

Submission from:

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Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services

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INQUIRY INTO WHISTLEBLOWER PROTECTIONS IN THE CORPORATE, PUBLIC AND NOT-FOR-PROFIT SECTORS

Thank you for the opportunity to make a submission to the Committee. I am an academic researching and teaching aspects of corporate crime and the recommendations made in this submission are based on my work in this area. My recommendations primarily relate to whistleblower protections in the private corporate sector.

There are three primary recommendations I would like to make to the committee:

- (a) The protections in the *Corporations Act 2001* (Cth) ('*Corporations Act*') should be expanded to apply to all private sector disclosures.
- (b) A body is needed to represent and act on behalf of all private sector whistleblowers, such as a Private Sector Whistleblowers' Ombudsman.

- (c) Ensuring that there is certainty of enforcement action being taken against those who engage in victimisation or reprisals against whistleblowers should be a greater priority than increasing the relevant penalties.

1. Expansion of Whistleblowers' Protections

The protections in the *Corporations Act 2001* (Cth) (*'Corporations Act'*) currently only protect disclosures made in connection with breaches of the *Corporations Act* and *ASIC Act 2001* (Cth) (*'ASIC Act'*). While there are significant protections available in relation to public sector disclosures, there is a lack of consistency and uniformity in the availability and nature of protections for private sector disclosures. This could be remedied by expanding the protections in the *Corporations Act* to apply more broadly to apply to all private sector disclosures, giving greater consistency and offering protections to a greater number of potential whistleblowers.

2. Establishment of a Private Sector Whistleblowers' Ombudsman

A body is needed to represent and act on behalf of all private sector whistleblowers. This could be either an expansion of the ASIC Office of the Whistleblower, or a newly established Private Sector Whistleblowers' Ombudsman. This body would be able to advise whistleblowers, take disclosures from them, advocate for them where needed, and take enforcement action against those who breach the relevant protections.

ASIC has already established the Office of the Whistleblower but, as noted above, the *Corporations Act* protections only extend to breaches of the *Corporations Act* and the *ASIC Act*. Additionally, ASIC's Office of the Whistleblower has no formal legislative role or powers. In order to encourage and enable private sector whistleblowers to make disclosures, a formal whistleblowers' advocate is needed. Whether it is determined to expand the ASIC Office of the Whistleblower, or establish a new Private Sector Whistleblowers' Ombudsman, formal legislative establishment of the office, with appropriate powers, personnel, resources and budget, would be required. Such an investment would enable and encourage greater disclosures that would not otherwise be made, which would most likely lead to increased revenue through fines and other penalties as a result of action that would be able to be taken as a result of those increased disclosures.

3. Enforcement Action against those who victimise or undertake reprisals against Whistleblowers

Despite the existence of the current protections in the *Corporations Act*, potential whistleblowers may still fear reprisals and victimisation as a result of disclosures they make. In order for potential whistleblowers to be willing to make a disclosure, they must be confident not only that protections exist, but also that those protections will be effective and will be appropriately enforced. If whistleblowers are not confident that they will be protected from those who may engage in victimisation or reprisals against them, they are unlikely to be willing to make a disclosure. This requires greater enforcement action, and those who engage in reprisals and victimisation of whistleblowers in breach of the protections must be seen to be detected and appropriately sanctioned, in order that potential whistleblowers believe that they will be protected. The certainty of appropriate enforcement action being taken, rather than an increase in relevant penalties, is more likely to deter those who may otherwise be tempted to engage in victimisation or reprisals against whistleblowers. There must be certainty that breaches of the protections are identified and that the relevant penalties will be applied. An appropriately resourced Private Sector Whistleblowers' Ombudsman would be the most suitable party to take the appropriate enforcement action.

I appreciate the opportunity to make a submission to the Committee. Please feel free to contact me if I can be of any further assistance.

Yours sincerely

Dr Juliette Overland