

2 May 2019

Re: ALRC Review into Australia's corporate criminal responsibility regime

To whom it may concern,

I welcome this ALRC review into Australia's corporate criminal responsibility regime, as well as the opportunity to comment on the scope of the inquiry and the terms of reference.

I am a legal academic with comparative research expertise in corporate misconduct and crime. I am the inaugural Francine V McNiff Chair in Criminal Jurisprudence at Monash University, having previously been Professor of Criminal Law at Durham University, UK. My research focuses on how the law responds to sophisticated, profit-driven crime, both by otherwise legitimate corporate entities as well as networks of organised crime. My research is published widely, and has been funded by the Research Council UK's Partnership for Conflict, Crime and Security, the UK's Arts and Humanities Research Council, the Law Foundation of New Zealand, the Fulbright Commission, the Modern Law Review, and the Carnegie Trust.

I endorse strongly the proposed focus in the ALRC's review on

- the policy rationale for Part 2.5 of the Code;
- the efficacy of Part 2.5 of the Code as a mechanism for attributing corporate criminal liability;
- the availability of other mechanisms for attributing corporate criminal responsibility and their relative effectiveness, including mechanisms which could be used to hold individuals (eg senior corporate office holders) liable for corporate misconduct;
- the appropriateness and effectiveness of criminal procedure laws and rules as they apply to corporations; and
- options for reforming Part 2.5 of the Code or other relevant legislation to strengthen and simplify the Commonwealth corporate criminal responsibility regime.

Examination of the application of Part 2.5 in practice should be central to this review. The fact that the corporate culture provision specifically has not been applied and tested in court must be examined, not least as it is regarded as a prototype in other jurisdictions.

I suggest that the interaction of Part 2.5 with the Corporations Act 2001 should be reviewed and reconsidered. Chapter 7 of the Corporations Act excludes the culture provision from application to finance offences. This means that Part 2.5 of the Code does not encompass individual directors or senior managers such as were criticized by Commissioner Hayne in the Royal Commission Report, even if they presided over a problematic corporate culture.

In terms of cognate developments in the corporate criminal responsibility regime, deferred prosecution agreements are likely to be introduced by the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017. These mechanisms, which can enable accountability but both supplement and weaken corporate criminal liability, should also be focused upon in the Review. I have analysed this in more detail in "Trying corporations: why not prosecute?" [2019] *Current Issues in Criminal Justice* (forthcoming).

I am well-placed to comment on comparative corporate criminal responsibility regimes in relevant foreign jurisdictions, especially common law jurisdictions. I have written on British reform efforts in respect of the

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criminalisation of corporate failure to prevent economic offences in "Corporate liability and the criminalisation of failure" (2018) 12 *Law and Financial Markets Review* 57-70.

I am delighted to provide this brief comment and am happy to elaborate further if this would assist.

Yours faithfully,

A solid black rectangular box redacting the signature of Professor Liz Campbell.

Professor Liz Campbell

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