

PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Question No. 1

Senator Xenophon asked the following question at the hearing on 28 April 2017:

Please comment on the Registered Organisations Act Amendments (RO Act), where there has been an expansion of what constitutes taking reprisal, expansion of civil remedies, issues relating to process, including costs, the interaction between civil remedies, civil penalties and criminal offences, how the investigation and protected disclosure ought to take place, indicate to the extent that you think those amendments are useful or not useful, and how they could be changed in any way or added to in the context of this process?

The answer to the honourable senator's question is as follows:

The AFP supports appropriate protections for whistleblowers and is of the view that the RO Act protections described above are useful, to the extent that they aim to provide better protection from reprisals and decrease the threat of legal action and impact on reputation, career and finances.

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Question No. 2

Senator Xenophon asked the following question at the hearing on 28 April 2017:

In regard to the case study included in the AFP's submission, did the matter proceed in this case?

The answer to the honourable senator's question is as follows:

The matter proceeded without the information from the informant.

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Question No. 3

Senator Xenophon asked the following question at the hearing on 28 April 2017:

Can you give examples of the sorts of matters where you think an improved whistleblower protection regime would make a difference?

- a. For what sorts of matters would the AFP have a greater chance of successful prosecution or have of charges being laid?**
- b. What sort of matters are we talking about in terms of whistleblower protection?**

The answer to the honourable senator's question is as follows:

Whistleblowers are important to help detect serious financial crime that is often sophisticated, well concealed, and part of a culture of cover-up. Due to the complex nature of serious financial crime there is often a low risk of discovery by regulators and law enforcement unless whistleblowers are supported in coming forward. The sorts of matters where whistleblowers may inform investigations include foreign bribery, serious tax crime, identity crime, corporate and government corruption matters and serious fraud offences.

If people are discouraged from coming forward to regulators or law enforcement due to lack of protections for their safety, protection from legal action and the personal and financial impacts of disclosing company information, there may be no case to prosecute. Where people do come forward, but are not willing to give evidence, due to lack of protection for anonymity, law enforcement may not have sufficient evidence to prosecute. This may not be fixed solely by enhancing protections as court procedures can only go so far in protecting witness' identity.

Whether or not improved whistleblower protections would encourage people to come forward and disclose wrongdoing would depend on how the system is framed, and whether the public has the confidence that the system can ensure any protections.

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Question No. 4

Senator Xenophon asked the following question at the hearing on 28 April 2017:

Are there adequate resources, even if it is not full-blown change of identity and witness protection? What sort of protections can be given by the police, whether it is help with relocation, additional police checking up on those people, monitoring intelligence of those who might be making threats against them and the like?

The answer to the honourable senator's question is as follows:

Protections available to whistleblowers that fear reprisals, including witness protection, will depend on the circumstances of the situation. Wherever possible, the AFP takes steps to protect the identity of people providing information, including where there is a threat to the person's physical safety. Due to operational sensitivities and the need to protect sensitive law enforcement information, the AFP is unable to provide specific details of different protection measures, but notes a range of measures are available and are implemented when the AFP determines it is necessary.

The AFP reiterates any persons with immediate concerns for their physical safety should contact the relevant State or Territory police in their jurisdiction in the first instance.

As mentioned earlier, maintaining anonymity of the person making the disclosure cannot always be guaranteed in criminal proceedings. Under the Australian criminal justice framework, the accused has the right to face their accuser and credibility of the information may be undermined if the source cannot be identified. Where possible and appropriate, the AFP may seek to lead other evidence rather than have a person give evidence in proceedings themselves, and verify this evidence through other means.

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Question No. 5

Senator Xenophon asked the following question at the hearing on 28 April 2017:

What the internal mechanisms are if someone is unhappy with something within the organisation? What can be done? How are people protected if they are making a complaint about an internal matter within the AFP?

The answer to the honourable senator's question is as follows:

The AFP has a number of mechanisms in place where allegations of inappropriate behaviour within the organisation can be reported. These mechanisms exist for all levels of the AFP including those where senior management may be implicated. The internal mechanisms include Professional Standards (PRS), Safe Place, the Confidant Network and HR Advisory services. Employees can also report directly to their supervisor, the Commonwealth Ombudsman's Office and the Australian Commission for Law Enforcement Integrity (ACLEI).

Reporting of inappropriate behaviour can be done via email, telephone, the Complaint Recording and Management System (CRAMS) and in person or via a supervisor or colleague. The process for each of these mechanisms is outlined on the AFP intranet and advice for submitting a complaint can be sought through PRS, Safe Place & the Confidant Network.

Part V of the Australian Federal Police Act 1979 establishes the PRS portfolio which has responsibility for the development and maintenance of the AFP's Integrity Framework. Commissioner's Order 2 (CO2) compels AFP Appointees to report any contravention of the AFP's Code of Conduct to PRS. CO2 has been recently amended to also allow for the disclosure of sexual assault, sexual harassment, harassment and/or bullying to the Safe Place team. All corruption complaints are referred to ACLEI.

There are legal and internal protections available to people who make a complaint about an internal matter within the AFP. Confidentiality surrounding Professional Standards investigations exists to protect the complainant from the risk of victimisation as well as to ensure the integrity of the investigation process. Section 13B AFP Regulations 1979, refers to the non-disclosure of complaint information under Part V of the AFP Act. This precludes an AFP Appointee from (subject to certain exclusions) informing any other person, including the subject of a complaint, of the existence of a Part V matter. Division 8, Part V of the Act provides for offences relating to victimisation which carries a penalty of imprisonment for six

months. Protection is also available to disclosers under Division 1, Part 2 of the Public Interest Disclosure Act 2013.

Section 18 of the Commissioner's Order 2 (CO2) relates to confidentiality of complaint management information and states that 'an AFP appointee must not, directly or indirectly, record, divulge or communicate any information coming to their attention as a result of a complaint to any other person except for the purposes of complaint management or where there is a lawful authority or excuse'.

The Public Interest Disclosure Act 2013 (Cth) provides a mechanism for all current and former AFP appointees and non-appointee contractors to disclose suspected wrongdoing within the AFP. Protections are provided to the discloser in relation to immunity from criminal and civil liability.

Safe Place was established on 22 August 2016 following the release of the Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police Report. It is 'victim focused' and provides holistic support and advice about harmful workplace behaviours such as sexual assault, sexual harassment, bullying and harassment within or connected to the workplace. It has a small capability to undertake investigations in serious sexual misconduct. Confidentiality in Safe Place is ensured through use of all existing legislation including section 60A of the AFP Act and the Privacy Act.

The Confidant Network contains over 200 trained AFP appointees (confidants) located throughout Australia and overseas. The Confidant Network provides all appointees with a confidential method of seeking advice and reporting inappropriate or unethical behaviour impacting the work place. The network also provides guidance and welfare support to those appointees making a report. The Confidant Network is overseen by a Superintendent who also has responsibility for Safe Place.