

Question on notice

Question 1

Senator WHISH-WILSON: I want to put two questions on notice. You don't have to answer them now. You mentioned the term 'joint and several liability' many times today. Mr Imbesi, you noted I had asked the previous witness about the CLERP 9 reforms. We'll probably have to go back to Treasury and asked them about their submission. But they do say, under incorporation of auditors, that those laws were meant to allow you:

... to take advantage of limited liability afforded by the corporate structure and protect auditors who are not responsible for loss caused by another auditor in the audit firm.

Could we get some kind of idea of how those work, or how you understand the CLERP 9 relates to Deloitte?

The *Corporate Law Reform Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, commonly called CLERP 9, resulted from several high-profile corporate collapses, including HIH. It was aimed at restoring market confidence and introduced a range of corporate governance reforms in relation to audit reform, financial reporting, proportionate liability, disclosure and enforcement.

CLERP 9 introduced proportionate liability, which seeks to ensure a party who is jointly responsible for causing loss or damage is only held liable for the proportion of that loss or damage which a court considers to be just. In other words, if there are multiple parties who are all responsible for a wrongdoing, no one individual of them should be wholly liable for the loss or damage. Rather, each wrongdoer should be proportionately liable for their share of the overall loss.

Proportionate Liability is a concept which applies at law to all wrongdoers, not just in a professional services or audit context.

The Explanatory Memorandum to CLERP 9 expressly stated that it would not be mandatory for a firm to incorporate, recognising that this structure would not suit everyone. Deloitte did not incorporate, so partners remain jointly and severally liable to each other. This means that all partners may bear loss or damage caused by a single partner, or subset of partners.