

THE ALRC'S PROPOSED "SYSTEM OF CONDUCT OFFENCE" - HOW REPEAT CIVIL CONTRAVENTIONS MAY HAVE CRIMINAL BITE

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Legal Briefings - By **Jacqui Wootton, Christine Wong, Kate Meakin, Dirk Seiler, Enno Appel, Jordan Phoustanis and Maxine Byrne**

In this briefing we provide a breakdown of what a new "system of conduct" offence could involve and our initial views on implications for corporations in Australia

A PROPOSED NEW "SYSTEM OF CONDUCT" OFFENCE - KEY TAKEAWAYS

Earlier this year we [published a report](#) on the implications of the ALRC's Final Report on Corporate Criminal Responsibility. In the [Final Report](#), the ALRC made a number of recommendations for reform, including to address what it identified as an over-proliferation of Commonwealth offences applicable to corporations and to ensure that criminal sanctions are reserved for the most egregious corporate misconduct.

One of the more novel recommendations made by the ALRC concerned the introduction of a new offence for engaging in conduct that constitutes a "system of conduct" or "pattern of behaviour" that results in repeated civil penalty provision (**CPP**) contraventions.

This recommendation reflects a view that organisational fault is closely tied to an organisation's systems, "group think", collective behaviours and decision making at an organisational level.

It also seeks to deter misconduct that might otherwise be viewed by contravening corporations as a "cost of doing business" by signalling that repeated or systemic breaches of CPPs should be treated more seriously - criminally - to ensure that they are addressed early and/or avoided.

In this briefing we provide a breakdown of what a new “system of conduct” offence could involve and our initial views on implications for corporations in Australia.

Much of the detail will need to be developed if there is government support for the recommendation. If the offences were implemented in the broad way articulated by the ALRC, some of the implications will be:



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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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