



**Associate Professor Juliette Overland**

Associate Dean, Student Life

Associate Dean, Indigenous Strategy & Services

Associate Professor, Discipline of Business Law

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**The Australian Law Reform Commission**

[corporatecrime@alrc.gov.au](mailto:corporatecrime@alrc.gov.au)

**REVIEW INTO AUSTRALIA'S CORPORATE CRIMINAL RESPONSIBILITY REGIME**

I note with interest that the Australian Law Reform Commission has been asked to review and report on Australia's corporate criminal responsibility regime, and whether reforms to that regime are necessary or desirable.

I am an academic at the University of Sydney Business School, researching and teaching corporate crime, with a particular focus on securities market offences such as insider trading.<sup>1</sup> Through my work, I am regularly engaged in considering issues of corporate criminal responsibility, and my recent book 'Corporate Liability for Insider Trading'<sup>2</sup> includes an analytical review of the various models of corporate criminal liability which exist in Australia, and proposes reforms for a new model of corporate criminal liability for insider trading.

When considering the matters within the terms of reference for the review of Australia's corporate criminal responsibility regime, I urge the ALRC to include a focus on the regime relating to corporate criminal liability contained in Chapter 7 of the *Corporations Act 2001* (Cth). This regime comprises the general provisions relating to corporate criminal liability in Division 7 of Part 7.1 (sections 769A-769C) and the specific provisions relating to corporate criminal liability for insider trading in Division 3 of Part 7.10 (section 1042G).

A particular challenge concerning corporate criminal liability in Australia is the availability of a variety of regimes through which liability is able to be imposed upon or attributed to corporations. While the mechanisms available in part 2.5 of the *Criminal Code* operate as an exclusive set for the Commonwealth offences to which they apply, those mechanisms are excluded by s 769A of the *Corporations Act* from applying in respect of offences in Chapter 7 of the *Corporations Act*, to be replaced by those specifically provided for in

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<sup>1</sup> Details of my work and publications in this area are available online:

<https://business.sydney.edu.au/staff/juliette.overland>

<sup>2</sup> J Overland, *Corporate Liability for Insider Trading* (Routledge, United Kingdom, 2019). See also, J Overland, 'Reforming Australian Insider Trading Laws: A New Model of Corporate Criminal Liability - Part 2' (2018) 33 *Australian Journal of Corporate Law* 1-9.

<sup>3</sup> J Overland, 'Reforming Australian Insider Trading Laws: A New Model of Corporate Criminal Liability - Part 1' (2017) 32 *Australian Journal of Corporate Law* 314-332; J Overland, *Corporate Liability for Insider Trading* (Routledge, United Kingdom, 2019).

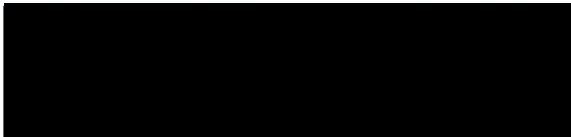


Chapter 7. In my considered view, this enables general law mechanisms for the attribution of corporate liability to be applied in addition to those contained in the relevant provisions of the *Corporations Act* (which are not exclusive in their operation) as detailed in my published research.<sup>3</sup>

Accordingly, while the ALRC has been asked to review the policy rationale for Part 2.5 of the *Criminal Code*, I also urge the ALRC to consider the policy rationale for excluding part 2.5 of the *Criminal Code* from application to offences in Chapter 7 of the *Corporation Act*, and to consider the efficacy of the various *Corporations Act* provisions concerning corporate criminal liability. These issues are of particular interest in light of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Hayne Report), since Chapter 7 of the *Corporations Act* relates to financial services and markets. In particular, the Hayne Report emphasises “culture” as a contributing factor to misconduct in the banking and financial sector, but the only applicable mechanism for using culture for the attribution of criminal liability exists in part 2.5 of the *Criminal Code*, which does not apply to Chapter 7 offences.

I would be pleased to discuss these and other relevant issues with members of the ALRC, and to make further submissions on consultation documents produced by the ALRC as part of this review.

Your sincerely



**Associate Professor Juliette Overland**  
Discipline of Business Law  
University of Sydney Business School

