



Australian Banking Association

17 May 2019

Corporate Crime Inquiry
Australian Law Reform Commission
PO Box 12953,
George Street QLD 4003

By email: corporatecrime@alrc.gov.au

Dear Sir/Madam

I write regarding the Australian Law Reform Commission Corporate Crime Inquiry. The purpose of this letter is to provide brief comments on the reviews' Terms of Reference.

Thank you for the opportunity to submit this one week after the deadline.

The Australian Banking Association (**ABA**) believes that where there has been wrongdoing by corporations or individuals, those corporations and individuals should be held to account. The ABA supports the objectives of the ALRC review and greater scrutiny of Australia's corporate criminal liability regime.

We note that the draft terms of reference require the ALRC to consider whether, and if so what, reforms are necessary or desirable to improve Australia's corporate criminal liability regime. The draft terms of reference are not, however, limited to corporate criminal accountability, as they specify that the ALRC should review 'mechanisms which could be used to hold individuals (e.g. senior corporate office holders) liable for corporate misconduct'. The terms of reference go on to state that the ALRC should consider 'whether Part 2.5 of the Code needs to incorporate provisions enabling senior corporate officers to be held liable for misconduct by corporations'.

In our view, it is important that any consideration of the liability of individuals for corporate misconduct take account of the various avenues pursuant to which individuals might be personally liable for corporate misconduct under the law as it stands. This would include consideration of duties of directors, officers and others under the Corporations Act and at common law. It would also include consideration of accessorial liability and how liability might extend to individuals 'involved' in a contravention of a civil penalty provision. While not imposing personal liability on accountable persons, the BEAR regime should also be considered, given the disqualification powers it confers on APRA.

Thank you again for the opportunity to provide comment.

Should you wish to discuss this matter, please contact Policy Director Jerome Davidson at Jerome.davidson@ausbanking.org.au

Yours faithfully

Jerome Davidson
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