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This article explores why there are differences between regulators in the enforcement strategies they adopt and the enforcement outcomes they achieve. It does this by comparing two regulators — the Australian Securities and Investments Commission and the Australian Charities and Not-for-profits Commission — two ‘conduct’ regulators that regulate certain activities of Australian companies, including governance and financial reporting. Enforcement outcomes for both regulators for the 10-year period from 1 July 2013 to 30 June 2023 are examined. The analysis finds that the two regulators have very different enforcement strategies and outcomes — in terms of the number of enforcement outcomes, the types of enforcement outcomes and who is subject to enforcement. Factors identified in the article that explain these findings include the different statutory objectives, government expectations, enforcement powers, resources and remit of the two regulators. The findings highlight the impact that certain factors have on the enforcement strategies and outcomes of conduct regulators.

There is a growing interest in expanding the availability of non-monetary punishments in Australian corporate criminal punishment, owing to the perceived inadequacy of monetary punishments such as fines. However, the absence of an ability to ‘imprison’ corporations remains a continuing pain point in both criminal law and legal scholarship. This article explores how non-monetary criminal punishment can be recontextualised in light of certain imprisonment characteristics to accentuate the creative potential of sanctions. Although the unique, integrated role that corporations play in society means that it is often less ideal to isolate a convicted corporation from the community, enacting greater intervention and supervisory measures can help facilitate meaningful internal change from within the organisation. This can be achieved by broadening the scope of corrective orders under existing Australian law or extending similar monitoring powers under the Casino Control Acts to the Corporations Act.

The imperfections in the corporate criminal responsibility regime have been a long-held anathema to regulatory bodies, law reformists and scholars alike. Existing accountability mechanisms — identification theory at common law and statutory models — were historically constructed to attribute human fault to that of the corporation. However, contemporary misconduct can — and does — emerge from corporate systems, processes and culture. Attribution mechanisms have not yet evolved to capture culpability within these intangibles.

At the frontier of current scholarship, it has been argued that appropriate reform rests in mechanisms tailored to culpable corporate systems. As an extension of such debate, this article considers two emerging models of reform — Professor Elise Bant's 'systems intentionality' attribution model and the Australian Law Reform Commission's 'system of conduct' offence. It will compare the theoretical merits of each proposal and their practical utility with reference to case studies of systematic misconduct revealed by the Hayne Royal Commission and Bergin Inquiry.

The Insolvency Law Reform Act 2016 (Cth) (ILRA) was introduced to achieve key objectives including to harmonise the corporate and personal insolvency systems. In 2022, the Parliamentary Joint Committee on Corporations and Financial Services (PJC) conducted an inquiry into the effectiveness of corporate insolvency in Australia. The PJC's findings and stakeholder evidence from five days of hearings and 78 submissions highlighted, inter alia, the ongoing divergence in the corporate regulator the Australian Securities and Investments Commission (ASIC) and the personal insolvency regulator, the Australian Financial Security Authority's (AFSA) respective regulation of registered liquidators and registered trustees (together 'insolvency practitioners'). A unified approach to the regulation of insolvency practitioners is important given their critical roles to support individuals and companies who cannot pay their debts. Accordingly, stakeholders including creditors, government and the community are affected by the actions of insolvency practitioners — particularly misconduct such as misappropriation of the funds of the estate they control. This article argues there should be one single regulator for the insolvency profession. The failure to implement a single regulator as a reform option with the implementation of the ILRA was a missed opportunity and is unsatisfactory — given the continued disparity in ASIC and AFSA's approach, and ongoing criticism of ASIC's performance most recently by the 2024 Senate Economics References Committee Report into ASIC's Investigation and Enforcement. This analysis is also timely in light of the recent transfer of personal insolvency from the Commonwealth Attorney-General's Department to the Commonwealth Treasury in alignment with corporate insolvency. This article advances the opportunity for harmonisation and makes the case for progressing reforms by recommending that AFSA should be the single regulator for insolvency practitioners. As a starting point, priority is given to the disciplinary functions of the regulator given the considerable impact of the disciplinary process on the livelihood of insolvency practitioners and those third parties relying on them.

Section 181 and the relational dynamics of directors' fiduciary duties in Australian corporate law

This article reconsiders the traditional understanding of director duties under s 181 of the Corporations Act 2001 (Cth) through the lens of relational contracting theory. While s 181's good faith requirement has been a cornerstone of Australian corporate law, its broad and often undefined nature has prompted ongoing debate among scholars and practitioners. By examining the relational dimensions of corporate governance, this article proposes a framework that prioritises the subjective intent and established practices of company participants. Drawing on empirical data and legal analysis, it introduces a Relational-Corporate Framework that provides a structured yet flexible approach to interpreting directors' obligations. This Framework not only clarifies the expectations placed on directors in both long-term and short-term corporate contexts but also offers a practical means for adjudicators to reconcile abstract fiduciary principles with the dynamic realities of corporate relationships. The article concludes by highlighting the potential of this relational perspective to enhance both the consistency and contextual sensitivity of judicial decision-making in corporate law.