

Australian Law Reform Commission
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Brisbane, QLD 4003

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31 January 2020

Thank you for the opportunity to make a submission in relation to proposals to reform the **Commonwealth corporate criminal responsibility regime** set out in Discussion Paper 97.

Justice Connect is an Australian Charities and Not-for-profits Commission (ACNC) registered charity and accredited community legal centre. We have worked for more than 25 years to improve legal and life outcomes for vulnerable people and community groups, through our specialist services and pro bono network of over 10,000 lawyers.

Justice Connect's Not-for-profit Law program is the only legal service in Australia providing free tailored legal advice, training and assistance specifically to not-for-profit organisations.

We submit that the potential application of the proposed new regime on a significant number of our clients – small-to-medium charities and not-for-profits – has been overlooked in this Discussion Paper.

According to ACNC data, there are just under 10,000 *Corporations Act 2001* (Cth) entities that are registered as charities with the ACNC. Most of these are companies limited by guarantee. It is likely that there are other corporate not-for-profits that are not ACNC registered that would increase this number of potentially affected not-for-profit organisations. Within this submission, we use the term 'not-for-profits' to include those that are registered charities.

We see the merit in a simplified and improved corporate accountability regime to ensure there are effective laws to hold corporations accountable for criminal misconduct. However, in our submission, it is important that this proposed regime does not impose an unreasonable regulatory burden on not-for-profit corporations and their officers. Regulatory burden must be risk-based and we are not aware of evidence demonstrating relevant particular risks within the not-for-profit sector.

We note that the proposed new regime will deal with individual liability provisions contained in 18 different Commonwealth statutes,¹ and we urge you to consider its potential application on officers of not-for-profits, the vast majority of whom are volunteers. Unlike for-profit corporations, many not-for-profits do not hold Directors and Officers Liability insurance, making volunteer directors more vulnerable. Also it would impose a regulatory burden on not-for-profits based on their legal structure, rather than on any known risks of potential criminal activity.

¹ Australian Law Reform Commission, *Corporate Criminal Responsibility: Discussion Paper (DP 87, 2019)*, Appendix I.

Requiring compliance by corporate not-for-profits will be an impost on the use of their limited funds, much of which have been provided by the public to enable them to pursue their charitable purposes and activities.

We urge the Commission to consider these possibly unintended consequences on not-for-profit corporations in its deliberations.

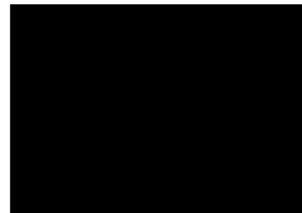
We would be happy to elaborate on our submission if that would assist.

Yours sincerely,



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