

Partner  
Writer  
Direct line  
Email  
Our reference

Scarlet Reid  
Nathan Roberts



8 May 2019

The ALRC President  
Australian Law Reform Commission

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

Dear Hon Justice S C Derrington

## **Review into Australia's corporate criminal responsibility regime**

---

- 1 McCullough Robertson welcomes the opportunity to contribute to the development of the Terms of Reference for the Australian Law Reform Commission (**ALRC**) inquiry into Australia's corporate criminal responsibility regime (**Inquiry**).
- 2 McCullough Robertson has significant experience in providing legal advice and specialised representation to corporate and government clients who are the subject of regulatory enforcement proceedings and investigations.
- 3 We believe that the Inquiry provides an important, and timely, opportunity to reflect on the operation of our corporate criminal responsibility regime. McCullough Robertson is conscious that the law should be robust and cohesive in order for corporations and their officers to be best placed to ensure compliance.
- 4 With this in mind, we make the following comments in response to the ALRC's invitation to comment on the scope of the Inquiry and any issues relevant to the terms of reference.

### **Impact of the Commonwealth Integrity Commission**

- 5 The Australian Government's recent announcement that it will establish a Commonwealth Integrity Commission (**CIC**) has emphasised the Australian Government's intention to improve the current National Integrity Framework.
- 6 We believe that the role of the proposed CIC and its interaction with other law enforcement agencies should be addressed by the Inquiry including, in particular, the extent to which evidence obtained in the course of a CIC investigation or inquiry, either voluntarily or under the exercise of coercive powers, is admissible in criminal proceedings, or otherwise the subject of privileges or immunities.

### **Indemnification for defence costs and criminal penalties**

- 7 The operation of section 199A of the *Corporations Act 2001* (Cth) (**Corporations Act**) prohibits a company or related body corporate from indemnifying a person against:
  - (a) certain liabilities incurred as an officer or auditor; and

This communication (including attachments) is only intended for its addressees and may contain privileged or confidential information. Unauthorised use, copying or distribution of any part of this document is prohibited. If you are NOT an intended recipient please notify us immediately and destroy the communication.

(b) legal costs incurred in defending or resisting criminal proceedings in which they are found guilty and other circumstances.

8 We consider that it is appropriate that the Inquiry consider the scope and effectiveness of section 199A of the Corporations Act including the extent to which it may be necessary to regulate insurance products that may be inconsistent with the purpose of section 199A.

### **Educative functions of regulators**

9 In our experience, effective corporate governance and social responsibility is a function of corporate culture and education. However, many Australian corporations and their officers are unfamiliar with the standards of good corporate governance and social responsibility imposed by the criminal law, and how to meet any such standards. These issues are not limited to the sectors that were the subject of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

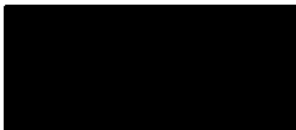
10 We suggest that the Inquiry's scope including consideration of the extent to which the law ought to be amended to enhance the educative functions of regulators that have responsibility for investigating and/or prosecuting corporate criminal conduct.

11 We expect that enhanced educative functions of regulators could achieve significant improvements in the standard of corporate conduct. In this regard, we refer the ALRC to the relatively effective manner in which safety regulators exercise both educative and regulatory functions to achieve their statutory objectives.

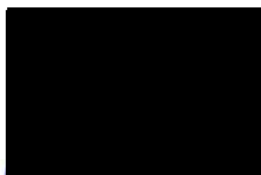
### **Conclusion**

12 Thank you for the opportunity to comment on the scope of the Inquiry. We look forward to making more substantive submissions once the Inquiry commences proper.

Yours sincerely



**Scarlet Reid**  
Partner



**Jason Munstermann**  
Partner



**Nathan Roberts**  
Senior Associate