

# Chapter 1

## Introduction

### Duties of the Committee

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Section 243 of the ASIC Act sets out the Parliamentary Committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
  - (i) activities of ASIC or the [Takeovers] Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
  - (ii) the operation of the corporations legislation (other than the excluded provisions); or
  - (iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or
  - (iv) the operation of any foreign business law, or of any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.<sup>1</sup>

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1 ASIC Act 2001, s. 243.

## Terms of reference

1.2 On 30 November 2016, the Senate referred an inquiry into whistleblower protections to the committee for report by 30 June 2017. The terms of reference are as follows:

- (a) the development and implementation in the corporate, public and not-for-profit sectors of whistleblower protections, taking into account the substance and detail of that contained in the *Fair Work (Registered Organisations) Act 2009* (FWRO Act) passed by the Parliament in November 2016;
- (b) the types of wrongdoing to which a comprehensive whistleblower protection regime for the corporate, public and not-for-profit sectors should apply;
- (c) the most effective ways of integrating whistleblower protection requirements for the corporate, public and not-for-profit sectors into Commonwealth law;
- (d) compensation arrangements in whistleblower legislation across different jurisdictions, including the bounty systems used in the United States of America;
- (e) measures needed to ensure effective access to justice, including legal services, for persons who make or may make disclosures and require access to protection as a whistleblower;
- (f) the definition of detrimental action and reprisal, and the interaction between and, if necessary, separation of criminal and civil liability;
- (g) the obligations on corporate, not-for-profit and public sector organisations to prepare, publish and apply procedures to support and protect persons who make or may make disclosures, and their liability if they fail to do so or fail to ensure the procedures are followed;
- (h) the obligations on independent regulatory and law enforcement agencies to ensure the proper protection of whistleblowers and investigation of whistleblower disclosures;
- (i) the circumstances in which public interest disclosures to third parties or the media should attract protection;
- (j) any other matters relating to the enhancement of protections and the type and availability of remedies for whistleblowers in the corporate, not-for-profit and public sectors; and
- (k) any related matters.<sup>2</sup>

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## **Conduct of the inquiry**

1.3 The committee advertised the inquiry on its webpage and invited submissions from a range of relevant stakeholders. The committee set a closing date for submissions of 10 February 2017. On 14 June and 15 August 2017, the Senate agreed to extensions of the reporting date to 17 August and 14 September 2017 respectively.<sup>3</sup>

### ***Submissions***

1.4 The committee received 75 submissions as detailed in Appendix 1. The committee also received additional information including answers to a series of questions taken on notice by witnesses.

### ***Confidential material***

1.5 While the committee prefers to receive evidence in public, the committee received a substantial number of confidential accounts from whistleblowers. Many of these accounts reveal that whistleblowers are reporting that they have suffered serious reprisals. Many have left their field of employment while others harbour deep-seated fears for their employment and livelihoods.

1.6 Some whistleblowers informed the committee that they have suffered reprisals as a result of past contact with parliamentary committees. Other submitters noted that their matter was still under investigation or consideration by a court or tribunal. The committee therefore chose quite deliberately not to name or retell stories and case studies in this report in order to protect the identity of whistleblowers.

1.7 On 15 December 2016 (the inquiry was referred on 30 November 2016) the committee resolved to inform submitters via the inquiry website that:

The committee welcomes accounts that may identify widespread issues and make recommendations regarding whistleblower protections. The committee is not able to receive or investigate whistleblower allegations. If you make adverse comment about people in your submission, the committee may reject such evidence or offer a right of reply.

1.8 While the committee informed submitters that it was not able to investigate or seek to resolve individual matters, it was clear from some of the correspondence that several submitters expected the committee to publicise their personal accounts. This was not the committee's role. However, the committee considered carefully all material received, and these personal accounts helped inform the committee of particular issues that need to be addressed and, by extension, assisted the committee in formulating recommendations.

### ***Hearings***

1.9 The committee held five public hearings in Brisbane on 23 February 2017, Melbourne on 27 April 2017, and Canberra on 28 April, 31 May, and 15 June 2017. A list of witnesses who gave evidence at the public hearings is detailed in Appendix 2.

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3 *Journals of the Senate*, No. 43, 14 June 2017, p. 1410, No. 53, 15 August 2017, p. 1709.

## Structure of the report

1.10 The report structure is set out below. While each chapter covers relatively discrete topics, a range of best practice criteria (summarised in chapter two on page 22) inform the different chapter topics.

**Table 1.1: Structure of this report**

| <b>Chapter</b> | <b>Contents</b>   | <b>Best practice criteria covered</b> |
|----------------|---|---------------------------------------|
| <b>1</b>       | Introduction  |                                       |
| <b>2</b>       | Background and context for whistleblower protections  |                                       |
| <b>3</b>       | Consistency of whistleblowing protections across different sectors in Australia.                        | 1                                     |
| <b>4</b>       | Comparison of whistleblower legislation against best practice criteria for whistleblowing legislation   | All                                   |
| <b>5</b>       | Disclosable conduct   | 2                                     |
| <b>6</b>       | Definition of whistleblowers; and thresholds for protection   | 3, 6                                  |
| <b>7</b>       | Provision for anonymous reporting, continuity of protection and protecting confidentiality              | 7, 8                                  |
| <b>8</b>       | Internal and external reporting channels  | 4, 5                                  |
| <b>9</b>       | Members of Parliament   | 5                                     |
| <b>10</b>      | Protection, remedies and sanctions for reprisals  | 10, 11, 12                            |
| <b>11</b>      | Reward system   |                                       |
| <b>12</b>      | Oversight authority, transparent use of legislation and requirements for internal disclosure procedures | 9, 13, 14                             |

## Acknowledgements

1.11 The committee thanks all those who assisted with the inquiry, especially the witnesses who put in extra time and effort to answer written questions on notice and provide further valuable feedback to the committee as it gathered evidence.

## Notes on references

1.12 References and pages numbers for the committee Hansard are to the proof Hansard.