

20 February 2017

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

**Whistleblower protections in the corporate,
public and not-for-profit sectors**

I am pleased to make a preliminary submission to the inquiry, and look forward to the opportunity to meet the Committee on Thursday 23 February.

Background / context

This inquiry is an important and welcome step in the history of Australia's systems of public integrity and corporate social responsibility. While the inquiry flows in part from precedents set in the *Fair Work (Registered Organisations) Amendment Act 2016* (Cth), formal recognition of the need for effective legal protection of public interest whistleblowing dates to at least 1994, and the recommendations of the Senate Select Committee on Public Interest Whistleblowing.

Since that time, between 1993 and 2013, all Australian public sector jurisdictions including the Commonwealth have enacted whistleblower protection or 'public interest disclosure' legislation, for public sector workers, of varying degrees of comprehensiveness. However, only very limited protections were enacted for non-government workers in Part 9.4AAA of the *Corporations Act* in 2004, and in limited specific industries (e.g. *Banking Act*, *Life Insurance Act*).

To assist the Committee to see how Australia now compares internationally, for both public and private sectors, ***Attachment 1*** contains a review of the state of whistleblowing laws across the G20 group of countries, conducted by a team of which I was a member in 2014 and 2015.

Consistently with this picture, the Senate Economics Committee's inquiry into the performance of the Australian Securities and Investments Commission (ASIC) (June 2014) recommended a comprehensive overhaul of corporate sector whistleblower protection. ***Attachment 2*** is my submission to that Committee, covering a range of issues in your terms of reference.

It was an extremely welcome development in November 2016 when the Turnbull Government announced its intention to proceed with such a review, in its draft Open Government Partnership action plan, in advance of the *Fair Work (Registered Organisations)* amendments. This history and commitment augers well for the development of best practice reforms in the life of the 45th Parliament, which can stand the test of time.

This submission

This submission is made on behalf of the research team conducting the collaborative project, *Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private sector organisations*. Led by Griffith University, the project involves four universities

and 23 partner and supporter organisations across Australia and New Zealand, as well as support from the Australian Research Council under ARC Linkage Project LP150100386.

Commonwealth Government partners include the Australian Securities & Investments Commission and Commonwealth Ombudsman, while private sector partners include CPA Australia, Australian Institute of Company Directors, and Governance Institute of Australia. Full project details can be found at www.whistlingwhiletheywork.edu.au.

This project represents the largest known investment in independent, reform-oriented research into whistleblowing systems worldwide, and is the first to systematically compare their performance in the public, private and not-for-profit sectors. It follows an earlier Australian Research Council Linkage Project (*Whistling While They Work*) which reported on public sector whistleblowing in Australia in 2008 and 2011, and informed law reform in Queensland, NSW, Western Australia, the ACT and at the Commonwealth level.

Whistling While They Work 2 is entering the second year of a three year project. The first phase of the project was a Survey of Organisational Processes & Procedures on whistleblowing, which collected data from a diverse sample of 702 organisations (made up of 437 Australian and New Zealand public sector organisations, from all jurisdictions, and 265 companies and not-for-profits from across Australian industry) between April and August 2016.

I am pleased to provide our report on initial results, released in November 2016 (*Attachment 3*).

Attachment 4 highlights specific initial results of relevance to particular terms of reference of the present inquiry, including its overall scope. We will be happy to expand on these at the hearing.

Finally, we would like the Committee to be aware that the second and major phase of the project, **Integrity@WERQ** has only just commenced and will run for the next 6 months. This phase consists of more detailed study of experience with managing the reporting of wrongdoing across the sectors, using extensive surveys of the staff, managers, governance professionals, directors (where relevant), and procedures of a large group of organisations from the initial phase.

This more in-depth data will be of considerable assistance to the Committee, and the research team has resolved to support the inquiry however we can, including by commencing early analysis with a view to providing further results as soon as practicable.

We very much hope that the inquiry's timetable will enable it to draw on this important new evidence base, in helping to judge what reforms may be more or less likely to succeed in assisting organisations and whistleblowers alike. To that end, we hope the Committee may also afford us the opportunity to make further submissions.

Yours sincerely

A J Brown

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Centre for Governance & Public Policy

- Attachments
1. Wolfe, S, Worth, M, Dreyfus, S & Brown, A J (2015), *Breaking the Silence: Strengths and Weaknesses in G20 Whistleblower Protection Laws*, Blueprint for Free Speech, Griffith University, University of Melbourne, Transparency International Australia <<https://blueprintforfreespeech.net>> October 2015.
 2. A J Brown, Submission to Senate Economics Committee (2013).
 3. A J Brown, N Dozo and P Roberts (2016), *Whistleblowing Processes & Procedures: An Australian & New Zealand Snapshot. Preliminary results of the Whistling While They Work 2 Project*, Griffith University: Brisbane, November 2016.
 4. Key initial data of relevance to the inquiry.