



Australian Government

Review of tax and corporate whistleblower protections in Australia

20 December 2016

NOTE TO SUBMITTERS

Submissions are due by 10 February 2017.

This paper is for discussion purposes only. The policy considerations outlined in this paper are not, and may not, become law.

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CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

The Government is seeking public comment to assist it with the introduction of appropriate protections for tax whistleblowers and in assessing the adequacy of existing whistleblower protections in the corporate sector. In particular, it seeks comment on whether corporate sector protections and similar provisions under financial system legislation should be harmonised with whistleblower protections in the public sector.

A Parliamentary Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors has also been recently established. The Inquiry is due to report by 30 June 2017. The Inquiry is seeking public submissions by 10 February 2017 and has released its Terms of Reference.

This consultation process, focused upon tax and corporate sector whistleblowing, is intended to complement the work of the Inquiry, which has not issued a discussion paper of its own. This consultation paper will assist members of the public in making submissions to either or both processes as it:

- Gathers together information about existing whistleblower provisions already operating in Australia, including those under the recent amendments to the *Fair Work (Registered Organisations) Amendment Act 2016*, and overseas in major comparable jurisdictions;
- Includes critiques of existing Australian provisions;
- Canvases a range of options for reform of existing protections under the *Corporations Act 2001* and similar provisions under other financial system legislation administered by ASIC and APRA which apply to corporations;
- Canvases a proposal for tax legislation to introduce specific protections for whistleblowers; and
- Identifies the variety of legislative approaches that may be taken by the Government to broaden reform in this area generally.

The results of this consultation process and any public submissions received in response to this paper will be made available to the Parliamentary Inquiry.

Members of the public are invited to address any matter raised in this paper and should not feel obliged to address each and every question.

Closing date for submissions: 10 February 2017

Contact details for submissions or queries

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FOREWORD



As the Minister for Revenue and Financial Services, I have committed to creating more transparency and accountability in business by leading consultation on the introduction of protections for tax whistleblowers and possible reforms to corporate whistleblower protections.

Whistleblowing plays a critical role in uncovering corporate and tax misconduct. It is a key means of combating poor compliance cultures, by ensuring that companies, officers and staff know that misconduct will be reported. The opaque and complex nature of corporate crime makes it difficult for law enforcement to detect abusive practices. In many cases, corporate crime is only detected because individuals come forward, sometimes at significant personal and financial risk.

The importance of protecting corporate whistleblowers has been recognised for many years. However, while legislative protections have formed part of the *Corporations Act 2001* since 2004, they have been sparingly used and are increasingly perceived as inadequate having regard to recent advances in the public sector and overseas. Currently, there are no specific protections for tax whistleblowers, and the range of secrecy and privacy provisions relied upon are incapable of guaranteeing absolute protection. That is why, in the 2016-17 Budget, the Government announced greater protections for those who disclose information about tax misconduct to the Australian Taxation Office. This will further strengthen the integrity of Australia's tax system.

Active protection of whistleblowers to encourage them to make disclosures is essential and the Government is determined to ensure it has the right legislative settings in place to achieve this, while at the same time ensuring disclosures can be fully investigated and that procedural fairness is provided to those who may be the subject of a disclosure. That is why I am pleased to release this paper for comment on ways to strengthen the current framework to ensure both corporate and tax whistleblowers can be confident of protection and have greater incentives to make disclosures.

This paper deals with a series of concerns which have been identified through recent evaluations of existing whistleblower protections and presents a number of options for addressing perceived shortcomings. The paper seeks comments on a range of issues including who should qualify for protection, what matters whistleblowers may disclose, anonymity, motives in disclosing, adequacy of protections against retaliation, adequacy of compensation arrangements, and whether a rewards system should be introduced. The paper looks also at proposals for enhancing internal company procedures for reporting misconduct to appropriate regulatory agencies and whether there is a need for an oversight agency responsible for whistleblower protection.

I invite all members of the public to provide their views in response to the paper.

A handwritten signature in black ink, appearing to read 'Kelly O'Dwyer'.

The Hon Kelly O'Dwyer MP
Minister for Revenue and Financial Services

1. INTRODUCTION

In the 2016-17 Federal Budget the Government announced the introduction of new arrangements to better protect tax whistleblowers as part of its commitment to tackling tax misconduct.

In addition, as part of the Open Government National Action Plan¹, the Government has committed to ensuring appropriate protections are in place for people who report corruption, fraud, tax evasion or avoidance, and misconduct within the corporate sector. The Government has also committed to improving whistleblower protections for people who disclose information about tax misconduct to the Australian Tax Office (ATO), and to pursuing reforms to whistleblower protections in the corporate sector to harmonise these protections with those in the public sector.

The Government also supports the Parliamentary Inquiry that was recently announced to inquire into and report on, among other things, the development and implementation of whistleblower protections in the corporate, public and not-for-profit sectors, taking into account the *Fair Work (Registered Organisations) Amendment Act 2016* passed by the Parliament in November 2016.

As noted, this consultation complements the Parliamentary Inquiry. Public submissions and responses to this paper will be available to the Committee to support their work and assist to progress the required legislative reforms.

1 <http://ogpau.pmc.gov.au/2016/12/07/australias-first-national-action-plan-submitted>

2. EXISTING TAX WHISTLEBLOWING PROTECTIONS IN AUSTRALIA

Currently there are no specific legal protections under tax law to ensure there is no revelation of the identity of people who disclose, on a confidential basis, information about individuals or businesses which they believe may not be meeting their tax obligations (tax whistleblowers).

Presently, the identity of tax whistleblowers is afforded some protection incidentally via the taxation confidentiality provisions pertaining to individual taxpayer affairs (Division 355 of the *Taxation Administration Act 1953*) and privacy laws.

This protection is not absolute due to a number of exemptions under the law that allow for personal information to be revealed in certain circumstances, including when the information has been disclosed voluntarily by the whistleblower (for example, if a court compels the disclosure of the identity of tax whistleblower as a result of item 1 of the table in subsection 355-70(1) of the *Taxation Administration Act*). Neither the taxation confidentiality provisions nor the privacy laws prohibit victimisation of whistleblowers if their identity becomes known or provides compensation if victimisation occurs.

In addition, factual information pertaining to the name of the taxpayer and the section of tax law breached are not protected even if provided as part of a report by tax or whistleblower lawyers' that is otherwise subject to legal professional privilege. This is because factual matters are not protected by privilege.

The absence of specific protections and remedies to compensate tax whistleblowers puts Australia at odds with comparable overseas jurisdictions which specifically provide for each. Nonetheless, the ATO encourages reporting of behaviour that indicates particular taxpayers may not be meeting their tax or superannuation obligations.

Currently, members of the public can inform the ATO about anyone they know who is doing the wrong thing by avoiding or reducing the amount of tax or super that they ought to be paying. Information can be provided anonymously or on a disclosed basis to the ATO by online form, phone, letter or email, or by using the 'Report a concern' tool in the ATO app. In addition, a specific facility is provided to allow tax practitioners to report instances of unlawful behaviour directly to the ATO. If they wish to assert a claim of legal professional privilege they need to apply via a claim form on the ATO website which aids the ATO in determining whether to accept or challenge such claims.

Information provided to the ATO is actioned by the Tax Evasion Reporting Centre (TERC). The information provided is assessed and distributed to the relevant ATO compliance areas for consideration. The information may also be used to determine industry trends, identify new risk areas and to assist in developing compliance strategies.

Some potential whistleblowers do not use the TERC process and instead contact an ATO officer directly. While the ATO currently receives and acts on disclosures, it has no express power to protect people from reprisals or other ramifications.

The lack of overlap with corporate sector protections is also problematic. A number of tax whistleblowers have made disclosures to the Australian Securities & Investments Commission (ASIC) in the mistaken belief that they are protected by provisions currently under the *Corporations Act 2001*, when in fact those provisions only provide protection for disclosures concerning contraventions of corporate, not tax, law.

3. EXISTING CORPORATE WHISTLEBLOWING PROTECTIONS IN AUSTRALIA

Statutory protections for whistleblower disclosures in the corporate sector are contained in Part 9.4AAA of the *Corporations Act 2001* which was introduced as part of a range of corporate legislative reforms in 2004.

The protections offered under Part 9.4AAA in respect of any disclosure about an actual or potential contravention of corporations legislation:

- (a) confer statutory immunity on the whistleblower from civil or criminal liability for making the disclosure;
- (b) constrain employer rights to enforce a contract remedy against the whistleblower (including any contractual right to terminate employment) arising as a result of the disclosure;
- (c) prohibit victimisation of the whistleblower;
- (d) confer a right on the whistleblower to seek compensation if damage is suffered as a result of victimisation; and
- (e) prohibit revelation of the whistleblower's identity or the information disclosed by the whistleblower with limited exceptions.

To qualify for protection whistleblowers must:

- (a) be either current officers or employees of the company in question (that is, an insider) or contractors (including an employee of the contractor) to the company (that is, an outsider);
- (b) make the disclosure to ASIC, the company's auditor, or nominated persons within the company 'in good faith' and have reasonable grounds to suspect that either the company, or some of its officers or staff, have breached (or might have breached) a provision of the corporations legislation; and
- (c) provide their names before making the disclosure (that is, the disclosure cannot be made anonymously).

If the disclosures are made to nominated company officers or to the company auditor, those people may identify the whistleblower and pass on the information disclosed to ASIC, the Australian Prudential Regulatory Authority (APRA) or a member of the Australian Federal Police (AFP), or with the whistleblower's consent, other persons.

OTHER CORPORATE WHISTLEBLOWER PROTECTIONS IN AUSTRALIA

Similar whistleblower protections to those set out in the Corporations Act are contained in the statutes below. These are available if the disclosures concern misconduct or an improper state of affairs or circumstances affecting the institutions supervised by APRA – Authorised Deposit-taking Institutions (ADIs), insurers and superannuation entities.

- (a) the *Banking Act 1959* (Cth);
- (b) the *Insurance Act 1973* (Cth);
- (c) the *Life Insurance Act 1995* (Cth); and
- (d) the *Superannuation Industry (Supervision) Act 1993* (Cth).

Under the Banking Act for instance, a person may qualify for protections if the disclosure:

- (a) relates to misconduct, or an improper state of affairs or circumstances in relation to the ADI; and
- (b) the whistleblower considers that the information may assist the recipient of the disclosure to perform his or her functions or duties.

The disclosure is authorised if it is made to ASIC, APRA, AFP or with the consent of the whistleblower.

Similar requirements are set out for insurers and superannuation entities in the *Life Insurance Act 1995*, the *Insurance Act 1973* and the *Superannuation Industry (Supervision) Act 1993* respectively, with some minor differences to reflect the roles of the actuary for insurers and superannuation entities as well as the role of the trustee of the superannuation entity.

In addition, a number of APRA's Prudential Standards include requirements for ADIs to maintain adequate processes for dealing with disclosures from whistleblowers.

Accordingly, the comments or observations made in this paper about the Corporations Act whistleblower provisions could just as readily be made about the whistleblower provisions under the above-named statutes. Given the overlapping responsibilities of ASIC and APRA for corporate entities, albeit with differing regulatory mandates, submitters should give consideration in responding to this paper whether there is a case for reforming each of these whistleblower provisions at the same time as any amendments that may be made to the Corporations Act, to ensure consistency of regulation and that whistleblowers across the financial system have the same protections and obligations in making disclosures.

4. PUBLIC SECTOR WHISTLEBLOWER PROTECTIONS IN AUSTRALIA

Protections for public sector employees or appointees are provided under the *Public Interest Disclosure Act 2013* (AUS-PIDA), which seeks to promote integrity and accountability of the Commonwealth public sector by:

- (a) encouraging and facilitating the disclosure of information by public officials ('public interest disclosure') about suspected wrongdoing within an Australian Government Agency, or by a public official, or a Commonwealth contracted service provider. Wrongdoing may including contravention of a law, corruption, maladministration, abuse of public trust, deception in respect of scientific research, wastage of public money, unreasonable danger to health or safety, danger to the environment, abuse of position, or grounds for disciplinary action;
- (b) ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences; and
- (c) ensuring that public interest disclosures by public officials are properly investigated and dealt with.

The disclosure can be made by a person that is either a current or former 'public official' if the person believes on reasonable grounds there is wrongdoing, defined as 'disclosable conduct'. Public official includes public servants, Defence Force members, statutory office holders and service providers under a Commonwealth contract.

The emphasis of the scheme is on disclosures of wrongdoing being reported to, and investigated within, government. This emphasis is designed to ensure that problems are identified and rectified quickly. Where an official does not wish to make a disclosure to their own agency, the disclosure can be made to the Commonwealth Ombudsman or the Inspector-General of Intelligence and Security. Officials can make disclosures to people outside government (other than a foreign public official) where certain criteria are met. However, a disclosure must first be reported internally to government except in the case of disclosures in an 'emergency' or to a 'legal practitioner' to obtain legal advice.

Qualifying disclosures entitle public sector whistleblowers to protection from exposure of their identities², and immunity from civil, criminal and administrative liabilities for making the disclosure³. The Act also gives protections to public officials from victimisation and discrimination as a result of making a public interest disclosure. A whistleblower can also seek a range of civil remedies through a court including an apology, injunction, reinstatement order, compensation for loss or damage, and costs.

In 2016, the Government commissioned a statutory review into the effectiveness and operation of the PID Act. The Review is discussed later in this paper.

2 Discriminatory treatment, termination of employment or seeking to enforce some other contractual remedy (such as damages for breach of contract) and physical injury or intimidation

3 Including disciplinary action, defamation and banning, but not actions for perjury.

5. WHISTLEBLOWER PROTECTIONS UNDER THE FAIR WORK (REGISTERED ORGANISATIONS) AMENDMENT ACT 2016

On 21 November 2016, the Parliament passed amendments to the *Fair Work (Registered Organisations) Amendment Act 2016* (the RO Act) which significantly strengthened whistleblower protections for people who report corruption or misconduct in unions and employer organisations.

The amendments provide protections to persons – ‘the disclosers’ – ‘who disclose information about certain contraventions of the law’, including current and former officers, employees, members and contractors of organisations. Anonymous disclosures are allowed.

To qualify for protections the disclosure has to be made either to the Registered Organisations Commission, Fair Work Ombudsman or Fair Work Commission if the discloser suspects on reasonable grounds that it refers to ‘disclosable conduct’ defined broadly as ‘an act or omission that:

- (a) contravenes, or may contravene, a provision of the RO Act, the Fair Work Act or the *Competition and Consumer Act 2010*; or
- (b) constitutes, or may constitute, an offence against a law of the Commonwealth’.

The disclosure can be made via the discloser’s lawyer. Disclosures to other external parties do not qualify for these protections.

The Courts can award compensation, impose injunctions and craft other relief to rectify any detriment that may flow from actual or threatened reprisals.

Importantly, Courts can also make compensation orders even when detriment ensued from a failure by a manager to prevent a reprisal. This is because employers are objectively liable for reprisals and actual or constructive knowledge of an actual or potential disclosure is sufficient to create the liability.

The amendments also guarantee that if whistleblowers seek compensation, they will not be subject to adverse legal costs orders if their compensation claims do not succeed, unless their claims are vexatious or an abuse of process.

The amendments also provide more specific guidance on the use of protected disclosures in investigations conducted by the Registered Organisations Commission, Fair Work Ombudsman or Fair Work Commission.

6. TAX AND CORPORATE WHISTLEBLOWER PROTECTIONS IN INTERNATIONAL JURISDICTIONS

This section summarises the key elements of tax and corporate whistleblower protection regimes under the United Kingdom (UK), Canada, the United States (US) and New Zealand law purely for the purpose of benchmarking⁴.

THE UK

Tax Whistleblowers Report to Her Majesty's Revenue and Customs (HMRC)

Consistent with the current ATO approach, details of tax whistleblowers are kept confidential to HMRC but no formal protections exist.

HMRC operates a 'tax evasion hotline' and a secure online reporting service which encourages individuals to report tax evasion including the evasion of income tax, corporations tax, capital gains tax, inheritance tax, VAT and national insurance.

HMRC offers financial rewards to tax informers; however, the mechanism for determining how much is paid and in what circumstances is not public. Payments are discretionary and made on a case-by-case basis.

Public Interest Disclosure Act

In the UK, the *Public Interest Disclosure Act* 1998 (amended in 2013) (UK-PIDA) provides protections for both public and private sector whistleblowers. It applies to a 'worker' in both the public and private sectors, and extends protection to contractors. It also protects confidential, not anonymous reporting and includes a public interest requirement to prevent abuse of the protections by disclosers.

The UK-PIDA protects workers from specific forms of retaliation by their employer, including dismissal, disciplinary action or transfer. Unless the employer can show a valid reason for the dismissal or detriment, an employment tribunal, on an application by the whistleblower, can order the company to compensate the whistleblower for losses suffered and require reinstatement of employment.

To qualify for protection, a whistleblower must meet specific criteria relating to the content of disclosed information (it must concern wrongdoing). The means by which disclosures can be made is codified. Essentially, it operates as a 'tiered' disclosure system, which allows wider disclosure (to regulatory agencies, 'external' individuals such as members of Parliament, or directly to the media) if the employer fails to act effectively or at all on the disclosure. However, it also imposes correspondingly greater obligations upon

⁴ We have refrained from undertaking any critique of overseas regimes as this task is beyond the scope of this paper and it is inappropriate for the Government to comment upon the efficacy of law in foreign jurisdictions. Academic analyses exist and can readily be located via internet.

whistleblowers in terms of accuracy or urgency or both, the further afield they make their disclosures. If these obligations are not met whistleblowers are not legally protected.⁵

CANADA

Offshore Tax Informant Program (OTIP)

In 2013, to mitigate growing concern about international financial transactions and mechanisms being used to avoid or evade tax, Canada introduced the Offshore Tax Informant Program (OTIP).

The *Income Tax Act* 1985 provides protection to prevent revelation of the personal information of tax informants except where necessary for court proceedings (in which case informants are notified in advance of this occurring). Eligibility requirements apply to exclude specified public officials from qualifying as whistleblowers. Public officials include current or former federal, provincial, or municipal employees, officials, representatives or contractors who obtained information as part of their duties, and employees of the Canadian Revenue Agency (CRA). Aside from these, anyone else, including overseas residents, are eligible to become informants under the program. The CRA operates a dedicated North American toll-free number for disclosures.

The OTIP allows the CRA to make financial awards to individuals who provide information related to major international tax non-compliance that leads to the collection of taxes owing. The CRA will only offer an informant a contract leading to an award if the potential assessment of federal taxes, excluding interest and penalties, exceeds CAD100,000.

Public Servants Disclosure Protection Act (PSDPA)

The *Public Servants Disclosure Protection Act* (PSDPA), adopted in 2007, is Canada's only freestanding, federal, whistleblower legislation. The goal of the PSDPA is to require employers in the public sector to establish a code of conduct that provides civil protections for whistleblowers including disciplinary actions against a public servant who subjects a whistleblower to any reprisal for making a disclosure. It extends to an order for reinstatement or damages in lieu of reinstatement.

Each public sector chief executive must establish internal procedures to manage disclosures made under the PSDPA by public servants within their area of responsibility. These executives must protect the identity of persons involved in the disclosure process, including not only the persons making the disclosures, but also the identities of witnesses and persons alleged to be responsible for the misfeasance, and establish procedures to ensure the confidentiality of information collected in relation to disclosures of wrongdoings is maintained.

5 There are three tiers of disclosure: (i) to employers or other responsible persons, (ii) to prescribed persons e.g. for example, Financial Conduct Authority, and (iii) other cases.

Criminal Code

Whistleblower protection in the private sector is governed primarily by the Criminal Code which prohibits employers from retaliating or threatening to take action against employees who disclose information. Violating this section could lead to imprisonment of up to five years.

The Code applies to employer wrongdoing that constitutes a criminal offence or is otherwise unlawful, and only protects employees who report to law enforcement officials. The Criminal Code does not protect employees who report wrongdoing such as misappropriation of funds internally within a company.

Some Canadian provinces have also enacted specific whistleblower laws to provide protections in the public and private sectors but these laws only apply within the particular province and are not uniform in scope.

THE UNITED STATES (US)

While whistleblower protections are included in a wide range of US laws, the key statute on tax fraud disclosures is the *IRS Whistleblower Law 2006*. There are also four other key statutes covering public interest disclosures in the US private sector: the *Whistleblower Protection Act 1989*; the *False Claims Act 1863*; the *Sarbanes-Oxley Act 2002* and the *Dodd-Frank Act 2010*.

IRS Whistleblower Law

The *IRS Whistleblower Law 2006* enables private individuals to report underpayments of tax and persons otherwise guilty of violating the internal revenue laws.

The Inland Revenue Service (IRS) preserves and protects the privacy and identity of the whistleblower to the fullest extent permitted by the law. However, as under comparable UK and Canadian law, the identity of the whistleblower may be revealed in some circumstances, such as when the whistleblower is an essential witness in a judicial proceeding or when it is impossible to pursue an investigation or examination without such revelation. In these cases the IRS informs the whistleblower before deciding whether to proceed.

The *IRS Whistleblower Law* is complemented by the *Fair Labour Standards Act* and the *False Claims Act* which each include anti-retaliation provisions making it unlawful to dismiss or discriminate against any employee in any way for having made a disclosure to the IRS. The *False Claims Act* additionally authorises private individuals who have knowledge of fraud committed against the Government, to sue the person committing the fraud on behalf of the Government (known as a *qui tam* action - see below).

The *IRS Whistleblower Law* and the *False Claims Act*, each reward whistleblowers for reports involving successful prosecution of fraud on the government. Whistleblowers under these systems can receive rewards of between 15 and 30 per cent of the collected proceeds (including penalties, interest, additions to tax and additional amounts) if the unpaid tax exceeds USD2 million. If the collected proceeds do not exceed USD2 million, then the maximum award is 15 per cent.

For a whistleblower to obtain a reward in cases involving individual taxpayers, the taxable income of the fraudulent individual must exceed USD200,000 in any year at issue. Disclosures of tax fraud are handled by the IRS Whistleblower Office and disputes may be appealed to the Tax Court.

The Whistleblower Protection Act 1989

The *Whistleblower Protection Act 1989* (WPA) applies to federal public services employees who report agency misconduct if the disclosure evidences a violation of any law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or constitutes a substantial and specific danger to public health or safety; that is not prohibited by law or Executive Order; and which is made to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures.

Presently, current and former public service employees (other than US Postal employees and a number of others who are subject to specific exclusions⁶), or applicants for employment to positions in the executive branch of government are covered by the WPA.

The WPA protects public service employees from reprisals in the form of ‘personnel action’. This covers actions by an agency which has a negative or adverse impact on the employee. A pre-condition is that public sector employees disclose the wrongdoing to their employer first.

A federal agency violates the WPA if the agency takes (or threatens to take) retaliatory personnel action against any employee or applicant because of disclosure of information.

The WPA was amended in 2012 by the *Whistleblower Protection Enhancement Act* to remove disincentives to report, broaden the type of wrongdoing that can be reported, and shield whistleblower rights from contradictory agency non-disclosure rules through an ‘anti-gag’ provision⁷.

The Sarbanes-Oxley Act

The *Sarbanes-Oxley Act* (SOX) was passed in 2002 to combat corporate criminal fraud and to strengthen corporate accountability. The SOX includes a requirement for corporations to develop standardised internal disclosure mechanisms to ensure employees have a recognised method of reporting misconduct within the corporation. It covers only employees of publicly traded companies.

Under the SOX employees are not required to complain to their employers first, but may complain to a Federal regulatory or law enforcement agency, any Member of Congress, any committee of Congress; or a person with supervisory authority over the employee.

6 The WPA does not apply to federal workers employed by the Postal Service or the Postal Rate Commission, the Government Accountability Office, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, and any other executive entity that the President determines primarily conducts foreign intelligence or counter-intelligence activities

7 Project on Government Oversight, 2012, *Whistleblower Protection Enhancement Act Summary of Reforms*

The SOX confers a right on whistleblowers to take legal action if they suffer retaliation and also criminalises retaliation (those found guilty can be jailed for up to ten years).

The False Claims Act

The *False Claims Act* (FCA), also known as the 'Lincoln Law' (having originally been signed into law by President Lincoln in 1863), imposes liability on persons and companies who defraud government programs. A key feature of the False Claims Act is its *qui tam* provisions (these allow people not affiliated with the government ('relators') to file actions on behalf of the government and to receive a portion of any recovered damages).

The *qui tam* provisions are intended to encourage citizens with knowledge of fraud against the government to come forward. The Government can decide whether to intervene in a case based on a disclosure. If it does intervene, the person who made the disclosure remains a relator to proceedings, and can make a claim for 15 to 25 per cent of any damages recovered. If the government declines to intervene, the relator can proceed alone, and can make a claim for 25 to 30 per cent of recovered damages (although such actions are typically less successful). Relators are protected from retaliation in their employment.

The FCA requires whistleblowers to initiate cases.

Dodd-Frank Act

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act) was enacted in 2010 through an amendment to the *Securities Exchange Act 1934*. This legislation covers only employees of publicly traded companies.

Under the Dodd-Frank Act the Securities Exchange Commission (SEC) established a whistleblower program. It has three fundamental components: monetary awards, retaliation protection and confidentiality protection. Awards can be paid to whistleblowers who provide the SEC with original information relating to a violation of securities laws which leads to an enforcement action, and can yield monetary sanctions of over USD1 million. The range of awards can be between 10 to 30 per cent of the total monetary sanction.

The Dodd-Frank Act also prohibits retaliation by employers against whistleblowers, and provides them with a private cause of action in the event their employment is terminated or they are otherwise discriminated against.

NEW ZEALAND

IR873 Anonymously Report Tax Evasion or Fraud

New Zealand allows informants to anonymously report information about tax evasion and fraud. Informants may voluntarily provide their name or contact details to the New Zealand Inland Revenue Department (IRD) which keeps these details confidential unless required by law or authorised to release.

Similar to Canada's OTIP and the US's IRS whistleblower law, New Zealand's secrecy obligations prevent IRD from releasing to the informant any taxpayer information or information pertaining to the progress of any investigations.

Protected Disclosures Act

The *Protected Disclosures Act 2000* protects whistleblowers who disclose information about illegal or harmful acts committed by their employer or co-workers. Whistleblowers are able to approach the Ombudsman's office for advice regarding the protections prior to and after disclosing information. The *Protected Disclosures Act 2000* allows for protections for whistleblowers in both the private and public sectors provided they disclose information to the people or organisations specified in the Act. Protections include:

- Prohibitions on reprisals such as unjustified dismissal or unfair disadvantage; and
- Immunity from prosecution for criminal offences, private disciplinary actions and suits for damages.

7. RECENT EVALUATIONS OF AUSTRALIAN PROTECTIONS

G20 EVALUATION OF PUBLIC AND PRIVATE SECTOR PROTECTIONS

An independent evaluation of G20 countries' whistleblowing laws was undertaken in 2014. It assessed the current state of whistleblower protection against a set of 14 criteria, developed from five internationally sets of whistleblower principles recognised as constituting best practice. In respect of Australia's laws, the evaluator concluded that although Australia's whistleblower protections were comprehensive for the public sector, they lagged international best practice for the private sector.

The G20 evaluation identified the following areas for potential reform:

- broadening the scope of wrongdoing covered;
- introducing protections for anonymous complaints;
- introducing requirements for internal company procedures;
- improving compensation arrangements; and
- establishing an oversight agency responsible for whistleblower protections.⁸

Senate Committee evaluation of corporate sector protections

A separate assessment of the same laws was undertaken by the Senate Economics References Committee (the Committee) as part of its Inquiry into the Performance of ASIC in 2014. It found that the current corporate whistleblower protections are overly narrow and make it unnecessarily difficult for those with information to qualify for protections.

In addition, the Committee found that the current legislation makes it difficult to preserve the anonymity of the whistleblower.

The Committee recommended a comprehensive review of Australia's corporate whistleblower framework to bring it closer to Australia's public sector whistleblower framework under the AUS-PIDA and introduce a number of amendments to the Corporations Act focusing on:

- extending the definition of whistleblowers by replicating the AUS-PIDA;
- strengthening protections by expanding the scope of disclosures and victimisation provisions to match the level of protections provided by the AUS-PIDA; and
- including provisions in the Corporations Act that would not require ASIC to reveal a whistleblower's identity without a court or tribunal order.

⁸ Simon Wolfe, Mark Worth, Suelette Dreyfus and A J Brown, 2014, *Whistleblower Protection Laws in G20 Countries: Priorities for Action*

Statutory review of the AUS-PIDA

In 2016, the Government commissioned a statutory review into the effectiveness and operation of the AUS-PIDA (the Review). The report was tabled in the Parliament on 20 October 2016.

The Review assessed the degree to which the AUS-PIDA had, in its first two and a half years of operation, delivered on its aims of bringing to light wrongdoing, helping agencies to understand wrongdoing and to respond appropriately.

The Review found that the Act had only been partially successful in its aims. This was attributed in part to the relative newness of the AUS-PIDA framework and more fundamentally to ineffective operation of the framework.

In particular, the Review found the mechanisms under the AUS-PIDA which facilitate investigation of wrongdoing were overly complex and that the categories of disclosable conduct were too broad. The Review considered the latter should be concentrated instead upon the most serious integrity risks, such as fraud, serious misconduct or corrupt conduct.

The Review made a number of recommendations to improve the operation of the AUS-PIDA including:

- strengthening the ability of the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security to scrutinise and monitor decisions of agencies about disclosures;
- appointing additional investigative agencies under the AUS-PIDA;
- redrafting procedural aspects of the AUS-PIDA using a 'principles-based' approach;
- strengthening the AUS-PIDA's focus on significant wrongdoing;
- including as permissible additional external disclosure when disclosure within an agency has not been actioned as required by the statute;
- inserting an explicit requirement to accord procedural fairness to a person against whom wrongdoing is alleged before making adverse findings about that person;
- retaining criminal offences for revealing identifying information but repealing the prohibitions on not using and not disclosing protected information⁹;
- providing better support for disclosers, or potential disclosers, by enabling them to get help and advice from lawyers, and other professional support services; and

9 APRA has noted that similar offences under the Life Insurance Act (and by implication the Corporations Act and other like financial system legislation) should be reviewed as they may result in perverse outcomes, that is, the prohibitions on wider dissemination might inhibit companies and regulators from investigating issues which are the subject of disclosures if they feel they cannot share information about the disclosure with others to facilitate investigation without committing an offence

- providing witnesses to the wrongdoing with the same protections as disclosers from detriment, and immunity from civil, criminal and administrative liability.

The Government response to these recommendations is pending.

Independent Private Research project ‘Whistling While They Work 2’

A private research project into public interest whistleblowing, *Whistling While They Work 2*, is currently being led by Griffith University with support from various organisations including Australia’s Commonwealth Ombudsman and ASIC. The project seeks to review the experience of whistleblowers and management responses to whistleblowing; to ascertain what worked well so as to inform future policy and law reform.

The research so far draws on the results of surveys of whistleblowing processes and procedures across 702 public sector, business and not-for-profit organisations from Australia and New Zealand. Preliminary results indicate that a high number of organisations have some form of whistleblower procedures but that there is no uniform approach. For instance:

- Only 16% of all organisations have mechanisms for ensuring adequate compensation or restitution is made if staff experience reprisals or other detriments after raising wrongdoing concerns;
- 23% of all organisations had no particular system for recording and tracking wrongdoing concerns and did not currently have any strategy, program or process for supporting and protecting staff who raise concerns;
- 38% of all organisations indicated they did not assess the risks of detrimental impacts that staff might experience from raising wrongdoing concerns, either at all or until problems began to arise; and
- Only 46% of all organisations provided potential whistleblowers with access to a management-designated support person inside the organisation as part of their response.

Senate Inquiry into the Scrutiny of Financial Advice

Corporate whistleblower protections have also been reviewed in the context of the Senate Economics References Committee Inquiry into the Scrutiny of Financial Advice, which on 21 April 2016, released a related issues paper titled *‘Corporate whistleblowing in Australia: ending corporate Australia’s cultures of silence’*. On 11 October 2016, the Senate agreed to the committee's recommendation that this Inquiry be re-established in the 45th Parliament (it was prorogued following the double dissolution of Parliament in 2016) to consider further whistleblower protections. The committee is due to report by 30 June 2017.

Senate Inquiry into Foreign Bribery

The adequacy of private sector whistleblowers provisions has also been considered by the Senate Economics References Committee Inquiry into Foreign Bribery. To inform this Inquiry, Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) released for comment a paper discussing possible options to encourage, and possibly incentivise corporate whistleblowing. Having been prorogued due to the dissolution of the Parliament, this Inquiry has been re-established in the 45th Parliament and is also due to report by 30 June 2017.

Australian Bankers' Association (ABA) whistleblower principles

On 12 October 2016, the Australian Bankers' Association (ABA) released for consultation draft principles on how banks can strengthen their existing whistleblower programs, based on an analysis of international best practice standards.

The principles will require banks to ensure their whistleblower policies and programs meet the highest standards by July 2017.

8. OPTIONS FOR ENHANCING CORPORATE WHISTLEBLOWER PROTECTIONS

It is evident from the foregoing that tax and corporate sector whistleblowing provisions in Australia lag those of the public sector and those of comparable overseas jurisdictions. The balance of this paper is directed first, in this section (8), to the range of options available to improve corporate sector protections and secondly, in section 9, to a proposal to establish specific tax law provisions. Comment is invited on all of these proposals.

CATEGORIES OF QUALIFYING 'WHISTLEBLOWERS' – ARE THEY TOO NARROW?

Whistleblower protections under the Corporations Act presently only apply to current officers¹⁰ or employees of the company, or contractors who supply services or goods to the company.

This qualification appears to be narrow relative to other jurisdictions as it excludes people who may have information that ought to be investigated such as former company officers and staff. The limitation to current officers and staff was presumably intended originally because of the view that reprisals could not be made against former officers or staff. What this view misses however, is the fact that whistleblower provisions are not concerned solely with mitigating the effect of reprisals but also with providing statutory immunities from suits or prosecutions and providing an incentive to come forward. At present, there is no incentive for former officers, staff or contractors to come forward as they are not covered by the existing provisions.

A simple amendment to extend the definition so it covers at least a company's former employees and contractors would align the Corporations Act with the RO Act, AUS-PIDA, UK-PIDA and US WPA which protect both current and former employees.

The amendment could be expanded to include financial services providers, lawyers,¹¹ accountants, unpaid workers and business partners as these people are also likely in some cases to hold information about suspected misconduct by a company by reason of their dealings with the company. Arguably all of these categories except unpaid workers and business partners already qualify under the contractor limb because they would 'supply services' to the company under a contract. However, this does not seem to be the conclusion reached by the Committee responsible for the Inquiry into the Performance of ASIC. That Committee expressly recommended that these other classes of people be considered for inclusion as whistleblowers. To remove any doubt or ambiguity, the contractor provision could be clarified.

¹⁰ Officers includes directors, company secretaries, senior executives and anyone else falling within the definition of 'officer' in s.9 of the Corporations Act, which includes shadow directors.

¹¹ Ordinarily, matters discussed with lawyers are subject to legal professional privilege and a lawyer is duty bound to refrain from making any disclosure. However, legal professional privilege is not absolute - it does not apply in cases of illegality for instance, or where it is expressly abrogated by statute.

There is no need to include company auditors in the list of qualifying whistleblowers because there is a separate mandatory disclosure requirement for auditors under the Corporations Act (see s.311) and auditors are among the class of people to whom disclosures can be made by whistleblowers under the Act.

QUESTIONS

1. Do you believe that the Corporations Act categories of whistleblower should be expanded to former officers, staff and contractors?
2. Should it be made clear that the categories include other people associated with the company such as a company's former employees, financial services providers, accountants and auditors, unpaid workers and business partners?
3. Are there any other types of whistleblowers that should be included, and if so, why?

Subject matter of disclosures covered by whistleblower protections – are these wide enough?

To qualify for current protections the disclosure must be in relation to a defined subject matter, namely the corporations legislation¹², and the discloser must have reasonable grounds to suspect an actual or potential contravention of the legislation has occurred.

The subject matter qualification does not fully support the range of investigative work that ASIC may undertake as part of its remit. That is because ASIC's remit covers not only those areas of regulatory responsibility expressly conferred upon ASIC under the corporations legislation but also those conferred upon ASIC under other statutes.

This might suggest that the current framework is inadequate given ASIC relies on a variety of reports of misconduct to support a robust regulatory framework. However, the gap only exists to the extent that the other statutes do not include whistleblower provisions. As noted in section 3 above a number of these other statutes include whistleblower protections. By contrast, there are no whistleblower provisions under credit legislation, and there is no reason to believe that the risk of misconduct in the financial system stems only from financial services licensees but not credit licensees. So there is logic to expanding the subject matter limitation to include breaches or potential breaches of any law administered by ASIC if it is not already provided for as part of other whistleblower provisions.

This fragmented legislative approach (numerous statutes with separate, specific whistleblower regimes) is also problematic as potential whistleblowers might need to consult a number of statutes or a lawyer to determine whether they have protection or not, adding unnecessary cost, uncertainty and delay. If a single general regime were to be adopted instead (either by amendment to the Corporations Act regime through the inclusion of a broader subject matter definition of the legislation that can be breached or via the development of a private sector whistleblower statute as a counterpart to the AUS-PIDA), this would significantly simplify the law and mean it is less likely that a whistleblower could fall between the gaps.

¹² Defined in s.9 of the Corporations Act as being that Act, the ASIC Act and any court rules made under a provision of the former Act.

Adoption of the former approach to the corporate whistleblower regime would align it with the RO Act regime, which extends the definition of ‘disclosable conduct’ beyond a breach of workplace law to any ‘act or omission that (...) constitutes, or may constitute, an offence against a law of the Commonwealth. ‘An expansion of this kind to the Corporations Act regime might appear too broad at first blush, although an even wider approach is mandated to the reporting of suspect transactions¹³ and some crimes in Australia.

The immense range of corporate activity in Australia would also appear to justify such an expansion to cover at least Commonwealth law, or more broadly, because not all corporate offences are covered by the Corporations Act. Fraud, money laundering, bribery or corruption, and legislation addressing work, health and safety and environmental protection are examples of activities that are not regulated under the Act. While offences under the latter legislation (which are generally State controlled) are governed by other regulators, fraud, bribery and corruption are matters of concern to ASIC (if they are indicative of systemic or cultural issues, might cause financial reports of listed companies to be materially inaccurate, or heighten the risk of insolvency and consequential losses to investors).

A number of independent evaluations¹⁴ also support the view that protections can be strengthened by expanding the scope of information that is covered and making them comprehensive across Commonwealth legislation, as opposed to siloed in individual acts (eg. Corporations Act, Banking Act, Fair Work Act). Conversely, the Review of AUS-PIDA was critical of the broad subject matter approach taken under that statute to disclosable conduct because it appeared to have encouraged reporting of personal grievances and other insignificant matters, but few reports of serious fraud or misconduct. The Review recommended narrowing the scope of the relevant AUS-PIDA provisions by excluding matters solely related to personal employment-related grievances that are better dealt with through other existing processes.

There is no evidence to suggest that this has been a problem under the Corporations Act regime. However, if amendments were to be made to expand the scope of the subject matter requirements as discussed above one means of striking an appropriate balance would be to introduce a concept of seriousness or materiality which could be coupled with these requirements. This would also be advantageous to ASIC as it would ensure that only more serious or significant breaches were reported, consistent with the approach currently applied to financial services licensee self-reporting requirements¹⁵.

Good faith obligation – is it effective?

The good faith reporting requirement under the current Corporations Act regime was included originally to minimise the risk of personal grievances being reported since it excluded protection for any reports made maliciously or with an ulterior motive. This

13 These reports are required to be made under the *Financial Transaction Reports Act 1988* in respect of transactions which might be relevant to an investigation of tax evasion, the prosecution of any person for an offence under any law of the Commonwealth or Territory or relevant to enforcement of the proceeds of crime legislation.

14 For example, Brown, A. J., Lewis, D., Moberly, R. & Vandekerckhove, W. (eds), 2014, *The International Handbook on Whistleblowing Research*, Edward Elgar.

15 S.912D, Corporations Act. Note the breach reporting requirements for licensees under this provision are to be reviewed by the ASIC Enforcement Review Taskforce in early 2017 and may change.

obligation, however, could have the effect of discouraging whistleblowers from coming forward if they have multiple motives for making the disclosure, including self-interest.

Although there is no evidence that this has been the case under the Corporations Act regime it may be appropriate nonetheless to consider whether an objective test should be introduced, regardless of what the whistleblower believes. Such a test may require that a disclosure be based on an honest belief, held on reasonable grounds, that the information disclosed shows or tends to show wrongdoing has occurred. This would align protections under the corporations regime with the RO Act, AUS-PIDA, and international protections under UK-PIDA.

QUESTIONS

4. Should the scope of information disclosed be extended? If so please indicate whether you agree with any of the options discussed above, and why. If you do not believe any of the above options should be considered please explain why not and whether there are any other options that could be considered instead.
5. Should the 'good faith' requirement be replaced by an objective test requiring the disclosure be made on 'reasonable grounds'?

Anonymous disclosures

Currently anonymous disclosures are not protected under Australian corporate law, yet they are protected in the public sector under the AUS-PIDA. Recently introduced amendments to the RO Act also permit protections for anonymous disclosures.

Internationally, the UK-PIDA protects anonymous disclosures. Also, under the SOX, every public company in the US must establish mechanisms which allow employees to provide information anonymously (for example, via an anonymous hotline) to the company's board of directors.

In the absence of a compelling policy rationale for a difference to be maintained between the corporate, public sectors and the RO legislation in Australia, it appears sensible to allow anonymity with appropriate conditions. It may still need to be coupled with additional protections, however, such as obligations which limit further use or disclosure of information in some circumstances, because sometimes the very nature of the information is such that the identity of the anonymous discloser can be deduced. This risk is higher if the information could only have come from one source.

QUESTIONS

6. Should anonymous disclosures be protected?
7. Should the information provided by anonymous whistleblowers also be subject to rules limiting further dissemination of the information if the information might reveal that person's identity?
8. Should regulators be able to resist production of this information under warrants, subpoenas or Freedom of Information processes?

To whom information may be disclosed

The current corporate protections are limited to disclosures made to ASIC, the company's auditor, or nominated persons within the company. In contrast, the RO Act allows the disclosures to be made to the Registered Organisations Commission, Fair Work Ombudsman and Fair Work Commission via an 'external' party: a lawyer. Also, the AUS-PIDA and UK-PIDA both provide a 'tiered' disclosure system to allow disclosure to wider classes of people in emergencies or if the initial disclosure has not been acted upon (effectively or at all). Under the UK-PIDA, disclosures can be made to 'external' individuals such as members of Parliament, lawyers, the media and others in addition to the usual categories. However, as noted, the need for accuracy or urgency increases as the dissemination of the information widens.

The Review of the AUS-PIDA recommended strengthening provisions allowing for external disclosure when the agency failed to conduct an adequate or timely investigation or did not adequately respond to the findings of an investigation. To make it easier for disclosers (and potential disclosers) to get advice and help, the Review recommended allowing disclosure for the purpose of seeking professional advice about using the AUS-PIDA.

Whistleblowing to a wider class than currently provided for under the corporate regime in appropriate circumstances could be an option as a contingency against inadequate company action following disclosure. It provides an impetus to companies to act quickly and decisively if they know wider disclosure can be made. It also acts as an impetus for companies to involve ASIC or APRA or both, as appropriate, earlier than they might currently. In the current climate where serial concerns have been raised about the perceived lack of a compliance culture in a number of major financial institutions, active protection of whistleblowers and enabling them to make disclosures to company outsiders, including the media, if the company fails to take action, could materially improve compliance and stimulate a cultural change. Such changes would also increase the robustness of the whistleblowing regime and provide an additional safety net mechanism to potential whistleblowers. The public interest would also be better served by more timely identification and rectification of issues than is currently possible if left to companies alone that may not have the cultural settings to deal appropriately with the issues raised, or a regulatory action after a prolonged investigation, which can be the case now.

An expansion of this kind would maintain the primacy of the company as the locus for remedial action but allow others to be involved in ensuring this occurs independently in the event of any inaction or ineffective action. This approach is utilised for auditor reports under s.311 of the Corporations Act, and since auditors are one of the categories of people to whom whistleblowers may make a disclosure, it might enhance the role of audit, equip auditors to make reports more quickly and lead to more effective outcomes in the case of any material misstatements or misrepresentations in company financial statements or as to the financial position or affairs of the company.

QUESTIONS

9. Should the specified entities or people to whom a disclosure can be made be broadened? If so, which entities and people should be included?
10. Should whistleblowers be allowed to make a disclosure to a third party (such as the media, members of parliament, union representatives, and so on) regardless of the circumstances? In the alternative, should such wider disclosures be allowed but only if the company has failed to act decisively on the information provided? Are there alternative limitations that should be considered? Please give reasons for your answers.
11. What are the risks of extending corporate whistleblower protections to cover disclosures to third parties? How might these risks be managed?
12. Do you believe there is value in a 'tiered' disclosure system being adopted similar to that in the UK?
13. Should there be any exceptions in this context for small private companies?
14. Should disclosure be allowed for the purpose of seeking professional advice about using whistleblower protections, obligations and disclosure risks (as suggested by the review of AUSPIDA)?

Protection of whistleblower's identity and procedural fairness

Compared to legislation in other jurisdictions, the corporate whistleblower provisions provide limited protections to prevent revelation of a whistleblower's identity.

The current Corporations Act provisions also include restrictions on the use that may be made of information obtained from whistleblowers and wider dissemination except to certain nominated people or regulators, including ASIC, APRA, or a member of the AFP. The whistleblower information may be shared more widely with the whistleblower's consent.

Although the Corporations Act is silent on whether regulators, enforcement agencies or third party recipients may disseminate the information further or use it for investigative purposes, the latter is implicit in the scheme, whereas the former is not. It seems obvious that regulators or enforcement agencies ought to be able to further disseminate information for investigative or prosecutorial purposes, but this is by no means clear. It also seems obvious that if they were to disseminate the information more widely or personal information that identifies the whistleblower, that each agency would come under the same duties of confidentiality that apply to initial disclosures. Again, however, this is unclear. As such, whistleblowers may be reluctant to make disclosures in the first place or to consent to wider dissemination if it vitiates their statutory protections.

This state of affairs creates not only uncertainty and risk for whistleblowers – it also creates uncertainty for regulators and enforcement agencies as to what they may legitimately share for investigative or other statutory purposes, and may retard the progress of investigations.

In practice, ASIC may utilise s.127 of the ASIC Act to impose additional confidentiality constraints upon any entity or person it may share confidential information with. It has also utilised public interest immunity to seek to avoid having to make disclosures about a whistleblower in any court or other proceedings under subpoena or other compulsory

process, which might limit the efficacy of its investigative processes. But court relief in this regard is discretionary.

In the US, the WPA prohibits the OSP from disclosing the identity of a whistleblower without his or her consent. The one exception is if there is imminent danger to public health or safety or imminent violation of any criminal law that makes it necessary to reveal whistleblower's identity.

Both the UK-PIDA and AUS-PIDA protect the confidentiality of the person making disclosure. The AUS-PIDA does so by prohibiting the release of any information by anyone to anyone (including to a court or tribunal) which might identify or disclose the identity of the whistleblower as well as the content of the 'protected information' obtained through disclosure investigations. However, the Review of the AUS-PIDA criticised the breadth of this prohibition as too broad and recommended repeal of these provisions because they limited agencies' ability to investigate alleged wrongdoing.

It might be thought that repeal of these particular AUS-PIDA provisions would erode some important protections for whistleblowers. But courts and tribunals have a range of mechanisms to carefully manage confidential information while allowing proceedings to continue in the administration of justice. These mechanisms include the ability to hold sessions or hearings in camera, to make suppression orders to prevent further dissemination or comment in the media, and to make orders limiting what is placed on court files and who has access to them. Courts also have a contempt power, so can effectively enforce any breaches of their orders, including issue bench warrants and even jailing offenders for a period to ensure compliance, although such powers are rarely used.

The Review found also that the broad confidentiality offences of the AUS-PIDA can make it hard for those accused of wrongdoing to defend themselves against allegations. It recommended including an explicit requirement for procedural fairness to address this imbalance.

Given the foregoing, clarity as to the circumstances in which, and the means by which, there may be further dissemination by the recipients of information from whistleblowers, would appear to be necessary. This need not extend as far as banning any use of the information even in a court as under the AUS-PIDA, given the powers available to courts to manage information dissemination effectively. It could include express provisions however, similar to other provisions of the AUS_PIDA and the recently amended RO Act which set up a mechanism for investigating disclosures and to allow dissemination incidental to this purpose.

QUESTIONS

15. Is there a need to strengthen protections of a whistleblower's identity, and if so, what specific amendments should be considered?
16. To whom should the provisions apply to – Government agencies who receive the information or all recipients of the information or both?
17. Should courts and tribunals be allowed access to information provided the confidential character of the information and the whistleblower's identity is maintained through the use of bespoke judicial orders?

18. How should any additional protections of a whistleblower's identity be balanced by the need for a company or agency to investigate the wrongdoing and also to ensure that procedural fairness is afforded to those alleged to have engaged, or been involved, in wrongdoing?
19. Should consent by a whistleblower be required prior to disclosing the information to people or entities for the purposes of investigating a matter? If so, in what circumstances should consent be obtained?

Protection against retaliation

Corporate whistleblower protections prohibit victimisation of the whistleblower and give the whistleblower the right to seek compensation if damage is suffered as a result of victimisation. The Act does not seek to define concepts of reprisal or victimisation for this purpose (on compensation see the section immediately below in this paper).

By contrast the AUS-PIDA identifies reprisals as including discriminatory treatment, termination of employment, injury, intended to punish a whistleblower for making the disclosure. The AUS-PIDA also prevents anyone from trying to enforce any contractual or other remedy against them (such as termination of employment or damages for breach of contract or for defamation).

Similarly, the RO Act makes it a criminal offence to take or threaten to take a reprisal, however it has a broader range of defined conduct that is prohibited for this purpose, including damage to reputation, third party property damage, psychological harm and other forms of intimidation or harassment, and provides a flexible remedies to redress these.

Internationally, the UK-PIDA protects workers from retaliation by their employer. In addition, the UK Prudential Regulatory Authority requires firms to 'take all reasonable steps to ensure that no person under the firm's control engages in victimisation of whistleblowers, and to take appropriate measures against those responsible for any such victimisation'.¹⁶

QUESTION

20. Is there a need to strengthen the current prohibition against the victimisation of whistleblowers in the Corporations Act? If so, should these be similar to those which exist under the AUS-PIDA and RO Act?

Compensation arrangements

While the Corporations Act provides for compensation in the event that a whistleblower has suffered damage as a result of victimisation arising from the disclosure, practically, compensation is difficult to access. The provisions do not provide clarity around what remedies are available and how the claim processes should work. Further, the legislation does not provide a centrally coordinated channel to enable whistleblowers to launch a claim for compensation without incurring significant cost and time delays, and compromising their anonymity and confidentiality. It is the claimant's responsibility to bring any action for compensation themselves.

¹⁶ PRA Supervisory Statement SS39/15, Page 5

This is in contrast to whistleblower protections in other jurisdictions which provide a clearly defined path to compensation if the whistleblower suffers a reprisal. Under UK-PIDA, workers can make a complaint to an employment tribunal if subjected to a detriment as a result of making a protected disclosure. Unless the employer can show a valid reason for the dismissal or detriment, an employment tribunal may order the company to compensate employees for the losses suffered and, in rarer cases, mandate re-employment.

Similarly, the US WPA protects employees from reprisals in the form of an agency taking a 'personnel action' and can provide a route to compensation in that event.

The AUS-PIDA provides a right to obtain an apology, an injunction, a reinstatement order, compensation if loss or damage is suffered because of a reprisal, and costs. It establishes a dual system in which remedies for detrimental action are obtainable by application either through the Fair Work system or the Federal Court in its general civil jurisdiction.

Under the recently passed RO Act, the Court can award compensation, injunctions and other remedies to whistleblowers for detriment flowing from a failure to prevent reprisals relying on actual or constructive knowledge. Their exposure to adverse costs orders is also mitigated when making compensation claims provided they have not been made vexatiously and do not constitute an abuse of process.

Enhancing the current compensation arrangements (and ensuring awareness of them) so that compensation can be sought more effectively could take into consideration: (1) the most appropriate mechanism for administering the compensation process to avoid any unnecessary delays; (2) mitigate hardship or suffering of whistleblowers; and (3) remove the adverse cost risk that whistleblowers face in bringing a compensation claim.

An alternate option may be to introduce a compensation scheme which allows whistleblowers to make claims confidentially to an ombudsman or similar public officer to remove the uncertainty and stress for whistleblowers in having to run court actions. If such a scheme were introduced it could operate in a couple of different ways. One is similar to the Financial Ombudsman model¹⁷ which combines public and private funding from financial licensees to cover costs. Others could involve purely public or purely private funding.

QUESTIONS

21. Do the existing compensation arrangements in the Corporations Act need to be enhanced? If so, what changes should be made to ensure whistleblowers are not disadvantaged?
22. Does the existing legislation provide an adequate process for whistleblowers to seek compensation? Should these be aligned with the AUS-PIDA and the RO Act? Please include an explanation for your answer and identify what changes, if any, are needed and why.
23. What would be the most appropriate mechanism for administering the compensation process? Should it rely on whistleblowers having to make a claim or someone else as advocate on their behalf?
24. How should compensation be funded?

¹⁷ Currently under review – see the Interim Report of the External Dispute Resolution Review (aka the Ramsey Review) published on 6 December 2016.

25. Should whistleblowers be required to bear their own and their opponent's legal costs when seeking compensation or have the risk of adverse costs order removed as per recent amendments to the RO Act?

Whistleblower rewards

Currently the Corporations Act does not allow for rewards to incentivise whistleblowers.

While introducing a reward system may encourage more whistleblowing, individuals may only be willing to raise a concern when there is empirical proof of breach and a monetary reward is available (which could reduce the opportunity to detect malpractice early and prevent harm).¹⁸ Conversely, a reward system could encourage greater levels of nuisance reporting to securities regulators. As the SEC has noted on its website, only 34 complaints out of 14,000 received since the inception of the whistleblowing reward program in 2011 have resulted in rewards being paid.

However if the reward system is structured properly¹⁹, it may create a strong inducement to report. The fact that the SEC has received 14,000 complaints since inception of the program, even if few of them resulted in rewards, demonstrates the power of a monetary incentive system in driving conduct. The SEC has paid a total of US\$111 million in rewards payments, with approximately US\$57 million of that total awarded in 2016 alone including the third-largest award of US\$20 million in November 2016.

Incentives other than money however (such as sense of civic duty, or a commitment to self-improvement, or moral concern) can be preferable motivators.²⁰

Further consideration to setting up a whistleblowing reward system in Australia may be worthwhile but there would also need to be: (1) more comprehensive whistleblowing reform; (2) higher penalties for wrongdoing; and (3) a special funding allocation to support the rewards program. This may be more appropriately considered in the context of tax whistleblowing having regard to the range and size of discretionary penalties and interest charges that can be imposed by the ATO for non-payment of tax.

QUESTIONS

26. Should financial rewards or other types of rewards be considered for whistleblowers? Why or why not?
27. If so, what options should be considered in establishing a rewards system?
28. If a reward system is established, how should it be funded?

18 For example, Mavrakis and Legg, 2011, *Preparing for the Impact of US Securities Whistleblower Reforms – Employees Become Bounty Hunters*, 14 Inhouse Counsel 193.

19 For example, Callaghan, E. S. and Dwrkin, T. M. (1993), *Do good and get rich: Financial incentives for Whistleblowing and the False Claims Act*, Villanova Law Review, Vol. 37. <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2777&context=vlr>

20 For example, Emad H. Atiq, 2014, *Why Motives Matter: Reframing the Crowding Out Effect of Legal Incentives*, The Yale Law Journal, Vol 123. <http://www.yalelawjournal.org/note/why-motives-matter-reframing-the-crowding-out-effect-of-legal-incentives>

Internal company procedures

The Corporations Act does not require companies to implement internal whistleblower systems. This is in contrast to the public sector approach under the AUS-PIDA. It requires federal agencies to have 'procedures for facilitating and dealing with public interest disclosures relating to the agency', which must comply with the standards set by the principal oversight agency, the Commonwealth Ombudsman.

The Australian Standard Whistleblower protection programs for entities – AS 8004-2003 – provides a voluntary framework for internal whistleblowing programs and includes a 15 point checklist for good practice. Key to this standard is having clear guidance around the purpose and principles underlying the scheme, namely:

- (a) to ensure compliance with law, and ethical behaviour;
- (b) to enshrine protection, confidentiality and feedback for whistleblowers; and
- (c) to ensure there is commitment to the prominence and effectiveness of the scheme.

In the UK, the Financial Conduct Authority (FCA), as part of its business conduct rules, requires companies to:

- appoint a senior manager as their whistleblowers' champion;
- put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of person;
- put text in settlement agreements explaining that workers have a legal right to blow the whistle;
- tell UK-based employees about the FCA and Prudential Regulatory Authority (PRA) whistleblowing services;
- present a report on whistleblowing to the board at least annually;
- inform the FCA if it is referred to an employment tribunal by a whistleblower and is required to pay compensation or provide some other relief or remedy; and
- ensure its appointed representatives and tied agents tell their UK-based employees about the FCA whistleblowing service.

Compliance with this scheme is monitored as part of the FCA's risk-based surveillance and supervision programs.

There is potential for introducing mandatory internal whistleblowing arrangements within Australian corporates, taking into consideration the guidance in AS 8004-2003, the AUS-PIDA model, and the rules adopted in the UK and the US.

While prescribing requirements might raise concerns about systems becoming overly rigid, this may be balanced against the benefits from increased whistleblowing and improved

compliance overall with the law resulting from more comprehensive internal whistleblowing policies and procedures – a correlation which is supported by research²¹.

To mitigate the risk of systems becoming overly rigid, it could be worthwhile exploring the potential for adopting a more principles-based approach (such as the UK FCA's approach). To ensure there is sufficient internal and external oversight in respect of the mandatory internal whistleblowing arrangements, it may be worthwhile also considering rules that would require oversight by a company's board and a regulatory body, such as ASIC – as per the approach recently introduced by the FCA.

QUESTIONS

29. Do you believe there is merit in requiring companies to put in place systems for internal disclosures? If so, what form should this take?
30. Mandating internal disclosure systems for companies would impose a higher regulatory burden but the benefits may outweigh the costs. Would you support a move to a mandatory system? Please give reasons for your answer.
31. Should systems for internal disclosure be considered for all companies, irrespective of size or should there be an exception for small proprietary companies, as defined in the Corporations Act? Please explain why or why not.
32. If internal procedures are required should any breach of these be the subject of internal disciplinary action or should responsibility for enforcement be undertaken by ASIC or another external regulator? What would be a potential mechanism for oversight and monitoring of internal company procedures by a regulator? Could it be modelled on the UK FCA's approach?

Oversight agency responsible for whistleblower protection

There is no independent oversight agency responsible for corporate sector whistleblower protection.

The operation of AUS-PIDA is supported by two independent oversight agencies: the Ombudsman and, in respect of intelligence agencies, the Inspector-General of Intelligence and Security (IGIS). A range of internal agency decisions must be notified to these oversight agencies, including exercises of discretions not to investigate disclosures, to ensure that disclosure systems are working and not being subverted or abused. The Ombudsman is given a back-up jurisdiction to investigate or reinvestigate any disclosure if required, and any whistleblower may complain to the Ombudsman or IGIS about any breakdown in the process, including failures in support.

The Review of AUS-PIDA recommended strengthening the Commonwealth Ombudsman's and the IGIS' ability to scrutinise and monitor decisions of agencies about public interest disclosures by strengthening the transparency of agency decision-making.

Internationally, the US and the UK have specialist whistleblower protection agencies, that is, the Office of Special Counsel and Public Concern at Work respectively.

²¹ For example, A. J. Brown (eds), 2008, Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations, ANU Press

There may be benefits from establishing an independent oversight agency for corporate whistleblowing, including providing greater confidence to potential whistleblowers that disclosures will be managed in a fair and consistent manner and increase both the quality and quantity of whistleblowing. There may also be greater economies of scale from referring corporate whistleblower issues to the Commonwealth Ombudsman as that office already exists, although it may need increased resources to take on this role.

On the other hand, other approaches may be less costly and involve no increase to public funded offices. One approach is to allow companies to address breaches internally. This could be coupled with reporting obligations to ASIC annually on compliance with procedures by licensed entities, to guard against the risk of internal reviews becoming haphazard or a whitewash. Another alternative may be to require entities to procure periodic independent compliance audits and report serious anomalies or breaches to ASIC. Both approaches would enable ASIC to take corrective action for serious departures from the internal procedures through licensing action as appropriate.

It may be also worth considering whether the benefits from the establishment of an independent oversight agency would be optimised if a comprehensive whole of private sector whistleblowing approach was adopted in Australia. It would ensure a more consistent and coordinated approach across industries and regulators, remove gaps, and promote greater certainty.

Considerations around establishing a suitable governance framework (for example, through regular reporting to Government about the progress of matters under investigation and the outcome of investigations, and periodic audits) could also be considered to ensure a robust governance and accountability framework is in place.

QUESTIONS

33. Should the Corporations Act establish a role for ASIC or another body to protect the interests of and generally act as an 'advocate' for whistleblowers?
34. Should alternate private enforcement options be considered instead?

Scope of reforms

Similar provisions to those discussed above are contained in other financial system legislation identified in section 3 above.

Conversely, there are no whistleblower protections available under the *National Consumer Credit Protection Act 2009* for which ASIC also has oversight.

It would seem logical to consider harmonising any proposed Corporations Act reforms with these Acts to ensure a consistent and coordinated approach across the financial system.

QUESTION

35. Should reforms be extended to the industries regulated under the other legislation identified above, including the credit legislation? If so, should the reforms be uniform across all similar legislative whistleblowing regimes, even those not named in this paper?

Varying legislative approaches to reform

Assuming the Government decides to reform the existing corporate whistleblower regime there are a number of ways it can achieve this, namely:

1. Amend only the Corporations Act;
2. Amend that Act and the other statutes identified in section 3 above so the provisions continue to broadly mirror each other, and also amend the credit legislation to introduce a whistleblower regime;
3. Amend the AUS-PIDA to expand the protections to the corporate sector so that both public and private sectors are covered under a single statute; or
4. Create a new statute covering the entire corporate sector, as a counterpart to the AUS-PIDA (which would be retained in its current form unless amended).

QUESTION

36. Please provide your views on how the proposed reforms should be best structured and rationale.

Other

QUESTION

37. Please comment on any other matters you believe the Government should consider in strengthening the protections available for corporate whistleblowers.

9. PROPOSED PROTECTIONS FOR TAX WHISTLEBLOWERS

The Corporations Act only provides protection to whistleblowers who disclose information to ASIC about breaches of corporations legislation. Individuals who disclose information on the taxation arrangements and behaviours of companies, other entities and individuals to the ATO are not protected. This leaves tax whistleblowers open to reprisals including job loss or civil, criminal and administrative liability. The lack of specific protections for tax whistleblowers may discourage disclosures about tax avoidance or evasion and other potential breaches of tax law. Australia is becoming an outlier internationally in this regard.

As a result, the Government announced in the 2016-17 Budget new protections for individuals who disclose information to the ATO on tax avoidance behaviour and other tax issues. The proposed protections for tax whistleblowers is based off the existing protections offered under AUS-PIDA, the Corporations Act, the RO-Act and other international jurisdictions.

DEFINITION OF TAX WHISTLEBLOWER

A tax whistleblower is proposed to be defined as any person who:

- Is, in relation to the taxpayer in question, a current or former:
 - employee of the entity, organisation or business;
 - unpaid worker;
 - contractor;
 - financial service provider;
 - accountant;
 - auditor;
 - tax agent*, legal advisor* or consultant*;
 - business partner or joint venture*;
 - client* of a financial service provider, accountant or auditor; tax agent, legal advisor or consultant; and that
- the person provides information about behaviour that they believe, on reasonable grounds, amounts to actual or potential tax avoidance, evasion or other breaches of tax law.

This definition aligns with the expanded Corporations Act's definition recommended by the Senate Economics References Committee (the Committee) as part of its Inquiry into the Performance of ASIC in 2014. It also includes specific individuals that are likely to encounter tax avoidance or evasion behaviour and other breaches of tax law (these are denoted by *).

The proposed categories of tax whistleblowers is broad in order to cover the full scope of activities in which tax avoidance may occur and to include the people who are most likely to uncover or become aware of actual or potential tax avoidance. Other breaches of tax law would extend to superannuation and excise obligations. The definition also adopts the test of belief on reasonable grounds, see *Scope of Disclosures* below.

QUESTIONS

38. Are the proposed categories of persons who can be a tax whistleblower appropriate?
39. Are there any other categories of individuals that should be included or excluded?

Protection of a tax whistleblowers identity

In respect of specific protections it is proposed that:

- The identity of a tax whistleblower and the disclosure of any information which is capable of revealing their identity be subject to an absolute requirement of confidentiality (that is, prohibiting the release of any information by anyone to anyone, including to a court or tribunal), unless:
 - the whistleblower gives informed consent to the release of their identity; or
 - the revelation is necessary to avert imminent danger to public health or safety, to prevent imminent violation of any criminal law, or to enable whistleblowers to secure compensation for reprisals.

QUESTION

40. Do you consider the proposed protections for a tax whistleblower's identity to be appropriate?

Protection against retaliation

AUS-PIDA, alongside the US, UK, Canada and New Zealand, all include anti-retaliation provisions that essentially make it unlawful to dismiss or discriminate against an individual for having made a disclosure.

It is proposed that the tax whistleblower protections against retaliation match those provided by AUS-PIDA (refer to Sections 4 and 8 of this paper) including immunity from criminal, civil and administrative liability for the commission of or involvement in any contravention of the tax law.

Consistent with AUS-PIDA and the RO Act, it will be a criminal offence to take or threaten to take a reprisal and it will be within the whistleblower's rights to be granted compensation if detriment is suffered due to reprisal.

QUESTION

41. Do you consider the proposed protections against retaliation for tax whistleblowers to be appropriate?

Scope of disclosures covered by tax whistleblower protections

To qualify for protection a tax whistleblower must disclose the information to the ATO and have reasonable grounds to suspect actual or potential tax avoidance behaviour or a breach of tax law.

The requirement ensures that a whistleblower's disclosure is based on an honest belief, on reasonable grounds, and that the information disclosed shows or tends to show wrong doing; an objective test, regardless of what the whistleblower believes. The inclusion of an objective test rather than 'good faith' aligns tax whistleblower protections with the recommendations made by the Committee in 2014, the RO Act, AUS-PIDA, the proposed amendments to the Corporations protections in Section 8 and international jurisdictions.

QUESTION

42. Should the scope of disclosures protected be determined by an objective test requiring the disclosure to be made on 'reasonable grounds'?

Anonymous disclosures

The proposed definition does not include the requirement for the whistleblower to provide their name or contact details in order to enable voluntary disclosures. However, tax whistleblowers will be able to voluntarily provide their name and contact details. By enabling whistleblowers to disclose information anonymously it encourages disclosures from those who, although they would be protected from reprisal and have their identity protected by law, may be discouraged by the requirement to provide personal details. This is similar to the anonymous disclosure system operating in New Zealand.

QUESTION

43. Do you agree that tax whistleblowers should be able to disclose information anonymously?

Compensation arrangements

Consistent with the Registered Organisation amendment to the *Fair Work Act 2014*, tax whistleblowers will be protected from any reprisals for whistleblowing and be able to be compensated for any reprisals through the court system.

Compensation can include an order for damages, reinstatement of employment or both.

However, as discussed in Section 8 of this paper, there are issues around ensuring clear, appropriate and accessible mechanisms are established for whistleblowers claiming compensation.

QUESTIONS

44. How should the claim process for tax whistleblower compensation work?

45. Are the proposed remedies for tax whistleblowers that are disadvantaged as a result of making a disclosure sufficient?

To whom information may be disclosed

The primary reporting mechanism for tax whistleblowers will be to the ATO via secure channels. It is proposed that the ATO may disclose the information provided by a whistleblower to Government agencies and people or entities necessary to investigate, without the consent of the whistleblower. This is subject to the provision that the identity of the whistleblower is protected by an absolute requirement of confidentiality.

The proposed protections would extend to whistleblowers who disclosed information on tax misconduct via 'internal' whistleblowing mechanisms (for example, to their employer) and the ATO but only when the internal mechanisms have proven inadequate. The proposed protections would not extend to 'external' recipients such as the media or members of Parliament. This is due to the need to preserve confidentiality in relation to tax protected information.

The Federal Court has indicated that the Commissioner of Taxation can use privileged or illegally obtained information in making an income tax assessment.

QUESTIONS

46. Do you agree with tax whistleblowers only being protected when disclosing information to the ATO to preserve the confidentiality of tax protected information?
47. Should tax whistleblowers be able to receive the proposed protections when disclosing to internal or external individuals?
48. To what extent should the Commissioner be able to use information disclosed under the proposed tax whistleblower system to make income tax assessments?

Rewards

A number of OECD members provide rewards for information regarding taxpayers' non-compliance, including Canada, the US and the UK, with varying approaches across international jurisdictions. In the UK, HMRC pays discretionary awards to informants of tax avoidance and evasion based on factors including the amount of tax recovered and the time saved in investigations. HMRC does not publicise its payments, and most of the whistleblowers who contact HMRC receive no reward.

In the US, the FCA and the Dodd-Frank Act offers generous rewards to tax whistleblowers for sharing information on tax avoidance and evasion ranging between 10 and 30 per cent of the total monetary sanction. However, payment is only made after protracted and expensive disputes or complaints around the provision of the reward. All cases including the reward amount payable are handled exclusively by the US Tax Court.

Under Canada's 2013 Economic Action Plan, the CRA is able to offer a reward for information about major cases of international tax non-compliance. The payment process begins once CAD\$100,000 of federal tax relating to the assessments has been collected, and all recourse rights associated with the assessments have expired.

While rewards systems for whistleblowers are used in practice in other jurisdictions, academic research on the systems in use has shown there is little evidence that rewards

influence the quality of disclosures²². As discussed above in Section 8, since the implementation of the Dodd-Frank Act in 2011, the US SEC has provided rewards payments to only 34 of the 14,000 whistleblowers who lodged complaints. Issues identified with reward systems include increased administration costs; false claims; and incentives for informants to steal taxpayer information. However, as outlined in the corporations section above, correctly structured reward systems may help encourage whistleblowers to step forward with other non-monetary reward incentives also having shown to motivate disclosures.

The Government is open to exploring the possibility of including a reward system for tax whistleblowers. If a reward system were to be adopted, the ability for rewards to be received would only be available to those whistleblowers that voluntarily provided their name and contact details.

QUESTIONS

49. Do you consider a reward system should be introduced for tax whistleblowers?
50. If Australia were to introduce a reward systems for tax whistleblowers what structure should the Government consider implementing?
51. Should a whistleblower be entitled to a reward if they participated in the tax avoidance behaviour?
52. If a reward system were to be adopted should a threshold (i.e. the amount recovered by the ATO) be established to determine when whistleblowers are rewarded?

Disclosure of taxpayer information to the informant

In the US, New Zealand and Canada, all taxpayer information is covered by the confidentiality rules in federal tax legislation.

The IRS Whistleblower Law and Canadian OTIP both prevent the disclosure of taxpayer information to the informant. The informant will only be told the status and disposition of their file, and the CRA, IRD and IRS will only confirm with the informant whether or not their file is still active. If the file has been closed, the CRA and IRS will confirm whether or not a reward is payable to the informant.

Similar to Canada's OTIP, the US's IRS whistleblower law and New Zealand's secrecy laws, the ATO will not be permitted to release any information pertaining to the progress of any investigation.

QUESTIONS

53. Do you agree that the proposed tax whistleblower protections should include provisions preventing the disclosure of taxpayer information to the informant?

²² For example, Mavrakis and Legg, 2011, *Preparing for the Impact of US Securities Whistleblower Reforms – Employees Become Bounty Hunters*, 14 Inhouse Counsel 193.

54. Do you agree that the ATO should be prevented from providing whistleblowers with information relating to progress of investigations?

OVERSIGHT AGENCY FOR TAX WHISTLEBLOWERS

The operation of AUS-PIDA is supported by two independent oversight agencies: the Ombudsman and the inspector-General of Intelligence and Security. Similarly, the US and UK have specialist whistleblower protection agencies, the Office of Special Counsel and Public Concern and Work respectively. (For further information see *Oversight Agency Responsible for Whistleblower Protection* in Section 8).

While the ATO is the only proposed body in which tax whistleblowers can make disclosures to, there may be merit awarding greater powers to a separate, independent body to advocate for tax whistleblowers particularly in cases of retaliation or compensation claims.

QUESTIONS

55. As part of the new protections for tax whistleblowers should an existing body be empowered (or a new body be established) to protect the interests of tax whistleblowers? Should it be empowered to take legal action on behalf of the whistleblowers?
56. If an oversight body was to be established should it solely focus on tax whistleblowers or act as a wider whistleblower oversight agency?

Other

QUESTIONS

57. Are there any other protections that should be offered to tax whistleblowers?
58. What are the interactions, if any, between these proposed protections and professional advisors' fiduciary including legal professional privilege or ethical obligations?