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Bar Association

The ABA acknowledges the relationship between the land on which it and its members work and the First Nations' peoples of Australia

## **MEDIA RELEASE**

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### **ABA JOINS THE LAW COUNCIL OF AUSTRALIA IN EXPRESSING THE NEED FOR CAUTION IN ADOPTING THE RECOMMENDATIONS OF THE ALRC'S REPORT 'CORPORATE CRIMINAL RESPONSIBILITY'**

The Australian Bar Association joins with the Law Council of Australia in expressing caution in adopting the recommendations of the Australian Law Reform Commission's Report on Corporate Criminal responsibility.

The Report contains recommendations allowing for the physical or mental element of an offence to be deemed to be that of the corporation if "any officer, employee, or agent of the body corporate, acting within actual or apparent authority" carries out the act or holds the relevant state of mind or otherwise directs, agrees or consents to a person carrying out the act. There is no requirement that such an employee be a "high managerial agent" of the company.

'The extension of criminal liability to a corporation for the acts of such a large group of actors has far reaching ramifications for the criminal law of this country. It is not clear why a company should be criminally liable for the conduct of such a wide group', the President Matthew Howard SC said.

'At a time when Australia heads into a recession and when there is a need to stimulate business, a change to the law that makes a company vicariously liable for the acts of any employee of a company no matter what their position would have a sobering effect on anyone thinking of starting a business in this country or remaining in business', Mr Howard said.

The ALRC recommends that some conduct attracting a civil penalty could be characterised as criminal conduct if there is a 'system of conduct or pattern of behaviour'. Caution needs to be exercised in adopting this recommendation.

'While there may be a need to dissuade a corporation viewing a civil penalty as a cost of doing business, the public, including corporations, should have the benefit of knowing when conduct will be criminal in nature. If the legislature has accepted that an offence should attract a civil penalty, the criminalisation of that conduct cannot be left to an undefined point in time', Mr Howard said.

'No one doubts the need to hold companies to account, including imposing criminal liability, however, the diverse size, operations and functions of companies dictates that care must be taken in determining how far down the chain of command conduct should be sheeted home to a company', Mr Howard said.

'The ALRC's report is close to 600 pages long. It is the result of an enormous amount of work and deals with a very complex area of law. It is imperative that time be taken to carefully consider its recommendations many of which go to the heart of the nation's concept of criminal responsibility' said Mr Howard.

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