

Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

Submission to Senate Standing Committees on
Economics

23 February 2018



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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence. While maintaining our plaintiff common law focus, our advocacy has since expanded to criminal and administrative law, in line with our dedication to justice, freedom and rights.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

¹ www.lawyersalliance.com.au.



Introduction

1. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the issues raised by the Senate Standing Committee on Economics' current inquiry into the Treasury Law Amendment (Enhancing Whistleblowers Protection) Bill 2017. This submission makes some general comments in relation to the Bill.

Importance of uniform whistleblower protections

2. The ALA strongly supports reforms that enhance the ability of people aware of misconduct to make disclosures aimed at ending that misconduct. Our community is strengthened when illegal or unethical conduct is identified and, where appropriate, official action is taken to eliminate it. This is only possible, however, where people aware of misconduct do not face the threat of reprisals for revealing what they know. As such, whistleblower protections are essential to ensuring that public and private entities follow the law.
3. As such, we are supportive of the Bill under review, believing that it holds the potential to greatly enhance accountability and eliminate corporate wrongdoing and tax evasion. We make a few comments that we believe could further enhance the protections included in the Bill.
4. Ultimately, we believe that a Federal anti-corruption body will be required to consider both public and private corruption in the near future. We have made this recommendation in previous Parliamentary submissions.² We have also recommended that anti-corruption efforts be coordinated nationally among the Commonwealth, state and territory governments to ensure that there is no corner in which corrupt conduct can flourish.³ To that end, we believe that this issue should be the subject of discussion at Council of Australian Government meetings, with the aim of having nationally consistent best practice whistleblower protections across Australia.

² ALA, *Whistleblower protections in the corporate, public and not-for-profit sectors: Submission to the Parliamentary Joint Committee on Corporations and Financial Services*, 10 February 2017, <<https://www.lawyersalliance.com.au/documents/item/816>>.

³ Ibid.



Protection of the environment and human rights

5. Emergency disclosures under the Bill are available if internal disclosure has been attempted, and the discloser believes that there is an imminent risk of serious harm or danger to public health or safety, or to the financial system.⁴
6. The ALA believes that this should be extended to include threats to the environment. Just as with imminent risks of serious harm or danger to public health or safety or the financial system, damage to the environment can be irreversible and very costly. As such, where a potential whistleblower is aware of an imminent threat, and internal disclosures have not been successful in eliminating the threat, that whistleblower should enjoy the same protections as others entitled to make emergency disclosures.
7. We also believe that disclosures regarding systematic infringement of human rights as recognised under Australian domestic law, and by which Australia has agreed to be bound at the international level, should be protected under this Bill. This would include, for example, insider knowledge that widespread discrimination was occurring within a particular corporation, information that might not be available to individuals being discriminated against. Australia is under an obligation not only to ensure that government entities implement human rights obligations, but also to ensure that private actors, including individuals and corporations, do not infringe these obligations. For Australia to be able to fulfil these due diligence obligations to ensure that human rights obligations are respected, such disclosures should be protected.

Ensure agencies are adequately resourced and empowered to implement reforms

8. These reforms will only lead to meaningful reform if the entities to which disclosures are made are adequately resourced to both receive a potentially substantial increase in disclosures, and to investigate those disclosures.

⁴ See, for example, cl1317AAD in Schedule 1 of the Bill.



Bounties

9. While this submission focuses on the proposed amendments to the *Corporations Act 2001* (Cth), we note our particular support for the prospect of protecting whistleblowers in relation to taxation. In this regard, we note the absence of any bounty system which could support people considering blowing the whistle on misconduct that is costing the Commonwealth in terms of lost revenue. While there is provision for compensation where the entity in question is insolvent, the whistleblower could still suffer severe financial penalty and challenges in finding employment. In such cases, a bounty system would be important in maintaining integrity regarding corporate taxation and accountability.

Recommendations

10. The ALA makes the following recommendations:
 - a. While the current Bill is a positive first step, the government should continue to work toward a nationally consistent whistleblowers protection framework across all Australian jurisdictions;
 - b. The Commonwealth should establish a national anti-corruption body;
 - c. Whistleblower protections for urgent disclosures should be extended to circumstances where there is an imminent risk to the environment;
 - d. Whistleblower protections should be extended to circumstances of systematic human rights violations, such as systematic discrimination;
 - e. Agencies tasked with receiving and investigating whistleblower protections must be adequately resourced; and
 - f. The government should consider implementing a bounty system to support individuals who suffer financial detriment as a result of disclosures and who do not have access to compensation, for example as a result of the insolvency of the corporation in question.