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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
By electronic submission

Dear Secretary

Inquiry into Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

Thank you for inviting me to make a submission to the Committee in relation to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill*. The Bill's introduction of reform measures in relation to whistleblowing in the private sector is, in general terms, very welcome, and is clearly overdue.

I have a few specific comments on the Bill.

Statutory requirement for review

I note that the Parliamentary Joint Committee on Corporations and Financial Services: Whistleblower Protections Inquiry (September 2017) recommended the creation of a statutory requirement for a review of the new whistleblower legislation advocated by the Inquiry (Recommendation 12.11). A review is not currently provided for by the Bill. If the Bill is to be passed in essentially its current form, I would strongly support its amendment to add a requirement for review.

While the Bill represents a significant improvement on the existing regime for private sector whistleblowing in Australia, it is clear that it may not alter the landscape sufficiently. A number of important recommendations of the Inquiry are not adopted by this legislation, and while this is to some extent understandable in light of the complexity of some of the issues involved (in particular in relation to the recommended introduction of a single piece of Commonwealth private sector whistleblowing legislation and the creation of a 'one-stop shop Whistleblower Protection

inspiring
achievement

Authority’),¹ these recommendations ought to remain under consideration pending an assessment of the efficacy of the current, more limited, reforms. The just-released Transparency International Perceptions of Corruption Index (21 February 2018) shows a continuation of Australia’s recent trend of reduced scores.² Whistleblowing is a crucial anti-corruption measure and it is important that the reforms proposed by the Bill are as effective as possible.

The 2016 Moss Review of earlier public sector whistleblowing reforms (*Public Interest Disclosure Act, 2013* (Cth)) provided a very useful opportunity to consider the effect of those reforms and to highlight a number of unintended consequences. Given the significance of the current whistleblowing reforms a post-implementation review is crucial to ensuring sufficient and effective reform has been achieved.

Rewards recommendation

The Inquiry recommended that a system of whistleblower ‘rewards’ be established (Recommendations 11.58 & 11.59). The current Bill does not adopt this recommendation. While the introduction of rewards was one of the most controversial aspects of the Inquiry’s Report, the significant potential advantages of rewards are well canvassed in the Report and are deserving of continuing consideration. Any mandated post-implementation review ought, in my view, require specific attention to the issue of whether the decision to not introduce rewards should be reconsidered, in light of the impact of the reforms introduced by the Bill. Further, more useful data will by then be available on the effectiveness of corporate whistleblowing rewards systems in both the United States and Canada. If whistleblowing activity is not sufficiently encouraged by the new mechanisms provided for in the Bill, the more controversial step of whistleblowing rewards should be reconsidered.

Mandatory internal policies

The legislation’s mandating of internal corporate whistleblowing policies in larger companies (s1317AI) offers an opportunity to influence corporate culture positively with regard to the significance of whistleblowing, and represents a step forward in raising the profile of whistleblowing activity in Australia generally. If this approach is taken however, the policies, or a summary of them, ought to be available publically. As currently drafted the Bill requires only that the policies be available to officers and employees. Eligible whistleblowers can however comprise a wider class, including (on the terms of the Bill as drafted) relatives of employees, contractors and relatives of contractors (s1317AAA). Given the difficulties whistleblowers traditionally experience in accessing information in relation to the protection and systems available to them, it would be preferable to

¹ Parliamentary Joint Committee on Corporations and Financial Services: Whistleblower Protections Inquiry, Recommendations 3.60 and 12.1 (September 2017).

² Transparency International, *Corruption Perceptions Index 2017*, https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table.

ensure that the entire class of potential whistleblowers be able to access at least a summary of a company's whistleblower policy (eg electronically via corporate webpages). The raised profile that corporate policies can give to whistleblowing activity is a powerful potential tool in the development of whistleblowing practice, and in my view such policies should be as widely disseminated as is practicable.

I would be happy to answer any questions the Committee may have in relation to this submission.

Yours sincerely

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