

Senate Economics Legislation Committee

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Anthony Watson

Opening Statement

Thank you for inviting me to appear.

I have 4 main points.

1. Whistleblowing Matters

Whistleblowing matters. It matters that fraud, wrongdoing and hazards are brought to the attention of those best able to address them. All too often, when there is a scandal or disaster, it transpires that it could have been avoided or mitigated if someone who knew of it spoke up, or if their message had been heeded when they did speak up.

Whistleblowing legislation is not only a crucial employee protection; whistleblowing itself is the best tool for corporate governance and raising the alarm. In October last year Professor AJ Brown, who assisted the Parliamentary Joint Committee in developing Australia's whistleblower laws, stated that his research "*...confirms that whistleblowing is the single most important and significant way in which wrongdoing comes to light.*"

2. PwC advised Lendlease on the tax rort I disclosed

I called a large tax rort devised by PwC for Lendlease. They defrauded the Commonwealth of \$263m.

For calling the rort, I lost my career. When I held my ethics and wouldn't look away, I was set upon by PwC and Lendlease. I subsequently told the ATO. And now my wife and I are selling our house to pay legal fees.

The total primary tax is \$263m. Penalties will double that. The ATO will issue the first amended assessment before the end of June.

3. Australia's current tax whistleblowers do not work as Parliament intended, and the protections in this Bill are similarly flawed.

Under this Bill, Parliament seeks to extend protections to whistleblowers who make disclosures to the Tax Practitioners' Board (TPB). The crucial issue for this Committee is that the identical problem that I faced - for disclosures to the ATO - will apply to whistleblowers who make disclosures to the TPB. Their disclosures won't attract the promised protection.

Parliament recognises that entities like PwC, when they are caught, will do anything to avoid accountability. They have used a battery of lawyers to deny me the whistleblower protection Parliament intended. PwC will do the same thing when a whistleblower makes a disclosure to the TPB.

4. Parliament should ensure the whistleblower laws work as intended

Parliament should fix the law so that the whistleblower provisions apply when a protected disclosure is made. This was the intention of Parliament.

Whistleblowing matters. If this is not fixed, Parliament will be helping the likes of Peter Collins and Tom Seymour and Luke Sayers and the other PwC partners who sold out Australian taxpayers, and hurting people of conscience who should be encouraged and protected.

I attach draft amendments.

AJ Watson
9 April 2024

Questions and observations which may assist the Committee

When did you commence your action against PwC and Lendlease?

I commenced my action against Lendlease and PwC in April 2022. In the two years that have passed, millions of dollars have been spent arguing about just one thing: which set of whistleblower laws apply in my case. The former whistleblower laws in the Corporations Act were repealed on 1 July 2019, and the current whistleblower laws – in the Corporations Act and the Taxation Administration Act – commenced on 1 July 2019. The old laws were inadequate and were never used, which is why PwC and Lendlease have spent millions, and two years, seeking to deny me access to Australia's current laws.

What are the main advantages of the current laws over the old laws?

The two important ones are the reversal of the burden of proof and the non-award of costs.

The Explanatory Memorandum explained why the reversal of proof and the non-award of costs are so important: *The reversal of the onus of proof recognises the well documented propensity of organisations that are the subject of a disclosure*

of wrongdoing to accuse and victimise the whistleblower, citing reasons other than the disclosure for their actions. It also recognises the actual knowledge of the reasons for, and any conduct of, any victimising conduct will lie exclusively with the defendant in these cases.

Legal costs can be prohibitive to any person seeking compensation for damage, and the risks of being ordered to pay the costs of other parties to the proceedings may deter whistleblowers from bringing the matter to court.

When do the current laws apply?

The current provisions in the Tax Administration Act commenced on 1 July 2019. The amending Act¹ contained a specific application provision:

16 Application

The amendments made to the Taxation Administration Act apply in relation to disclosures that:

- (a) are made at or after 1 July 2019; and
- (b) relate to matters that occur or occurred before, at or after 1 July 2019.

Senators, I can take you to the amending Act, so you can read it yourselves.

The Explanatory Memorandum says: *The amendments [to the Taxation Administration Act] will apply in relation to whistleblower disclosures made on or after 1 July 2019, including disclosures about events occurring before 1 July 2019.*

It was Parliament's intention that disclosures made after 1 July 2019 attracted the protection. Senators, I made whistleblower disclosures to the ATO after 1 July 2019, but the promised protection has been denied.

PwC and Lendlease convinced the Federal Court that the current law only applies to entities which engage in detrimental conduct after 1 July 2019. The Court has rewritten Parliament's test. Consider this: *Lisa and Jodie work for BigCasino. They become aware BigCasino is carrying out a tax fraud. On 30 June 2019, Lisa and Jodie tell their boss. Lisa is dismissed immediately. Jodie is dismissed the following day (1 July 2019). They both tell the ATO on 1 July 2019. The way the law has been interpreted, Jodie is protected under the current whistleblower laws in the Tax Administration Act. Lisa has no protection. The only difference between them is the date of their dismissal. It is a ridiculous outcome and was not Parliament's intention. Both Lisa and Jodie should be protected.*

¹ Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

Two recent articles in the AFR which may assist the Committee's understanding

<https://www.afr.com/property/commercial/lendlease-reveals-liability-risk-from-pwc-advised-260m-tax-scheme-20240219-p5f5zn>

<https://www.afr.com/rear-window/lendlease-s-tax-shenanigans-are-future-people-problems-20240220-p5f6eb>

Treasury Laws Amendment (Restoring Whistleblower Protections) Bill 2024

The Parliament of Australia enacts:

....

Schedule 1 – Amendments

Part 1 – Amendment of the Corporations Act 2001

Corporations Act

1 After subsection 1644(1)

Insert:

(1A) In applying subsection (1), the timing of any detrimental conduct is to be disregarded.

2. After subsection 1644(2)

Insert:

(2A) In applying subsection (2), the timing of any detrimental conduct is to be disregarded.

Note: The application of subsections 1644(1) and (2) is determined exclusively by the timing of the related disclosures.

Part 2 – Amendment of Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

Act No. 10, 2019

1. Item 16

Repeal the item, substitute:

16. Application

- (1) The amendments made by this Part apply in relation to disclosures that:
- (a) are made at or after the time this Part commences (the *commencement time*); and

(b) relate to matters that occur or occurred before, at or after the commencement time.

(1A) In applying subsection (1), the timing of any detrimental conduct is to be disregarded.

Note: The application of the amendments made by this Part 2 is determined exclusively by the timing of the related disclosures.

Schedule 2 – Amendments

The amendments made by Schedule 1 apply from 1 July 2019.

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Schedule 2 – PwC Response – Extending tax whistleblower protections

Add:

11.

(1) The amendments made by this Schedule 2 apply in relation to disclosures that:

- a) are made at or after the time this Schedule commences (the *commencement time*); and
- b) relate to matters that occur or occurred before, at or after the commencement time.

(1A) In applying subsection (1), the timing of any detrimental conduct is to be disregarded.

Note: The application of the amendments made by this Schedule 2 is determined exclusively by the timing of the related disclosures.