Chapter 6

Definition of whistleblowers and thresholds for protection

6.1 This chapter discusses the committee's consideration of public and private sector legislation against the best practice criteria for a broad definition of a whistleblower, and thresholds for protection. This section also covers four issues that have come to the committee's attention during the inquiry that are not formally included in the best practice criteria, however, they are closely related to them:

- protections for suspected whistleblowers;
- protections for suppliers and customers;
- protections for those handling disclosures; and
- continuity of protection.

Broad definition of a whistleblower

6.2 There is a significant disparity between the PID, FWRO and Corporations Acts as to who qualifies as a whistleblower under the current definitions.

6.3 For the public sector, the PID Act defines a whistleblower through the following clauses:

- section 7 provides for protecting public officials and former public officials from adverse consequences of disclosing information that, in the public interest, should be disclosed;
- section 26 provides that a public interest disclosure can be made by a person who is, or has been, a public official; and
- section 69 of the PID Act sets out 20 categories of public officials and the agencies to which they belong.[1]

6.4 However, the definition of a public official in subsection 69(1) of the PID Act does not appear to align clearly with the definitions set out in sections 7 and 26. The committee discusses this further in the committee view at 6.58 and 6.59, and makes a recommendation on this matter in recommendation 6.1.

6.5 For registered organisations the FWRO Act provides the following explicit definition of a whistleblower in Part 4A Division 1, subsection 337A(1):

> (a) the discloser is one of the following:
>
> (i) an officer or former officer of an organisation, or of a branch of an organisation;
>
> (ii) an employee or former employee of an organisation, or of a branch of an organisation;

1 PID Act.

(iii) a member or former member of an organisation, or of a branch of an organisation;

(iv) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an organisation or a branch of an organisation;

(v) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an officer or employee of an organisation or of a branch of an organisation who is or was acting on behalf of the organisation or branch;

(vi) an officer, former officer, employee or former employee of a person referred to in subparagraph (iv) or (v).[2]

6.6 In contrast to the above two Acts, the Corporations Act has a much narrower definition that does not include former staff and others. Subsection 1317AA(1) states:

(a) the discloser is:

(i) an officer of a company; or

(ii) an employee of a company; or

(iii) a person who has a contract for the supply of services or goods to a company; or

(iv) an employee of a person who has a contract for the supply of services or goods to a company.[3]

Statistics on who has blown the whistle

6.7 The annual reports of the Commonwealth Ombudsman provide information on the types of disclosers who made public interest disclosures as shown in Table 6.1. Similar data was not available for the corporate and registered organisations sectors.

Table 6.1: Types of disclosers in the public sector

	2013–2014	2014–2015	2015–2016
Current public officials	79%	72%	59%
Former public officials	7%	8%	9%
Contracted service providers	3%	2%	19%
Deemed to be a public official under section 70 of the PID Act	11%	18%	13%

Source: Commonwealth Ombudsman Annual Reports 2013–2014, p. 75; 2014–2015, p. 69, [NOTE: contractors are listed in a separate note in the text]; 2015–2016, p. 74.

2 FWRO Act.

3 Corporations Act.

6.8 Table 6.1 indicates that contracted service providers can be a significant source of disclosures. Given the significant overlap between the public and private sectors, for example when public sector agencies out-source particular services to private contractors, it will be important to ensure consistency between public and private sector whistleblower protections (see below and the discussion in Chapter 3).

6.9 The following sections cover particular areas in which the protections for whistleblowers could be broadened and clarified, and areas where those protections could be harmonised between the public and private sectors.

Former staff, former contractors, and others

6.10 In the public sector, Table 6.1 shows that former public officials contributed seven to nine per cent of disclosures in the first three years of the operation of the PID Act. This highlights the importance of ensuring that:

- the PID Act is unambiguous that it applies to former public officials; and
- private sector whistleblower definitions also explicitly provide for former staff of various kinds (including contractors) to be afforded protection.

6.11 The committee received evidence from witnesses supporting the inclusion of former staff in whistleblower protections. For example, Mr Warren Day, Senior Executive Leader, ASIC told the committee that former staff were a valuable source of information on wrongdoing:

> …some of the better information that we have received has come from former employees.[4]

6.12 However, ASIC Commissioner, Mr John Price warned the committee that as things currently stand, former employees are not afforded any protection under the Corporations Act if they blow the whistle on a former employer:

> The most obvious example is former employees. It may well be a situation that an employee decides, as a result of the experience they have had with a company and their concern about the wrongdoing, the best thing for them to do is seek other employment. As soon as you do that, you are outside the existing test in the Corporations Act.[5]

6.13 Ms Rani John, a partner at DLA Piper, supported expanding the definition of whistleblowers to include a company's former employees, directors and officers, service providers, accountants and auditors, unpaid workers, contractors and business partners. She told the committee that such a legislative change would be both positive and appropriate.[6]

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4 Mr Warren Day, Senior Executive Leader, Assessment and Intelligence, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 69.

5 Mr John Price, Commissioner, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 69.

6 Ms Rani John, Partner, DLA Piper, *Committee Hansard*, 27 April 2017, p. 11.

6.14 The Australian Council of Trade Unions (ACTU) noted that the systems that apply to the public and corporate sectors operate on the assumption that whistleblowers are insiders, including employees and contract workers. Mr Trevor Clarke from ACTU informed the committee it was vital that former employees gained whistleblower protections under the Corporations Act:

> Certainly, a large amount of what we know about worker exploitation comes from those sources. That can expose employees to reprisals at the workplace level and to reputational damage. That can impair their employability in their chosen industry. In the case of former employees, they have absolutely no protection under the Corporations Act framework. We strongly believe that needs to change.[7]

6.15 Ms Maureen McGrath, Chair of the Legislative Review Committee, the GIA argued for an even broader definition of whistleblowers to include any person who makes a disclosure of alleged corporate wrongdoing. The GIA suggested that the test for qualifying should be connected not to the capacity in which the discloser has access to information but rather to the information itself and the honest and reasonable belief in the genuineness of that information.[8]

Committee view

6.16 The committee notes that subsection 7(1a) in the Division 3 overview and subsection 26(1a) of the PID Act provide that former public officials are able to make public interest disclosures.

6.17 However, the definition of a 'public official' in subsection 69(1) of the PID Act uses the following description: 'Agency to which the public official belongs'. The committee considers that such a definition has the potential to create uncertainty as to whether a former public official who no longer 'belongs' to an agency is covered by the PID Act. While the committee accepts the principle that legislation should be read holistically, the current definition in subsection 69(1) appears to introduce unnecessary ambiguity. The committee considers that it would be possible to provide much greater clarity by amending the definition in subsection 69(1) and using words such as: 'Agency to which the public official currently belongs or formerly belonged'.

6.18 The committee is also of the view that the protections of public officials be extended to those operating as contractors to public sector agencies.

Recommendation 6.1

6.19 The committee recommends that section 69 of the *Public Interest Disclosure Act 2013* be amended to make it explicit that former public officials, as well as current and former contractors to the Australian Public Service, are able to make public interest disclosures.

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7 Mr Trevor Clarke, Director, Industrial and Legal, Australian Council of Trade Unions, *Committee Hansard*, 27 April 2017, p. 16.

8 Ms Maureen McGrath, Chair, Legislation Review Committee, Governance Institute of Australia, *Committee Hansard*, 28 April 2017, p. 24.

6.20 Evidence to the committee from a range of witnesses strongly supported changing the current definitions of who can be a whistleblower under private sector legislation to include former staff and former contractors. These persons currently receive no protection under the Corporations Act. Furthermore, as the corporate regulator pointed out, some of their most valuable information comes from former employees.

6.21 In light of the evidence received, the committee is strongly of the view that it would be appropriate for all private sector whistleblower protections (including the Corporations Act) to apply to former staff, current and former contractors, and current and former volunteers.

6.22 Furthermore, with respect to the discussions regarding consistency in Chapter 3, the committee considers that the public and private sector protection for former staff and others could be aligned, with appropriate categories of people to be specified for each sector.

Recommendation 6.2

6.23 The committee recommends that all private sector whistleblower protection legislation include protections for current and former staff, contractors and volunteers.

Protections for suspected whistleblowers

6.24 The committee also heard evidence that whistleblower protection legislation may also need to contain provisions that would protect persons that have been subjected to reprisals on suspicion of their being a whistleblower, but who may not in fact have made a disclosure or even intended to do so.

6.25 For example, ASIC drew the committee's attention to the following scenario:

> You can see a scenario where there are two people working side by side. One is actually the whistleblower and the other one knows nothing about what is going on, but they work in the same place. The second person is completely oblivious to what is going on. Management come down from on high and think there is a leak and are really concerned they have a whistleblower and want to take harmful action against both employees. We would say that the second employee, the person who is oblivious to what is going on, is just as victimised as the first person, even though they are not the whistleblower.[9]

6.26 The committee notes that the three Acts it is considering have some provisions relating to such protections:

9 Mr Warren Day, Senior Executive Leader, Assessment and Intelligence, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 67.

- paragraph 13(1)(b) of the PID Act provides protection for someone who has made or proposes to make a public interest disclosure, as well as a person who is suspected of making a public interest disclosure;
- subsection 337BA(1b) of the FWRO Act provides protection for someone who has made, may have made, proposes to make or could make a public interest disclosure; and
- subsection 1317AC(2cii) of the Corporations Act provides some protections against reprisals.[10]

6.27 For offences for reprisals under section 19 of the PID Act it is not necessary to prove that a person made, may have made, or intended to make, a disclosure. Similar provisions in the FWRO Act apply to both civil and criminal penalties.[11]

Committee view

6.28 On the evidence provided by the corporate regulator, the committee considers that there is potential for reprisal action to be taken against an unwitting non-whistleblower in the private sector.

6.29 In light of the above, the committee considers that the provisions in both the public and private sectors could be improved to be consistent and ensure that they cover threats to, and actual reprisals against, people who:

- have made a disclosure;
- propose to make a disclosure;
- could make a disclosure but do not propose to; or
- may be suspected of making, proposing to make, or be capable of making a disclosure, even if they do not in fact make a disclosure.

Recommendation 6.3

6.30 The committee recommends that protections in both the public and private sector be made consistent for threats or actual reprisals against people who:

- **have made a disclosure;**
- **propose to make a disclosure;**
- **could make a disclosure but do not propose to; or**
- **may be suspected of making, proposing to make, or be capable of making, a disclosure, even if they do not make a disclosure.**

10 PID Act, FWRO Act, Corporations Act.

11 PID Act, FWRO Act, sections 337BD–337BE.

Protections for those handling disclosures

6.31 Another area that came to the committee's attention during the inquiry was the potential vulnerability of recipients of disclosures in some cases. For example, if a person makes a disclosure to their supervisor who is a low to mid-level manager in an organisation, the recipient may also be a in a vulnerable position. Equally, the person tasked with handling the disclosure such as an authorised officer or an investigation officer may be at risk of being targeted because they are investigating, or even considering investigating, a disclosure about a senior public official. Such officers may not have sufficient power within the organisation to deal with the disclosure effectively and may also be at risk of reprisals from those alleged to have engaged in disclosable conduct. In fact, such a recipient may face a dilemma: on the one hand wanting to do the right thing with the disclosure and assist the discloser, and at the same time being aware that their career could be destroyed by reprisals if they take the action which may be required of them under whistleblower legislation.

Committee view

6.32 The committee considers that the situation described above represents a potential impediment to effective whistleblower protections. In the committee's view, there is limited value in protecting the discloser if the recipient or others required to take action are either placed in a vulnerable position, or have a reasonable apprehension that they may be placed in a vulnerable position, by actual or potential reprisals emanating from those in more senior or more powerful positions.

6.33 It is not clear to the committee that the FWRO Act and the Corporations Act provide any protections for recipients or others required to take action in relation to disclosures. The PID Act includes some limited protections in subsection 78(1) relating to performing functions required under the PID Act. However, the committee notes that this protection posits a 'good faith' threshold for protection, which is a requirement that has been widely criticised as falling far short of international best practice (see the discussion later in this chapter in the section on 'thresholds for protection' starting at 6.44).

6.34 The committee considers that adequate protection for recipients should be developed for both the public and private sectors in a consistent fashion. The committee considers that the protection should apply for the performance of the functions of recipients or others required to take action in relation to disclosures without regard to their motivation.

Recommendation 6.4

6.35 The committee recommends that protections for recipients of disclosures in both the public and private sectors be made consistent, and cover the performance of any and all functions required of recipients or others required to take action in relation to disclosures, without regard to their motivations.

Protections for suppliers and customers

6.36 During the inquiry it came to the committee's attention that existing whistleblower protections largely focus on protecting individuals and that there were very little, if any, protections for businesses that may suffer reprisals. For example, a small to medium business operating as a supplier to, or customer of, a much larger business could suffer reprisals if one of its employees made disclosures about the conduct of the larger business.

6.37 The ACCC provided some relevant examples to the committee during the inquiry. The first case involved businesses with supply arrangements to Coles:

> We had a case against Coles which was a case in which we alleged unconscionable conduct by Coles. We said that they had acted unconscionably in withholding money from their suppliers without their consent, when they had no contractual right to do so. We experienced significant difficulty and delay during our investigation, due in part to the lack of adequate whistleblower protections under the Competition and Consumer Act.[12]

> There were a number of suppliers who refused to provide affidavit evidence—that is, court evidence—for fear that it would jeopardise their commercial relationship with Coles, and frankly we had no way of giving them any comfort that their relationship would not be jeopardised.[13]

6.38 The second example provided by the ACCC involved businesses with supply arrangements to Woolworths:

> …the Mind the Gap case. This was the case in which the judge said that it was not unconscionable for Woolworths to say to suppliers, 'You must pay us the difference between our profit expectations and the profits we're actually receiving, even though we have no contractual right to receive that.' So that was not unconscionable according to Justice Yates. In part, he made it clear that his view was formed because he did not have evidence about the broader circumstances of the dealings with suppliers. We did not produce evidence of the broader dealings with suppliers because we felt we needed to respect the commercial positions of the suppliers by not parading them before the court and putting them at risk of losing their business with Woolworths.[14]

Committee view

6.39 The committee notes that in both the cases discussed above there was a lack of appropriate protections for both the individuals and the businesses concerned. The committee considers that the enhanced whistleblower protections recommended

12 Mr Marcus Bezzi, Executive General Manager Competition Enforcement, Australian Consumer and Competition Commission, *Committee Hansard*, 27 April 2017, p. 61.

13 Mr Marcus Bezzi, Executive General Manager Competition Enforcement, Australian Consumer and Competition Commission, *Committee Hansard*, 27 April 2017, p. 61.

14 Mr Marcus Bezzi, Executive General Manager Competition Enforcement, Australian Consumer and Competition Commission, *Committee Hansard*, 27 April 2017, p. 62.

in this report could provide appropriate protections to the individuals. However, there would still be limited or no protection from reprisals for the businesses, particularly small to medium businesses that have supply arrangements with a much larger and more powerful apex business.

6.40 While the above examples involved suppliers being vulnerable to reprisals, the committee notes that other small businesses, for example a retail franchise, or a customer business in the utilities sector, may also be vulnerable to reprisal action taken by a much larger business. Apart from in the case of the principal-contractor relationship, a Whistleblower Protection Act would not apply to one business whistleblowing on another business.

6.41 The committee has not had the opportunity during this inquiry to adequately investigate protections for reprisals against businesses and the relationship to competition and consumer law, or the functions of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). Apart from in the case of the principal-contractor relationship, a Whistleblower Protection Act would not apply to one business whistleblowing on another business.

6.42 In light of the evidence received from the ACCC, however, the committee considers that such matters are worthy of an inquiry by the Parliament or the ASBFEO.

Recommendation 6.5

6.43 The committee recommends that an inquiry be conducted by either a parliamentary committee or the Australian Small Business and Family Enterprise Ombudsman into protections for reprisals against businesses where whistleblowers in those businesses make public interest disclosures about disclosable conduct by larger businesses.

Thresholds for protection

6.44 This section discusses the committee's consideration of the best practice criterion on thresholds for protection and how those thresholds vary across existing whistleblower protection legislation.

6.45 In addition to the disclosures being required to contain disclosable conduct as discussed in Chapter 5, each of the following three Acts includes a test for whether the discloser is genuine, as follows:

- the PID Act (section 26): the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct;[15]
- the FWRO Act (in Part 4A Division 1, subsections 337A(1c) and (3c)): the discloser has reasonable grounds to suspect that the information indicates one or more instances of disclosable conduct by:

15 PID Act, section 26.

- the organisation or a branch of the organisation; or
- an officer or employee of the organisation or of a branch of the organisation;[16]

- the Corporations Act (subsections 1317AA(1d) and (1e)):
  - the discloser has reasonable grounds to suspect that the information indicates that:
    - (i) the company has, or may have, contravened a provision of the Corporations legislation; or
    - (ii) an officer or employee of the company has, or may have, contravened a provision of the Corporations legislation; and
  - the discloser makes the disclosure in good faith.[17]

6.46 The main difference between the three Acts is the extra 'good faith' test in the Corporations Act.

Evidence received by the committee

6.47 Some submitters informed the committee that they supported the 'good faith' test remaining in legislation. For example the Financial Planning Association of Australia (FPA) supported the 'good faith' requirement and argued that individual whistleblowers do not usually have the legal knowledge to relate the suspicious activity to the relevant legal requirements. The FPA suggested that it is therefore unreasonable to require an individual to determine if suspected wrongdoing has occurred.[18]

6.48 However, the majority of submitters supported removing the 'good faith' test.[19]

6.49 Clayton Utz informed the committee that it considered the 'good faith' requirement to be an onerous and ambiguous burden placed on whistleblowers which should be removed. While noting that the 'good faith' requirement was originally inserted as a safeguard against vexatious claims, Clayton Utz argued that subsection 1317AA(1d) of the Corporations Act, which provides that the whistleblower must

16 FWRO Act, subsections 337A(1c) and (3c).

17 Corporations Act, subsections 1317AA(1d) and (1e).

18 Financial Planning Association of Australia, *Submission 57*, p. 10; see also FSU, *Submission 10*, p. 6.

19 Clayton Utz, *Submission 4*, pp. 8–9; DLA Piper, *Submission 8*, p. 2; Dr Vivienne Brand and Dr Sulette Lombard, *Submission 14*, p. 4; International Bar Association Anti-Corruption Committee, *Submission 62*, p. 6; Mr Richard Wilkins, *Submission 61*, p. 4; Australian Lawyers Alliance, *Submission 58*, p. 14; Media, Entertain & Arts Alliance, *Submission 55*, p. 7; Mr Warren Day, Senior Executive Leader, Assessment and Intelligence, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 68; Professor A J Brown, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University, *Submission 23*, Attachment 2, p. 4.

have 'reasonable grounds to suspect' a contravention, is an adequate safeguard against vexatious claims.

6.50 Clayton Utz also stated:

> The 'good faith' test is dependent on the whistleblower's motive which is an irrelevant consideration. It is in the public interest for information about corporate misconduct to be disclosed, regardless of the whistleblower's motive. It should be the veracity of a claim, not the intent behind it which determines whether a whistleblower receives protection.[20]

6.51 DLA Piper also argued for the removal of the 'good faith' requirement, informing the committee that the 'good faith' requirement has the potential to deny protection to whistleblowers who otherwise make qualifying disclosures because they have multiple motives for doing so.[21] DLA Piper supported the introduction of a requirement that one of the following conditions be met in order for a disclosure to qualify for protection:

- the person making the disclosure holds an honest and reasonable belief that the disclosure shows presumed wrongdoing (the subjective test); or
- the disclosure does show, or tends to show, proscribed wrongdoing, irrespective of the person's belief (objective test).[22]

6.52 The AICD supported replacing the 'good faith' requirement[23] with the alternative requirements suggested by the Senate Economics Reference Committee inquiry into the performance of ASIC, which would require that, to be protected, a disclosure:

- is based on an honest belief, on reasonable grounds, that the information disclosed shows or tends to show wrongdoing; or
- shows or tends to show wrongdoing, on an objective test, regardless of what the whistleblower believes.[24]

6.53 The Australian Lawyers Alliance (Lawyers Alliance) argued that there should be no requirement that disclosures be made in 'good faith', as long as the individual making the disclosure has reasonable grounds on which to believe that the information disclosed is true and indicates that disclosable conduct has taken place. The Lawyers Alliance suggested that the motivation of the discloser is not material to whether disclosable conduct has taken place, and even disclosures made in the absence of good faith can reveal important conduct that needs to be remedied.[25]

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20 Clayton Utz, *Submission 4*, pp. 8–9.

21 DLA Piper, *Submission 8*, p. 7.

22 DLA Piper, *Submission 8*, p. 8.

23 Australian Institute of Company Directors, *Submission 53*, pp. 6–8.

24 Senate Economics References Committee, *Review of Performance of the Australia Securities and Investments Commission*¸ June 2014, p. 225.

25 Australian Lawyers Alliance, *Submission 58*, p. 14.

6.54 The GIA pointed out that replacing the 'good faith' requirement with a requirement that a disclosure is based on an honest belief on reasonable grounds would be clearer to potential whistleblowers:

> The term 'honest and reasonable' could assist in clarifying that the emphasis is on the genuineness of the belief in the information being disclosed and not the motive for making such a disclosure. We also consider that the term 'honest and reasonable' is one which whistleblowers are better able to understand.[26]

6.55 ASIC indicated that it would be comfortable with a threshold based on 'honest belief' or 'reasonable grounds'.[27] Mr Day, Senior Executive Leader, ASIC informed the committee that the 'good faith' test is counter-productive and ASIC no longer applies it:

> Effectively in a way, we are ignoring that good faith test in the way that we look at that legislation now. I am the first to admit that I think it got in the way of some of our deliberations five years ago or so because we found ourselves probably unnecessarily being caught up with this quandary of: is this person making a disclosure to us and has it been done in good faith? I think we are now in a position where we say: 'We do not care. They have made a disclosure to us. We will treat them as a whistleblower, we will honour that information'.[28]

6.56 Professor A J Brown argued that the 'good faith' threshold requirement is out of date and inconsistent with the approach taken by Australia's public sector whistleblowing legislation, as well as best practice legislative approaches elsewhere, including the UK.[29] Professor Brown noted that in the UK:

> …the issue of 'good faith' is reduced to a consideration when the quantum of damages for compensation for a whistleblower is considered i.e. if an employer can show 'bad faith', then the damages may be reduced by up to 25 per cent.[30]

6.57 Professor Brown further explained that the 'good faith' requirement may be counter-productive because it is likely to deter people from making a disclosure:

> Motives are notoriously difficult to identify and may well change in the process of reporting, for example, when an internal disclosure is ignored or results in the worker suffering reprisals. Because it is such a subjective and open-ended requirement, the likely effect of a good faith test is negative —

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26 Governance Institute of Australia, *Submission 54*, p. 8.

27 Mr Andrew Fawcett, Senior Executive Leader, Strategic Policy, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 68.

28 Mr Warren Day, Senior Executive Leader, Assessment and Intelligence, Australian Securities and Investments Commission, *Committee Hansard*, 27 April 2017, p. 68.

29 Professor A J Brown, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University, *Submission 23*, Attachment 2, p. 4.

30 Professor A J Brown, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University, *Submission 23*, Attachment 2, p. 4.

> that workers simply choose not to report their suspicions about wrongdoing, because they are unsure whether or how this test would be applied to their circumstances.[31]
>
> The proper tests are simply whether the disclosure is based on an honest belief, on reasonable grounds, that the information shows or tends to show defined wrongdoing.[32]

Committee view

6.58 The committee notes that at least two previous inquiries, including one by this committee, have recommended that the 'good faith' requirement be removed from the Corporations Act:

- In 2004, the committee examined the CLERP Bill which proposed the introduction of the corporate sector whistleblower protections. The committee recommended removing the 'good faith' requirement, arguing that the protections should be based on the premise that 'the veracity of the disclosure is the overriding consideration and the motives of the informant should not cloud the matter. The public interest lies in the disclosure of the truth.'[33]
- In 2014, the Senate Economics References Committee recommended that it be removed, arguing that the 'good faith' requirement serves as an unnecessary impediment to whistleblowing.[34]

6.59 The committee considers that the weight of evidence before it strongly makes the case for removing the 'good faith' requirement. In terms of best practice criteria, the committee considers that this amendment would allow the thresholds for protection to be further aligned and made consistent across the public and private sectors.

Recommendation 6.6

6.60 The committee recommends that:

- **the 'good faith' test not be a requirement for protections under whistleblowing protection legislation; and**
- **a person be required to have a reasonable belief of the existence of disclosable conduct to receive protections under a Whistleblowing Protection Act.**

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31 Professor A J Brown, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University, *Submission 23,* Attachment 2, p. 4.

32 Professor A J Brown, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University, *Submission 23,* Attachment 2, p. 4.

33 Parliamentary Joint Committee on Corporations and Financial Services, *CLERP 9 Bill 2003,* 4 June 2004, p. 21.

34 Senate Economics References Committee, *Review of Performance of the Australia Securities and Investments Commission*¸ June 2014, pp. 223–225.