



07 February 2024

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Inquiry into the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Dear Secretary,

The Centre for Public Integrity thanks the Committee for the opportunity to make a submission to its inquiry into the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth).

The Centre is a non-partisan think tank led by integrity experts from academia, public policy, and the judiciary.

We welcome the objectives sought to be achieved by this Bill — in particular, the improvement of pathways and protections available for whistleblowers in the tax profession through amendment of the *Taxation Administration Act 1953* (Cth).

By bringing to the fore the exchange of sensitive information that occurs between public bodies and private entities such as professional services firms, the circumstances in which the PwC tax-leak scandal occurred demonstrate the importance of mechanisms, such as protected paths for whistleblowing, that allow wrongdoing to be brought to light and the integrity of our executive to be enhanced.

The potential for wrongdoing is, however, by no means exclusive to the tax profession. Accordingly, we submit that the improvements proposed in the Bill should be followed up by a more comprehensive inquiry into the inconsistencies between the private and public whistleblower regimes with a view to ensuring their navigability and consistency, and informing the establishment of an independent Whistleblower Protection Authority.

Sincerely,

Dr Catherine Williams
Executive Director

Mahalia McDaniel
Researcher

Amendments to whistleblower protections

Part IVD of the *Taxation Administration Act 1953* (Cth) (**TAA**), which establishes a whistleblower protection regime for the tax sector, was introduced in 2019 alongside regimes covering the corporate and financial sectors.¹ The amendments proposed in schedule 2 of the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth) (**the Bill**) would enhance the tax affairs whistleblowing regime in two respects.

First, they would expand the range of disclosures qualifying for protection by including those which eligible disclosers make to:

- the Tax Practitioners Board;²
- certain entities for the purposes of obtaining advice on the operation of the regime;³ and
- certain professionals for the purposes of obtaining medical or psychological assistance.⁴

Second, they would assist whistleblowers who make certain claims for protection from liability under the TAA by reversing the burden of proving their claim in proceedings instituted against them.⁵

These measures, whilst undoubtedly positive steps in the right direction, fall short of addressing the more fundamental flaws plaguing the federal whistleblowing landscape, notably, the degree of consistency between regimes and absence of an overarching authority dedicated solely to whistleblowing. Substantive reform beyond that which is offered in this Bill is sensible, necessary and well overdue.

A fragmented legislative landscape

The legal landscape governing whistleblowing across sectors was considered in detail in the 2017 report of the *Inquiry into Whistleblower Protections in the Corporate, Public, and Not-for-Profit Sectors* by the Parliamentary Joint Committee on Corporations and Financial Services. The 'fragmented nature of whistleblower legislation' identified in that inquiry continues to risk confusing and discouraging those with legitimate wrongdoing to disclose.⁶ Harmonising and simplifying the protections available would not only assist the intended beneficiaries of these protections but also ensure precious funds are not squandered through the unnecessary administration of overlapping schemes.

¹ *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth).

² Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth) sch 2 cls 3, 6, 7. The discloser must consider that the information in question may assist the TPB to perform its duties under its establishing Act (or instruments made under it) in relation to the entity (or its associate).

³ Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth) sch 2 cls 4, 5.

⁴ *Ibid* sch 2 cls 4, 5.

⁵ *Ibid* sch 2 cl 8.

⁶ Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into Whistleblower Protections in the Corporate, Public, and Not-for-Profit Sectors* (Report, September 2017) 9.

We suggest that the statutory review of the tax and corporate whistleblower legislation due to take place in late 2024 could provide a timely opportunity to conduct a thorough examination of these regimes for the purposes of ensuring the greatest possible degree of coherency and clarity.⁷

Recommendation 1 Establish a parliamentary inquiry into inconsistencies between private sector regimes, and between public and private sector whistleblower legislation.

Recommendation 2 Consider consolidating all private sector whistleblowing regimes.

Whistleblower Protection Authority

One principal area of reform with great potential to achieve coherence and clarity — the establishment of an independent Whistleblower Protection Authority — was conceived of in broad terms in a 1994 inquiry,⁸ recommended in the aforementioned 2017 report,⁹ and taken up as an election promise by a former ALP government.¹⁰ A dedicated authority of this kind could streamline the pathways to making protected disclosures by acting as a first point of contact for whistleblowers and overseeing the various regimes in operation. It could be structured as a discrete office within an existing agency, such as the National Anti-Corruption Commission or the Commonwealth Ombudsman, or as a small standalone agency, but *must* be independent and sufficiently resourced.

Recommendation 3 Establish a sufficiently funded Whistleblower Protection Commissioner to operate as an independent Whistleblower Protection Authority.

Recommendation 4 Equip the Whistleblower Protection Commissioner with the necessary powers to administer a reward scheme for legitimate whistleblowers.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Stephen Charles AO KC, the Hon Anthony Whealy KC, Professor George Williams AO, Professor Joo Cheong Tham, Professor Gabrielle Appleby and Geoffrey Watson SC. Former board members include the Hon Tony Fitzgerald AC KC and the Hon David Ipp AO KC. More information at www.publicintegrity.org.au.

⁷ The Treasury (Cth), 'Government Response to PwC Tax Leaks Scandal' (19 September 2023) <https://treasury.gov.au/sites/default/files/2023-09/factsheet-government-response-pwc-tax-leaks-scandal_0.pdf>.

⁸ Senate Select Committee on Public Interest Whistleblowing, Parliament of Australia, *In the Public Interest* (Report, 1994).

⁹ Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Inquiry into Whistleblower Protections in the Corporate, Public, and Not-for-Profit Sectors* (Report, September 2017) 9.

¹⁰ Bill Shorten, 'Labor Will Protect and Reward Banking Whistleblowers' (Media Release, 3 February 2019) <https://www.billshorten.com.au/labor_will_protect_and_reward_banking_whistleblowers_sunday_3_february_2019>.