

**PARLIAMENTARY JOINT COMMITTEE
QUESTIONS ON NOTICE**

ASIC response to questions on notice

1. To what extent are auditing, consulting and other firms that operate under partnership structures covered by the provisions of Australia's corporate whistleblower protection regime or other state and territory based regimes?

The corporate sector whistleblower protection regime in Part 9.4AAA of the *Corporations Act 2001* (Corporations Act) applies to whistleblowers and recipients of information in relation to a 'regulated entity' defined in section 1317AAB. A 'regulated entity' does not include a firm structured as a partnership of individuals, meaning that a partnership of individuals is not subject to the regime.

A 'regulated entity' is defined as:

- (a) a company;
- (b) a corporation to which paragraph 51(xx) of the Constitution applies;
- (c) an authorised deposit-taking institution (ADI) (within the meaning of the *Banking Act 1959*), an authorised non-operating holding company (NOHC) (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;
- (d) a general insurer (within the meaning of the *Insurance Act 1973*), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;
- (e) a life company (within the meaning of the *Life Insurance Act 1995*), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;
- (f) a superannuation entity or a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity;
- (g) an entity prescribed by the regulations for the purposes of this paragraph. (Currently, there are no entities prescribed by the regulations for the purposes of this definition.)

An auditing, consulting or other business conducted through a company structure, including a authorised audit company or a company that is owned or operated by an audit partnership, is a regulated entity and subject to the regime.

In addition, an auditor, or member of an audit team conducting an audit, of a regulated entity, is an 'eligible recipient' under the corporate sector whistleblower protection regime, as defined in section 1317AAC. This is regardless of whether the audit firm is structured as a partnership or company. Eligible recipients can receive a disclosure from an individual about a regulated entity to enable the individual to access the whistleblower rights and protections, if the individual meets the definition of an eligible whistleblower in section 1317AAA (see answer below).

2. Where Australia's corporate whistleblower protections do apply, what criteria must whistleblowers satisfy in terms of their relationship to the firm, such as being an employee or contractor of either the firm or the firm's client?

The corporate sector whistleblower protection regime in Part 9.4AAA of the *Corporations Act 2001* (Corporations Act) provides certain rights and protections to 'eligible whistleblowers' of regulated entities defined in section 1317AAA. Regulated entities are defined in section 1317AAB (see answer above).

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Under section 1317AAA, an individual is an eligible whistleblower in relation to a regulated entity if the individual is, or has been, any of the following:

- (a) an officer of the regulated entity;
- (b) an employee of the regulated entity;
- (c) an individual who supplies services or goods to the regulated entity (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);
- (e) an individual who is an associate of the regulated entity;
- (f) for a regulated entity that is a superannuation entity:
 - (i) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), custodian (within the meaning of that Act) or investment manager (within the meaning of that Act) of the superannuation entity; or
 - (ii) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or
 - (iii) an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or
 - (iv) an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid); or
 - (v) an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);
- (g) a relative of an individual referred to in any of paragraphs (a) to (f);
- (h) a dependant of an individual referred to in any of paragraphs (a) to (f), or of such an individual's spouse;
- (i) an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity. (Currently, there are no individuals prescribed by the regulations for the purposes of this definition.)

In addition, under section 1317AA to qualify for the whistleblower rights and protections in the Corporations Act an eligible whistleblower must:

- make a disclosure to an eligible recipient of a regulated entity or to the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA); and
- have reasonable grounds to suspect that the information contained in their disclosure concerns misconduct, an improper state of affairs or circumstances, or a breach of the law in relation to a regulated entity or an officer or employee of a regulated entity.

Further information about the corporate sector whistleblower protection regime is contained in ASIC Information Sheet 238 *Whistleblower rights and protections* and ASIC Information Sheet 239 *How ASIC handles whistleblower reports*, which are available from www.asic.gov.au.