

ALRC TAKES A MEASURED APPROACH IN ITS FINAL REPORT ON CORPORATE CRIMINAL RESPONSIBILITY

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Legal Briefings - By **Jacqueline Wootton, Christine Wong and Jordan Phoustanis**

The ALRC's final report on corporate criminal responsibility is lengthy and there is a lot to absorb for Government and the business community. We have outlined our key areas to watch on the proposed reforms.

Against a poor record of corporate crime prosecutions in Australia, the ALRC was tasked with considering how existing laws could be reformed. The ALRC has moved away from some more radical proposals in its 2019 discussion paper, though key reforms are still proposed. While Covid-19 was not a driver in the ALRC's thinking, this is aligned with the more temperate climate around corporate regulation this year. Simpler, clearer and more consistent regulation is a recurring theme.

 Decriminalise trivial misconduct	 Harmonise attribution model	 Emphasis on 'reasonable precautions' defence	 New systematic conduct offence
 Extend 'failure to prevent' offences	 Defer reforms on individual responsibility	 Expanding the sentencing toolkit	 Support for deferred prosecution agreements, with judicial oversight

WHAT DO THE PROPOSALS MEAN FOR YOU?



- **Invest in compliance** as recommendations put adequate systems and controls in the spotlight through proposed offences for systematic conduct or patterns of behaviour, and a 'reasonable precautions' defence.
- **Initial changes likely to piggyback off reforms already in the pipeline**, such as the introduction of a 'failure to prevent' foreign bribery offence and a deferred prosecution scheme. Wholesale reform of criminal liability regimes and other new offences will take time, particularly given current Government priorities.
- **Expect further reviews and ongoing scrutiny** if no marked increase in criminal enforcement and successful prosecutions – particularly of directors and senior managers.

WHAT'S PROPOSED?

More principled approach to corporate criminal laws

- **Decriminalise** trivial corporate misconduct and apply stricter framework to introduce new offences.
- **Better levers** to deal with corporates and impose consequences, including dissolution orders, prohibitions on certain commercial activities and a debarment regime.
- **Data monitoring** to inform future reform

'Systematic conduct' and 'failure to prevent' offences
Harmonise model of corporate responsibility to anyone acting on corporation's behalf



WHAT'S NOT CHANGING?



- Corporate liability for **conduct of all 'associates'** abandoned.
- **No radical changes** to introduce new forms of **individual liability** for corporate offending.
- **Support for existing reforms** in the *Combating Corporate Crime Bill 2019*, including failure to prevent foreign bribery and introduction of deferred prosecution scheme, though with some extensions. Judicial oversight recommended over deferred prosecution agreements, and appetite to extend 'failure to prevent' offences to other transnational crime.

A FINAL WORD OF CAUTION

While the ALRC has made important recommendations, significant work is needed before they can be implemented, assuming Government support. It also remains to be seen whether the recommendations, once implemented, would effectively address historical challenges in prosecuting corporate misconduct. In our view, other facets of the enforcement landscape which go beyond the ALRC's Terms of Reference have a significant bearing on these questions. This includes the framework and model for investigating misconduct.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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