CLAYTON UTZ

Dr Patrick Hodder
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

10 February 2017

Dear Dr Patrick Hodder

Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors (Inquiry)

Thank you for inviting us to make a submission on the Inquiry and the *Corporate Whistleblowing in Australia* paper (**Issues Paper**) which was released by the Senate Economics References Committee as part of its Inquiry into the Scrutiny of Financial Advice. We congratulate the Parliament and the Committee on instituting this important Inquiry and welcome the opportunity to provide consultation.

Background

Nicholas Mavrakis is the National Practice Group Leader of Commercial Litigation at Clayton Utz. He has extensive experience in a range of areas including commercial disputes, class actions, financial adviser disputes, securities law, corporate governance and fraud. Over the course of his career he has advised many organisations on how to strengthen their internal compliance systems and views the support of genuine whistleblowers as an integral component of any robust internal compliance system.

Katrina Hogan is a corporate lawyer at Clayton Utz. She is currently undertaking a PhD in Law focused on transnational business ethics and corporate governance and is a fellow of the Centre for Comparative Corporate Governance at Deakin Law School.

We would also like to thank Michael Legg for his valuable consultation.

For convenience, our submissions have retained the numbering used in the terms of reference and the lettering used in the Issues Paper.

Response to the terms of reference

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 Registered Organisation Commission legislation passed by the Parliament in November 2016

1. We support the recent whistleblower amendments to the *Fair Work (Registered Organisations) Act 2009* (Cth), particularly the removal of the 'good faith' requirement, the extended application of the legislation so that it now includes whistleblowers who are former employees or contractors, and the provision that protects whistleblowers from an adverse costs order unless the proceedings were instituted vexatiously. However, we advocate that in order to avoid vexatious claims, whistleblowers should be required to disclose their identity when making a disclosure to the regulator.

2. The development and implementation of Australia's whistleblowing protections have been fragmented. A number of separate whistleblower regimes pertaining to specific groups or industries exist. While multiple regimes remain in existence, so too does the potential for whistleblowers to fall between the gaps.

3. This system of multiple regimes and multiple regulatory bodies accepting disclosures is unnecessarily complex. It creates confusion for potential whistleblowers, may result in disclosures being made to the wrong entity and may therefore result in genuine whistleblowers losing protection. To qualify for protection, the whistleblowing regimes in *the Banking Act 1959* (Cth), *the Insurance Act 1973* (Cth), the *Superannuation Industry*

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(Supervision) Act 1993 (Cth) and the *Life Insurance Act 1995* (Cth) contain a requirement that whistleblowers must consider that the information they are disclosing will assist the person who is accepting the disclosure 'to perform the person's functions or duties'. This onerous requirement relies on whistleblowers having a level of knowledge that most whistleblowers do not have. The complexities and confusion created by these different regimes create a significant barrier for potential whistleblowers.

4. In order to encourage whistleblowers to make disclosures, parliament should consider the advantages and disadvantages of the following models:

   (a) harmonisation of the current regimes so that all whistleblowers are subject to one set of requirements and protections. This should include the removal of the requirement that the disclosure must assist the regulator 'to perform the person's functions or duties' and should include comprehensive referral processes for disclosures which are made to the wrong regulator.

   (b) the establishment of a new regulator responsible for receiving and investigating all whistleblower complaints.

   (c) the establishment of a new intermediary entity which accepts claims at first instance, and provides support and preliminary advice to whistleblowers about their whistleblower status and protections. This entity would then refer the whistleblower to the relevant regulator.

5. Pre-existing regulators who are responsible for receiving disclosures under whistleblowing regimes, like the Australian Securities and Investment Commission's (**ASIC**), often have extensive experience in the relevant subject matter and have presumably developed valuable tacit knowledge in handling whistleblower disclosures. However, the formation of one central whistleblowing body (or intermediary) would allow for the expeditious accumulation of this knowledge in one place so that synergies and economies of scale could be better leveraged.

6. If parliament chooses to pursue model (b) or (c), it should also consider simplifying whistleblower regimes so that only two exist - one for the public sector as currently exists within the *Public Interest Disclosure Act 2013* (Cth) and one for the private sector (which should include not-for-profits) and be contained in a new piece of legislation.

7. Under the *Corporations Act*, whistleblowers must bear the time costs and significant financial burden of unilaterally enforcing their whistleblower protections in the courts. A tribunal would be a more appropriate forum, as the informal evidentiary rules, reduced time costs and reduced financial expense would better facilitate the progress of claims.

8. The following submissions focus on the corporate sector regime and use the provisions in part 9.4AAA of the *Corporations Act* as a foundation upon which to recommend reforms.

b. the types of wrongdoing to which a comprehensive whistleblower protection regime for the corporate, public and not-for-profit sectors should apply

9. The broadest private sector whistleblowing regime is currently located in the *Corporations Act* and only applies when the disclosure relates to an alleged breach of the *Corporations Act*, the *Australian Securities and Investments Commission Act 2001* (Cth) or regulations under either act. We submit that this is too narrow. This limitation places important disclosures like those relating to the *Competition and Consumer Act 2010* (Cth) outside the scope of protection.

10. In its final report on the performance of the Australian Securities and Investments Commission, the Senate Economics References Committee recommended that, consistent with the recommendations made by ASIC, the government develop legislative amendments to expand the scope of information protected by the whistleblower protections to cover 'any misconduct that ASIC may investigate'. We advocate for a broader definition. Whistleblowers should gain protection for submitting information to a government body if that information pertains to 'any offence against a Commonwealth law which attracts a maximum penalty of imprisonment and/or more than 5 penalty units'. A penalty unit threshold of this nature would ensure that whistleblower provisions are not misused for trivial claims which overburden the resources of the regulator and the court/tribunal.

d. compensation arrangements in whistleblower legislation across different jurisdictions, including the bounty systems used in the United States of America

11. We do not support a United States (**US**) style bounty system. Any compensation arrangements which are introduced should support internal whistleblowing at first instance, where it is reasonably open to a whistleblower to do so.

12. Australia should consider introducing more comprehensive compensation mechanisms for whistleblowers. However, we should not go so far as to financially reward whistleblowers in the way the US have done through their bounty system. Parliament should instead consider practical informal ways to ensure whistleblowers are not disadvantaged, such as stronger victimisation provisions and improved compensation, particularly the provision of compensation for the loss of future earnings.

13. A rewards based-system risks encouraging unreliable and speculative claims by people motivated by potential monetary gain, rather than altruistism,[1] and may encourage 'bad faith' claims. The introduction of bounties may also deter altruistic whistleblowers who do not want to be associated with acting for monetary gain. Australia's strong culture of mateship, loyalty and respect for authority manifests in an 'anti-dobbing' culture which may also be at odds with a bounty system.[2]

14. Under the US regime, one whistleblower received a bounty in excess of $30 million dollars.[3] This is excessive and likely to lead to a litigation culture, potentially perpetuated by litigation funders. This would create inefficiencies as these claims put a strain on court resources and the resources of businesses defending them. This problem will be exacerbated if parliament widens the scope of the whistleblower protections so that they cover disclosures about types of misconduct which attract higher penalties. In the US, litigation funders such as Bentham IMF have already launched initiatives targeted at whistleblowers who may be eligible for bounties.[4]

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[1] Nicholas Mavrakis and Michael Legg, 'The Dodd-Frank Act whistleblower reforms put bounty on corporate non-compliance: Ramifications and lessons for Australia', *Australian Business Law Review* 40 (February 2012) 27.

[2] Pascoe J, 'Corporate Sector Whistleblowing in Australia: Ethics and Corporate Culture' (2009) 27 *Company & Securities Law Journal* 524, 529.

[3] United States Securities and Exchange Commission, *SEC Announces Largest-Ever Whistleblower Award* (14 December 2016) <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543011290>.

[4] Bentham IMF, *Whistleblower Funding* <https://www.benthamimf.com/docs/default-source/default-document-library/whistleblower-funding-brochure-final.pdf?sfvrsn=4>.

15. This litigation culture may result in an abundance of poor quality tips given by individuals 'as employees race to be the first to blow the whistle to the public regulator'.[5] This would burden the regulator's investigative capacity without resulting in successful enforcement actions. The US Office of the Inspector General conducted a statistical sampling of whistleblower tips submitted to the Securities and Exchange Commission's (**SEC**) Office of the Whistleblower between 12 April 2011 and 30 September 2012 and found that on average only 31 percent of the tips were deemed to be of high enough quality to require further action.[6]

16. A bounty system is also open to abuse by 'serial submitters'. The SEC's 2015 Annual Report to Congress on the Dodd-Frank Whistleblowing Program contains evidence of individuals abusing the system. Final Orders of the SEC have been issued in relation to two whistleblowers who have attempted to claim awards in connection with 153, and 25 different actions respectively.[7]

17. A bounty system may encourage whistleblowers to bypass internal disclosure mechanisms and make disclosures directly to regulators or external parties. This undermines internal governance systems and robs companies of the opportunity to investigate, respond to, and ameliorate issues before they are escalated to a regulator or (potentially) the media. Such external disclosures subject companies to reputational risk, the resource drain associated with responding and delays in receiving vital information about internal compliance. If a whistleblower discloses externally to a regulator, the company may not be aware of internal misconduct until the regulator has investigated the disclosure and approached the company. This process can be lengthy and could disrupt the employer/employee relationship.

18. If parliament chooses to implement a bounty system, this challenge could be mitigated by legislating a requirement that in order to be eligible for the monetary reward, whenever practicable, whistleblowers must report conduct internally before providing a disclosure to the regulator. Alternatively, the amount of the award could be reduced for whistleblowers who did not utilise internal reporting mechanisms first.

19. In the US, the SEC has identified this weakness in the regime and has sought to overcome it by providing for an increase in the award percentage where the whistleblower participated in internal compliance systems and a decrease where the whistleblower interfered with internal compliance or reporting systems.[8] Furthermore, if a whistleblower is eligible for an award, the whistleblower's 'place in the queue' is determined according to the date on which the internal report was made.[9] In the US, if a whistleblower provides a tip to a company's internal reporting

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[5] Vivienne Brand, Sulette Lombard and Jeff Fitzpatrick, 'Bounty hunters, whistleblower and a new regulatory paradigm', *Australian Business Law Review* 41(5) (October 2013), 304.

[6] SEC Office of the Inspector General, 'Evaluation of the SEC's whistleblowing program' (Report No 511, 2013) 14.

[7] US Securities and Exchange Commission, Congress, *2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program* (2015) 14; Final Order (May 12, 2014), available at http://www sec gov/about/offices/owb/owb-final-orders shtml; and Final Order (Aug 5, 2015), available at <http://www sec gov/about/offices/owb/owb-final-orders html>.

[8] SEC Rule 240.21F-6. See Nicholas Mavrakis and Michael Legg, 'The Dodd-Frank Act whistleblower reforms put bounty on corporate non-compliance: Ramifications and lessons for Australia', *Australian Business Law Review* 40 (February 2012) 36.

[9] SEC, *Implementation of the Whistleblower Provisions of s 21F of the United States Securities and Exchange Act of 1934*, 17 CFR Parts 240 and 249 [Release No 34-64545; File No S7-33-10] RIN 3235-AK78 http://www.sec.gov/rules/final/2011/34-64545.pdf cited in Vivienne Brand, Sulette Lombard and Jeff Fitzpatrick,

system, the company later reports that tip to the SEC and it leads to a successful enforcement action, all the information provided by the entity to the SEC will be attributed to the whistleblower.[10] This is likely to result in a larger reward for the whistleblower.

20. US whistleblower bounties are paid from an Investor Protection Fund set up by the *Dodd-Frank Act*. In Australia penalties levied though enforcement activities undertaken by ASIC are paid to consolidated revenue. Presumably, whistleblowers would also be paid from a separate fund diverted from consolidated revenue meaning that a bounty system would be financed by taxpayers. Alternatively, the bounties could be paid from the penalties levied in relation to the enforcement action to which the disclosure related. However, this would either come at the expense of victims who stand to recuperate their loss from the compensation awarded, or would result in higher penalties for companies.

21. Furthermore, US whistleblower bounties only reward whistleblowers when they voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over $1 million, and successful related actions.[11] Whistleblowers whose claims do not reach the $1 million threshold are not eligible. Therefore, the bounty system, which is expensive to implement and maintain, will only assist a small portion of whistleblowers. A more comprehensive compensation system is a much fairer recourse.

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

22. In other contexts, regulators have sought to avoid civil payments which require court approval by negotiating undertakings with companies who have committed misconduct. These undertakings often require the company to make a community benefit payment to a relevant fund. For example, in 2016 the Commonwealth Bank of Australia and National Australian Bank each gave an undertaking that they would contribute $2.5 million to Financial Literacy Australia to support the further development of financial literacy education relating to changes to delivery of care in the aged care sector.[12] In 2016, BMW Australia also made a $5 million payment to fund financial advocacy, consumer literacy research and counselling.[13] Regulators should consider similar 'community benefit payment' schemes aimed at financing entities who provide assistance and legal advice to potential whistleblowers.

h. the obligations on independent regulatory and law enforcement agencies to ensure the proper protection of whistleblowers and investigation of whistleblower disclosures

23. Regardless of the regulatory model, at least one regulator should be responsible for accepting a whistleblower's claim, conducting a preliminary investigation, referring claims to a more

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'Bounty hunters, whistleblower and a new regulatory paradigm', *Australian Business Law Review* 41(5) (October 2013) 298.

[10] SEC Rule 240.21F-4(c)(3).

[11] US Securities and Exchange Commission, Congress, 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program (2015) 4.

[12] Enforceable Undertaking between ASIC and Commonwealth Bank of Australia dated 21 December 2016, clause 3.14 and Enforceable Undertaking between ASIC and National Australia Bank dated 21 December 2016, clause 3.17.

[13] Enforceable Undertaking between ASIC and BMW Australia dated 2 December 2016, clause 3.28.

appropriate regulator where necessary and taking action on behalf of whistleblowers who have been victimised. The applicable legislation should clearly empower the regulator to undertake this role and provide it with adequate resources to do so. Parliament should also consider giving this regulator the power to make declarations about whistleblower status.

24. There is no evidence of any enforcement activity of the whistleblower provisions by ASIC.[14] ASIC's Guidance Note 52 provides a sobering analysis of the limited scope of ASIC's power in relation to whistleblowers.[15] The Note outlines that ASIC's Office of the Whistleblower's role is to 'give appropriate weight to the information [they] receive from whistleblowers' and to 'handle properly the information [they] receive from whistleblowers.' It specifies that it 'cannot investigate every allegation that is made to [it]' and 'must prioritise'. It states that 'generally we do not act for individuals and we will seek to take action only where our action will result in a greater impact in the market and benefit the general public more broadly'.[16] This Note emphasises that '[t]he whistleblower provisions in the *Corporations Act* do not give ASIC any special standing or specific power to act for a whistleblower who is the subject of litigation; bring an application on behalf of a whistleblower whose employer has terminated their employment as a result of disclosure; [or] bring an action seeking compensation for a whistleblower for damage caused by victimisation'.[17] ASIC does not have the power to determine who is and is not a whistleblower and ultimately, if there is a dispute regarding whether the protections apply, it is up to the whistleblower to argue their whistleblower status before the court. ASIC cannot provide legal advice and unlike the SEC it has no power to enforce whistleblower protections or issue financial rewards.

i. the circumstances in which public interest disclosures to third parties or the media should attract protection

25. We do not support the extension of whistleblower protections to disclosures made to third parties. In particular, we believe that there is a high risk that the protection of disclosures to the media would be misused as a vehicle for politics or to air grievances rather than the authentic resolution of claims.

Response to discussion items in Issues Paper

Item 1 - Preventing and punishing the victimisation of whistleblowers, and whistleblower compensation

26. We support the introduction of harsher penalties for companies who victimise whistleblowers and higher compensation for the victim.

27. The protections in the *Corporations Act* are rarely used. There are only 4 published cases which consider the whistleblowing provisions in section 1317AA of the *Corporations Act*.[18]

[14] Pascoe and Welsh, 'Whistleblowing, Ethics and Corporate Culture: Theory and Practice in Australia' (2011) 40 *Common Law World Review* 144, 152.

[15] Australian Securities and Investments Commission, 'Guidance note 52: Guidance for whistleblowers' (Information Sheet 52, reissued in August 2015) .

[16] Ibid.

[17] Above n, 15.

[18] *Yousif v Commonwealth Bank of Australia* [2008] FCA 1948; *Duffy and Australian Securities and Investments Commission* [2012] AATA 556; *Bird v Biraban Local Aboriginal Land Council* [2016] [2016] FCA 580 and *Australian Securities and Investments Commission v P Dawson Nominees Pty Ltd* (2008) 169 FCR 227.

This can be attributed to the low compensation whistleblowers stand to receive if their action is successful, the low penalties levied against company's who engage in victimisation and the absence of a regulator who can advocate for victimised whistleblowers.

28. The *Corporations Act* prohibits the causing of actual detriment or the threat to cause detriment to another person because the second person made a disclosure that qualifies for protection under Part 9.4AAA.[19] In Australia whistleblowers cannot be subject to civil or criminal liability on the basis of the disclosure they made,[20] and victimisation carries a fine of 25 penalty units and/or imprisonment for 6 months.[21] This penalty is inadequate.

29. 'If an employer terminates a whistleblower's employment as a result of a protected disclosure, the whistleblower may ask the court to reinstate them either in their original position or in another position at a comparable level'.[22] The *Corporations Act* also allows whistleblowers to claim compensation where they have suffered damage as a result of victimisation.[23]

30. In the US, relief can include reinstatement with the same seniority status, twice the amount of back pay otherwise owed to the individual, with interest and compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.[24]

Item 2 - Internal disclosure

31. Whistleblowers should have the choice of reporting to the regulator or internally. There is merit in requiring companies to put in place systems for internal disclosure.

32. Principle 3 of the Australian Securities Exchange (ASX) Revised Corporate Governance Principles and Recommendations states that ASX listed companies should establish a code of conduct for directors and senior executives to, among other things, encourage the reporting of unlawful or unethical behaviour by employees and others, and to identify measures the company follows to protect whistleblowers who report violations.[25]

33. We support the introduction of mandatory codes of conduct for Australian listed companies. We advocate for a statutory requirement that listed companies must put internal disclosure systems in place and publish their internal disclosure system within their code of ethics. This would increase transparency and encourage whistleblowers to report internally. This is not an onerous regulatory burden on the corporate sector as it would only apply to listed companies who are large enough to absorb the compliance cost, the majority of whom already have a code of ethics. Listed companies are often large and influential. This mandatory requirement

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[19] *Corporations Act 2001* (Cth), s1317AC (1) and (2).

[20] *Corporations Act 2001* (Cth), s1317AB.

[21] *Corporations Act 2001* (Cth), s1317AC and schedule 3.

[22] Australian Securities and Investments Commission, 'Guidance note 52: Guidance for whistleblowers' (Information Sheet 52, reissued in August 2015).

[23] *Corporations Act 2001* (Cth), s1317AD.

[24] Nicholas Mavrakis and Michael Legg, 'The Dodd-Frank Act whistleblower reforms put bounty on corporate non-compliance: Ramifications and lessons for Australia', *Australian Business Law Review* 40 (February 2012) 30-31.

[25] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (3rd ed, 2014) <http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf> 20.

will signal expectations to the broader market and result in more widespread cultural change over time which supports internal whistleblower systems.

Item 5 - Eligibility for whistleblower protections

34. We do not believe that whistleblower protection should be dependent on having a contractual relationship with the entity who engaged in the misconduct. We support the expansion of the definition of whistleblower to include former employees, financial services providers, accountants and auditors, unpaid workers and business partners.

Item 6 - Anonymous disclosures

35. We support the requirement that whistleblowers must disclose their identity to the regulator to gain protection. However, following *ASIC v P Dawson Nominees Pty Ltd,*[26] we advocate that parliament should introduce statutory protections which allow the regulator to avoid answering a subpoena or producing documents where such an action may compromise the identity of a whistleblower. Exceptions to this rule may be appropriate where the regulator is ordered to produce the document by a court or tribunal, following certain criteria. Such carve out provisions should be clearly outlined in the legislation.

36. There are practical difficulties in applying protections to whistleblowers who disclose anonymously. Anonymous disclosures are typically more difficult to investigate.

Item 7 - The 'good faith' requirement

37. The good faith requirement is an onerous and ambiguous burden placed on whistleblowers which should be removed. It was originally inserted as a safeguard against vexatious claims.

38. We submit that the requirement in section 1317AA(1)(d) that the whistleblower must have 'reasonable grounds to suspect' a contravention, is an adequate safeguard against vexatious claims. In 2014, the Economic References Committee recommended that 'good faith' be removed and replaced with a requirement that a disclosure:

    (a) is based on an honest belief, on reasonable grounds, that the information disclosed shows or tends to show wrongdoing; or

    (b) shows or tends to show wrongdoing, on an objective test, regardless of what the whistleblower believes.

39. We believe that the alternate 'honest belief, on reasonable grounds' test is not dissimilar to the current 'reasonable grounds to suspect' requirement in section 1317AA(1)(d). In our opinion, it would be a slightly more demanding test.[27] In *George v Rockett*, the High Court remarked that 'the facts which can reasonably ground a suspicion may be quite insufficient to reasonably ground a belief', although some factual basis for the suspicion must still be shown.

40. 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

[26] *Australian Securities and Investments Commission v P Dawson Nominees Pty Ltd* (2008) 169 FCR 227.

[27] *George v Rockett* (1990) 170 CLR 104.

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.

41. No Australian cases have explicitly considered the 'good faith' requirement in section 1317AA(1)(e) of the *Corporations Act* however the explanatory memorandum to the CLERP Bill, the Government's response to the CLERP 9 Report and commentary from ASIC all indicate that the requirement of 'good faith' means that a whistleblower must altruistically disclose the information and have no ulterior motive for making the disclosure.

42. The explanatory memorandum to the CLERP Bill which introduced Part 9.4AAA of the *Corporations Act* specified that:

> 'Where a person has a malicious or secondary purpose in making a disclosure, it is considered that the good faith requirement would not be met.'[28]

43. The Australian Government's response to the CLERP 9 Report clarified that:

> '[r]equiring all disclosures to be made in good faith is designed to enhance the integrity of the system by ensuring that persons making disclosures do not have ulterior motives...[removing 'good faith'] would mean that the purpose or motive of the person making the disclosure would no longer be relevant. This could give rise to the possibility that a disgruntled employee might attempt to use the provisions as a mechanism to initiate an unnecessary investigation and thereby cost the company time and money'.[29]

44. ASIC has expressed a consistent view in its *Guidance for whistleblowers* information sheet:

> 'disclosure must be honest and genuine, and motivated by wanting to disclose misconduct. Your disclosure will not be "in good faith" if you have any secret or unrelated reason for making the disclosure.'[30]

45. The subjective motive of a whistleblower is a difficult evidentiary burden to prove and may change throughout the process (particularly if they disclose internally first and suffer victimisation). Under the current test, the more loathsome an employer's actions towards an employee, the more difficult it is to prove that the employee was acting without an ulterior motive (in 'good faith'). This requirement may unfairly deny protection and inhibit the detection of misconduct. We support its removal.

Item 9 - Keeping whistleblowers 'in the loop'

46. The *Corporations Act* should set out how disclosures should be dealt with, and create an obligation to keep whistleblowers informed of the progress of an investigation resulting from a disclosure they have made.

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[28] Explanatory Memorandum, *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003* at 162.

[29] Australian Government response to Parliamentary Joint Committee on Corporations and Financial Services, CLERP (Audit Reform and Corporate Disclosure) Bill 2003, at pp 3-4.

[30] Australian Securities and Investments Commission, 'Guidance note 52: Guidance for whistleblowers' (Information Sheet 52, reissued in August 2015).

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Item 10 - The Public Interest Disclosure Act 2013 (**PIDA**) as a template for reform

47. The PIDA should not be applied wholesale to the private sector, however there are some elements of the PIDA that the government should consider implementing into the new private sector legislation. In particular, PIDA's use of a tiered system which increases the requirements a whistleblower must meet if they are to disclose information to an entity outside of the organisation which is the subject of the disclosure. The lower thresholds for obtaining protection which apply when making an internal disclosure encourage internal disclosures in the first instance where it is reasonable to do so.

Yours sincerely

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