

14 December 2018

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The Treasury
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REPORTING THRESHOLDS – LARGE PROPRIETARY COMPANIES

Dear Kate

I write to make a submission on the Commonwealth's exposure draft regulations proposing to increase the thresholds for determining what constitutes a large proprietary company under the Corporations Act 2001, as follows:

- the consolidated revenue for the financial year of the company and the entities it controls from \$25 million to \$50 million;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities in controls from \$12.5 million to \$25 million; or
- the company and the entities it controls having 50 employees to 100 employees at end of the financial year.

I write as the project leader for the Australian Research Council Linkage Project, *Whistling While They Work 2*, in which the Commonwealth Government is a valued partner, via ASIC and the Commonwealth Ombudsman. As you know, I have also had the privilege of serving on the Minister's Expert Advisory Panel on Whistleblower Protection.

My strong submission to the Government is that:

- **These thresholds should not be changed or raised, OR**
- **If they are raised, that the proposed section 1317AI of the *Corporations Act* (under the current *Treasury Laws (Enhancing Whistleblower Protections) Amendment Bill 2017*), be amended to require all companies with at least 50 employees to have the whistleblowing policies required by that section, irrespective of whether they are a large proprietary company or not.**

I make no submission on the value of the proposed change, for the purpose of relieving financial reporting burdens or other red tape reduction relating to companies. However, I do suspect that the wider value of the proposed change is questionable.

My main point is that the proposed requirement to have a meaningful and effective whistleblowing policy – which is a historic and invaluable “world first” reform – has nothing to do with financial reporting or red tape reduction, and therefore should not be affected by any change to the threshold which has that particular aim.

For any company with a moderate number of employees (some may argue, *any* employees), the prescription for a whistleblowing policy in fact assists them with their own compliance and with prevention and better management of potentially costly employment disputes and reputational risks. It is entirely in the interests of any company with employees to have such a policy. It involves no red tape burden.

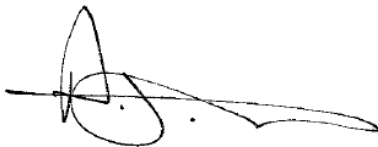
As the consultation information states, the proposed change to the threshold does not affect the actual legal protections available to company employees. However, given this fact, it only makes it more bizarre to then tell so many companies, they do not need to have the types of policies that will help them ensure they do not fall foul of potential bases for liability should they undertake, permit, or fail to prevent, detrimental actions or omissions in relation to their own whistleblowers.

To remove so many companies would also send the perverse message that whistleblowing policies are not really needed by most companies and employers, which would defeat the purpose of the otherwise excellent amendments to the Corporations Act now being pursued through the Parliament. If the Government was to proceed with this change, it would negate much of the value of the amendments, and would likely be the subject of obvious and deserved public criticism, that what the Government is pursuing with one hand, it is actually undermining with the other.

The alternative would be to de-link the amendment from the definition of large proprietary company, and have an alternative threshold for the purposes of section 1317AI of the Act. I would support this. However, I am not sure the Government would be well advised to make that change now, as it would require the Bill’s return to the Senate, and may mean that the amendments do not pass within the term of this parliament.

I hope this submission assists your consultation and remain happy to assist further in any way.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A J Brown', with a long horizontal flourish extending to the right.

Dr A J Brown

Professor of Public Policy and Law

Program Leader, Integrity and Anti-corruption, Centre for Governance & Public Policy
Boardmember, Transparency International