

Additional Comments by the Australian Greens

Reward for risk: recognising the toll on the individual

1.1 The Australian Greens believe this Bill is a missed opportunity. While the Bill does improve protections provided for whistleblowers—off a very low base—it has failed to do so adequately or in a way that recognises the enormous toll that whistleblowing can have on an individual.

The Parliamentary Joint Committee report

1.2 As is noted in the committee report, the Bill fails to address a number of recommendations from the Parliamentary Joint Committee on Corporations and Financial Services' report on Whistleblower Protections. The report provides a contemporary and comprehensive list of reforms required to protect and compensate whistleblowers. These recommendations were unanimously agreed to by members of both houses, from multiple parties, only six months ago. The Parliamentary Joint Committee served up the solutions on a plate, but the government have ignored them.

1.3 Professor A. J. Brown, Griffith University has listed the major areas of reform set out by the Parliamentary Joint Committee, but not provided for in the Bill:

- i. Providing business with a single, simple Whistleblower Protection Act covering all relevant Commonwealth regulation, rather than multiple legislative requirements (NB: while the Bill consolidates financial services provisions in the Corporations Act, it simultaneously creates a duplicate regime for tax whistleblowing in the Taxation Administration Act, contrary to the Committee's recommendation 3.1);
- ii. Clear coverage of wrongdoing, and clear roles and responsibilities for other Commonwealth regulatory and law enforcement agencies, beyond the Treasury portfolio;
- iii. Comprehensive coverage for all private and not-for-profit sector employees who reveal wrongdoing by or within the control of their employer, under Commonwealth regulation, i.e. beyond the present range of corporate, financial service and tax entities;
- iv. Access to remedial and compensation avenues beyond the courts (e.g. via the Fair Work Commission, as provided for in the Public Interest Disclosure Act 2013);
- v. An agency with full obligations and powers to implement the regime, including to take action to ensure protection and compensation (e.g. a whistleblowing protection authority or unit); and
- vi. Effective resourcing for this implementation (including, potentially, the Parliamentary Joint Committee's option of a reward-based scheme).¹

1 Professor A J Brown, *Submission 21*.

1.4 Given the extent of these shortcomings, and the fundamental nature of some of them, it will be very difficult to address all of these issues through amendments to the Bill. Nevertheless, the Greens will seek to amend the Bill in the Senate to better reflect the findings of the Parliamentary Joint Committee report.

Whistleblower rewards

1.5 Offering legal protections is often not enough for someone who has knowledge of fraudulent activities to come forwards with information and risk their financial security, job security and mental health. One of the most important and progressive recommendations of the Parliamentary Joint Committee was to introduce a reward scheme for whistleblowers (Recommendations 11.1 & 11.2) to encourage people to expose misconduct and enable tax authorities to reclaim money.

1.6 This is not a radical idea. The US False Claims Act was passed in 1863. It now allows whistleblowers to receive up to 30 per cent of reclaimed money that has been stolen or avoided from government authorities. In 2015, 80 per cent of the around \$3.5 billion recovered by US Justice Department was a result of actions taken by whistleblowers.

1.7 Rewards work. They encourage disclosure. They recover ill-gotten gains. And they help compensate whistleblowers. The Australia Greens support the implementation of the recommendations of the Parliamentary Joint Committee in relation to rewards.

Recommendation 1

That, following the imposition of a penalty against a wrongdoer by a Court (or other body that may impose such a penalty), a whistleblower protection body or prescribed law enforcement agencies may give a 'reward' to any relevant whistleblower.

That such a reward should be determined within such body's absolute discretion within a legislated range of percentages of the penalty imposed by the Court (or other body imposing the penalty) against the whistleblower's employer (or principal) in relation to the matters raised by the whistleblower or uncovered as a result of an investigation instigated from the whistleblowing and where the specific percentage allocated will be determined by the body taking into account stated relevant factors, such as:

- a) the degree to which the whistleblower's information led to the imposition of the penalty;**
- b) the timeliness with which the disclosure was made;**
- c) whether there was an appropriate and accessible internal whistleblowing procedure within the company that the whistleblower felt comfortable to access without reprisal;**
- d) whether the whistleblower disclosed the protected matter to the media without disclosing the matter to an Australian law enforcement agency or did, but did not provide the agency with adequate time to investigate the issue before disclosing to the media;**

- e) **whether adverse action was taken against the whistleblower by their employer;**
- f) **whether the whistleblower received any penalty or exemplary damages (but not compensation) in connection to any adverse action connected with the disclosure; and**
- g) **any involvement by the whistleblower in the conduct for which the penalty was imposed, noting that immunity from prosecution, seeking a reduced penalty against the whistleblower etc. is dealt with by separate processes and that a reward would be regarded as a proceed of crime, if the whistleblower had been involved in criminal conduct (i.e. immunity or reduced penalty, not the reward is the benefit and incentive).**

**Senator Peter Whish-Wilson
Senator for Tasmania**

