policies and practices.[36] Alternatively, this question of corporate intentions can be analysed in the terms of classic criminal legal doctrine that is applied to the archetypal legal subject. In the absence of a confession from an individual accused, juries are directed to infer or deduce intention based on the circumstances, conduct, and what a person says.[37] As I have argued in relation to my analysis of the film *Aliens*, this question of corporate intentions should not be over-complicated.[38] In *Aliens,* even though we do not understand their language or organisational structure, it is clear what the aliens want – to survive and reproduce. The same kind of analysis can be applied to corporations. Thus, instead of using a language of failure, we can point to Ardent's knowledge and choices to minimise costs and avoid shutting down Dreamworld's most popular ride even briefly to undertake basic safety procedures.[39]

Moreover, the assumption of difficulties of establishing corporate intent belies the extent to which after a history of denial, it becomes apparent that the corporation knew of the dangers and harms long before anyone else and continued to act regardless. There are too many examples of this, with the tobacco industry particularly effective here,[40] James Hardie and asbestos,[41] and the recent revelations about 3M and DuPont and toxic forever chemicals.[42] Even where *mens rea* is conclusively established, there is no prosecution. For example, Johnson and Johnson was sued in 1999 for causing mesothelioma, but successfully argued that its talc was safe. Later lawsuits revealed documents indicating that the product had asbestos in it, and the company knew from at least the 1970s that the talc tested positive for small quantities of asbestos.[43] As a consequence the company has been successfully sued in various countries for causing harms including ovarian cancer.[44] A St Louis circuit court judge found that there was evidence of 'particularly reprehensible conduct on the part of the defendants, including that defendants knew of the presence of asbestos in products that they knowingly targeted for sale to mothers and babies, knew of the damage their products caused, and misrepresented the safety of these products

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[33] Anthony and Crofts (n 3).
[34] Australian Law Reform Commission (n 5) 66. Corporate culture is expressly excluded from a broad range of legislation.
[35] *Criminal Code Act 1995* (Cth) pt 2.5 s 12.3(2)(c).
[36] Elise Bant, 'The Culpable Corporate Mind: Taxonomy and Synthesis' in Elise Bant (ed), *The Culpable Corporate Mind* (Hart, 2023) 3.
[37] 'Judicial Commission of NSW', *Criminal Trial Courts Bench Book 3-200* (Web Page) <https://www.judcom.nsw.gov.au/publications/benchbks/criminal/intention.html>.
[38] Penny Crofts, 'Aliens: Legal Conceptions of the Corporate Invasion' (2022) 34(3) *Law and Literature* 387. See also, Mihailis Diamantis, 'How to Read a Corporation's Mind' in Elise Bant (ed), *The Culpable Corporate Mind* (Hart, 2023) 209.
[39] Anthony and Crofts (n 3).
[40] SM Carter and S Chapman, 'Smoking, Disease, and Obdurate Denial: The Australian Tobacco Industry in the 1980s' (2003) 12 *Tobacco Control* 23.
[41] Peacock (n 17).
[42] Lauren Richter, Alissa Cordner and Phil Brown, 'Producing Ignorance Through the Regulatory Structure: The Case of Per- and Polyfluoroalkyl Substances (PFAS)' (2021) 64(4) *Sociological Perspectives* 631.
[43] Owen Dyer, 'Johnson & Johnson Knew for Decades Talcum Powder Contained Asbestos, Reports Allege' (2018) 363 *BMJ* K5430.
[44] Owen Dyer, 'Jury Awards $4.7bn Damages against Johnson & Johnson in Talcum Cancer Case' (2018) 362(8162) *BMJ* K3135.

for decades'.[45] And yet, even when we know their intentions and are aware of the massive harms that they have caused, they are still not prosecuted.

One barrier is that we tend to think of specifics with regard to intention, for example, the intention to kill a specific person. But with companies such as James Hardie, Johnson and Johnson, and Purdue – there is knowledge that their product *will* kill, there is just no specific victim. Surely though, this is at least as bad, if not worse than, an intention to kill specific people. There is a willingness that an unspecified number of people will die so that the corporation can continue peddling a product that it knows will kill so that it will continue to profit. The failure to prosecute relegates these deaths to accidents, disasters and tragedies as though corporations had no culpability despite knowingly choosing profit and externalising harms for decades. In these situations, particularly where the corporation knowingly ran the high risk of killing on an industrial scale for decades, the corporation can and should be prosecuted for manslaughter or even murder. But they are not. This is a failure of normative and legal imagination of the corporation as criminal, rather than a failure of criminal law.

V CORPORATE HARMS ARE NOT CRIME

An additional obstacle to prosecution is the perception that corporate harms are not criminal, linking back to the characterisation of strict liability offences as minor, regulatory offences. There is no question that there is a proliferation of minor regulatory offences,[46] which have led scholars and the ALRC to express concern about the over-criminalisation of corporations. This concern is reflected and reinforced by a tendency to characterise corporate crimes in euphemistic terms. For example, in the Financial Services Royal Commission banking practices were labelled fees for no service, rather than fraud. This is in part an expression of power, for example, the Australian Retailers Association prefers 'unlawful non-payment or underpayment of employees' remuneration' to theft.[47] This euphemistic thinking is facilitated by law, for example, instead of being prosecuted for the manslaughter of four people, Ardent was prosecuted for three breach of safety offences. This euphemistic language shores up the perception of corporations as non-criminal. The same behaviour by individuals results in prosecutions for crimes, whereas corporations may be prosecuted for regulatory offences under other names at most, or for civil penalties.

I have argued that far from over criminalisation, there is an under criminalisation of corporate harms because they are 'too big, too bad and too nasty' for criminal law.[48] Our system is geared to respond to and categorise harms that are caused by individuals. Corporations are capable of causing harm on an industrial scale that radically exceeds even the most motivated super villain.[49] We are thus left with the perverse outcome that the most serious and widespread harms are excluded from purview of criminal law, which claims for itself the worst public wrongs – because they are too much for criminal law categories. This suggests that we need to rejig and expand our numerical categories of harms to

[45] Associated Press, 'Salter J. Judge Refuses to Overturn $4.7 Billion Talc Powder Verdict', *The Washington Post* (online, 20 December 2018) <https://www.washingtonpost.com/business/judge-refuses-to-overturn-47-billion-talc-powder-verdict/2018/12/20/d837edac-0498-11e9-958c-0a601226ff6b_story.html>.
[46] For example, the failure to place an Australian Company Number on certain company documents: Australian Law Reform Commission (n 5) 75.
[47] Economic References Committee (Cth), *Systemic, Sustained and Shameful: Unlawful Underpayment of Employees' Remuneration* (Report, March 2022) 7.
[48] Penny Crofts, 'The Horror of Corporate Harms' (2022) 38 *Australian Journal of Corporate Law* 23, 24.
[49] Timothy Peters, 'You Are Bad Guy, but This Does Not Mean You're Bad Guy: The Office of the Villain in Despicable Me, Megamind and Wreck-It Ralph' (2023) 73(1) *Saeculum* 165.

include the sheer proliferation of corporate harms.[50] Legally and socially, we must stop using euphemistic language in response to corporate harms and use the language and categories of crime.

VI PUNISHMENT

A major barrier to prosecution is the belief that corporations cannot be imprisoned, and therefore there is no point to engaging with the criminal justice system.[51] However, it has long been recognised that corporations are motivated by reputational interests, and not just money.[52] This was confirmed in the Banking Royal Commission, where the banks preferred to be regarded as incompetent and/or immoral, rather than criminal.[53] There is, accordingly, a power in the label of criminality. Rather than giving up, we need to get imaginative about punishments, so that a wide range of sanctions are available. This approach is already adopted by the Land and Environment Court (LEC), where local councils may be found guilty of illegal dumping and financial punishments will affect innocent rate-payers. The LEC can impose penalties such as advertising the offence in local newspapers and remediation of land for the benefit of the community. Additionally, Thomas and Diamantis have argued that corporate punishments should communicate wrongdoing and condemn wrongdoers, and this could be done by 'branding' corporate criminals, in the same way that we brand tobacco as harmful to health. This would signal a corporation's criminal status to observers including potential customers, who could then exercise a choice as to whether or not to purchase.[54] Other proposals include equity fines,[55] a national debarment regime,[56] and the notion of moral insolvency for severe corporate wrongdoing, such as forced liquidation of awards of equity to victims, as arose for Purdue.[57] Accordingly, meaningful punishments are available – we just need to apply them.

VII CONCLUSION

Corporations cause horrific harms on an industrial scale and this is only getting worse. There is an urgent need to prosecute corporations as criminal legal subjects. The failure to do so suggests that corporate harms are acceptable costs of doing business, rather than prohibited wrongs. Much of existing criminal legal doctrine can and should be applied to corporations – there is no lack of offences, just a lack of enforcement.[58] We need to interrogate our legal imagination as to why we continue to permit corporations to get away with crime.

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[50] Crofts, 'The Horror of Corporate Harms' (n 48).
[51] John Coffee Jr, 'No Soul to Damn: No Body to Kick: An Unscandalized Inquiry into the Problem of Corporate Punishment' (1980) 79(3) *Michigan Law Review* 386.
[52] Brent Fisse and John Braithwaite, *The Impact of Publicity on Corporate Offenders* (State University of New York, 1983).
[53] Penny Crofts, 'Strategies of Denial and the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services' (2020) 29(1) *Griffith Law Review* 21.
[54] William Thomas and Mihailis Diamantis, 'Branding Corporate Criminals' (2024) 47 *Fordham Law Review*.
[55] Eugene Schofield-Georgeson, 'Equity Fines for Corporate Crime: Why They Should Be Back on the Legislative Agenda' (2019) 45(2) *Alternative Law Journal* 101.
[56] Australian Law Reform Commission (n 5) 42.
[57] Meredith Edelman, 'Responsive Law and the Problem of Corporate Crime' (2022) 38(1) *Australian Journal of Corporate Law* 46.
[58] Stephen Speirs, 'Examining the Criminal Regime in Chapter 7 of the Corporations Act' (2021) 40(2) *University of Queensland Law Journal* 257.