

# Chapter 1

## Introduction

1.1 On 8 February 2018 the Senate referred the provisions of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 (the bill) to the Economics Legislation Committee for inquiry and report by 16 March 2018.<sup>1</sup> On 16 March 2018 the Senate agreed to extend the reporting date to 22 March 2018.

### Conduct of the inquiry

1.2 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting submissions by 23 February 2018. The committee received 33 submissions, which are listed at Appendix 1.

1.3 The committee held a public hearing in Melbourne on 6 March 2018. The names of witnesses who appeared at the hearing are at Appendix 2.

1.4 The committee thanks all individuals and organisations that contributed to the inquiry.

1.5 Hansard references throughout this document relate to the Proof Hansard. Please note that page numbering may differ between the proof and the final Hansard.

### Overview of the bill

1.1 Part 1 of Schedule 1 of the bill amends the *Corporations Act 2001*. It widens the definition of eligible whistleblowers to include, for example, former employees of a company; it strengthens protections for whistleblowers and provides for compensation for retaliation against them; and it provides for disclosure to a third party if the original recipient of information has not responded adequately and circumstances require urgent action.

1.2 Part 2 of Schedule 1 amends the *Taxation Administration Act 1953* along similar lines, noting that the identity of taxpayers is protected. Part 3 amends the *Banking Act 1959*, the *Insurance Act 1973*, the *Life Insurance Act 1995*, and the *Superannuation Industry (Supervision) Act 1993* so that there is a single whistleblower protection regime to cover the corporate, financial and credit sectors.

### Background and consultation

1.6 The reason for government interest in protecting whistleblowers is that:  
...the prevention of corruption, waste, tax evasion or avoidance and fraud relies upon appropriate protections for people who report these wrongdoings.<sup>2</sup>

1.7 Similarly, the Australian Institute of Company Directors' position is that:

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1 *Journals of the Senate No. 83*, 8 February 2018, p. 2634.

2 Department of the Prime Minister and Cabinet, *Australia's first Open Government National Action Plan 2016–18*, p. 12.

We believe that strong protections for whistleblowers support good governance outcomes and are therefore in the interests of business, whistleblowers and the broader public.<sup>3</sup>

1.8 Protections for whistleblowers were included in the *Public Interest Disclosure Act 2013*. They were intended to encourage public officials to report suspected wrongdoing in the Australian public sector. The Act gave public sector whistleblowers protection against reprisal action. The government began work on provisions along the same lines for the private sector in mid-2016.<sup>4</sup>

1.9 Similar protections were legislated in the *Fair Work (Registered Organisations) Amendment Act 2014*, which was passed in November 2016. They were added as an amendment by Senator Nick Xenophon. In his second reading speech, Senator Xenophon noted an undertaking by the government to support a parliamentary inquiry into implementing the same level of protection across the corporate and public sectors, and to introduce legislation by December 2017 to bring this about.<sup>5</sup>

1.10 The current bill is part of the Government's Open Government National Action Plan, which was announced in December 2016.<sup>6</sup> In the Open Government National Action Plan, the government undertook to improve protections for whistleblowers in the corporate sector, and for whistleblowers on tax matters.

1.11 Since then, in September 2017, the Parliamentary Joint Committee on Corporations and Financial Services (the PJC) has published its unanimous report on *Whistleblower protections in the corporate, public and not-for-profit sectors*. The drafting of this bill and consultation on it were already under way when that report was published. The government has not yet responded to that report, and the bill does not purport to address all the recommendations of the PJC. However in effect the bill does address the vast majority of the PJC's 35 recommendations. The recommendations which are not addressed, as they pertain to the private sector, are summarised in the Explanatory Memorandum (pp. 10–11).

1.12 The measures in this bill reflect those in the Registered Organisations legislation. Because the Government's action to prepare this bill commenced prior to the PJC's reporting date, there are three substantive recommendations of the PJC that are not addressed in the bill. These include a single private sector Act, the introduction of a rewards scheme for whistleblowers, and the establishment of an independent

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3 Ms Louise Petschler, General Manager, Advocacy, Australian Institute of Company Directors, *Committee Hansard*, 6 March 2018, p. 33.

4 Ms Kate Mills, Principal Adviser, Financial System Division, Department of the Treasury, *Committee Hansard*, 6 March 2018, p. 55.

5 Senator Nick Xenophon, Second Reading Speech, Fair Work (Registered Organisations) Amendment Bill 2014, *Senate Hansard*, 21 November 2016, p. 2744.

6 Department of the Prime Minister and Cabinet, *Australia's first Open Government National Action Plan 2016–18* <https://ogpau.pmc.gov.au/sites/default/files/posts/2017/07/first-open-government-national-action-plan-final.pdf> (accessed 15 February 2018).

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Whistleblower Protection Authority. The government is considering all the recommendations of the PJC.<sup>7</sup>

1.13 Current protections for whistleblowers in the private sector are included in the *Corporations Act 2001*, and in legislation applying to the entities regulated by the Australian Prudential Regulation Authority (APRA), namely the *Banking Act 1959*, the *Insurance Act 1973*, the *Life Insurance Act 1995*, and the *Superannuation Industry (Supervision) Act 1993*.<sup>8</sup> There is currently no specific regime for tax whistleblowers.<sup>9</sup>

1.14 The Department of the Treasury released an exposure draft of the bill for comment in October 2017. Submissions on the draft have been published.<sup>10</sup>

### **Financial implications**

1.15 According to the Explanatory Memorandum, the Budget impact is minimal. The estimated overall average compliance cost is \$25.4 million per year over ten years.<sup>11</sup>

1.16 However, consulting firm KPMG believes that the compliance costs have been underestimated. In particular, the cost of training all managers and supervisors in all firms—because they will be eligible recipients of disclosures under the bill—and the cost of maintaining and communicating a whistleblower policy in big firms, could be huge.<sup>12</sup>

### ***Date of effect***

1.17 The bill is to take effect on 1 July 2018. It provides that whistleblower policies must be in place by 1 January 2019.

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7 Explanatory Memorandum, p. 10.

8 Explanatory Memorandum, p. 14.

9 Explanatory Memorandum, p. 65.

10 Department of the Treasury, Treasury Laws Amendment (Whistleblowers) Bill 2017—Exposure Draft, Published Responses, <https://consult.treasury.gov.au/market-and-competition-policy-division/whistleblowers-bill-2017/> (accessed 21 February 2018).

11 Explanatory Memorandum, p. 3.

12 KPMG, *Submission 15*, p. 3.

