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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600.

Email: economics.sen@aph.gov.au

Dear Mr Fitt

Re: Senate Economics Legislation Committee - Inquiry into Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

The Institute of Internal Auditors – Australia (IIA-Australia) is making a submission in relation to the definition of “eligible recipients” as contained in section 1317 AAC of the Bill.

Previously, under Corporations Act section 1317 AA (1) (b) protections for a whistle-blower only applied if they made the disclosure of misconduct to ASIC, the auditor of the company in question, or certain prescribed persons within the company.

The subsequent legislation Treasury Laws Amendment (Enhancing Whistleblowers Protections) Bill 2017 under section 1317 AAC lists a number of ‘eligible recipients’ of information “disclosees”, including at 1(b) an auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate.

In section 9 of the Corporations Act, the definition of an auditor or member of an audit team, essentially only applies to “external auditors” who are registered by ASIC.

It is clear therefore that internal auditors are not included in the implied definition of “audit team” as currently defined by the Corporations Act.

For example, the Corporations act still narrowly defines an “audit ” as an audit conducted for the purposes of this Act, and includes a review of a financial report for a financial year or a half-year conducted for the purposes of this Act. However, companies may undertake a number of “audits” including financial audits and performance audits, the latter of which are undertaken by audit professionals not necessarily “external auditors”.



In defining an audit-critical employee, section 9 of the Corporation Act states "in relation to a company, or the responsible entity for a registered scheme, that is the audited body for an audit, means a person who (a) is an employee of the company or of the responsible entity for the registered scheme".

IIA-Australia provided a submission to the inquiry conducted by a Senate Economics Committee/Parliamentary Inquiry, and also appeared before Joint Senate Hearings, and emphasized that an "internal auditor" as an "eligible recipient" should be defined separately to an "auditor," as outlined by the Corporations Act. We reiterate that stance for the purposes of this submission.

While internal auditors are not included in section 9 definitions, they are more likely to receive information from all internal and external sources in an organisation as opposed to the external audit team – which focuses solely on financial reporting; whereas the internal auditor focuses on a range of financial and non-financial internal controls.

The internal auditor generally reports to the head of an Audit and Risk Committee, and administratively to the Chief Executive Officer. The internal auditor provides assurance on risk functions, internal controls, and governance, and provides advice on fraud and corruption. The internal auditor therefore performs an entirely different role from that of the "audit team" as defined in the Act. As such, the internal auditor is more likely to discover internal weaknesses, instances of fraud, and other areas of maladministration. For this reason, internal auditors should be protected under the Corporations Act when reporting their findings.

In summary, the Corporations Act is silent on internal auditors. This is a hangover from the HIH scandal and CLERP 9 reforms, which were enacted in 2004, and in IIA-Australia's view, it is time for the legislation to be updated to reflect current business practices.

For example, the internal audit function is referred to by APRA in CPS 510 while ASIC in their guidance materials and Information Sheet 221 also promotes the internal audit function and references the International Professional Practice Framework (IPPF) which contains the 'Standards' governing the practice of internal audit, which are the only standards available to internal auditors practising in Australia. The Auditing and Assurance Standards Board (AUASB) issues standards only applicable to external auditors.

In addition, the ASX Corporate Governance Council's Principles and Recommendations mandate the internal audit function (recommendation 7.3). But the Corporations Act is well behind the regulatory authorities in recognising the practice of internal auditing.

Recommendations

As stated above, definitions in the Corporations Act only apply to external auditors within the definitions contained in Section 9 of the Corporations Act.

Internal auditors are more likely to become aware of serious wrongdoing because of their ongoing audits of whole of entity operations, but they are currently not protected by this Section nor are they covered by qualified privilege in the Corporations Act.

Therefore, to reflect current business practices, we recommend that 1317 AAC (1) and (2) be revised to include:

- A new subsection (f) and (g) respectively, insert “an internal auditor conducting an audit of the body corporate or a related body corporate”.

Also, if required, the Section 9 definitions in the Corporations Act could include the following:

- Internal auditor – means “an appropriately qualified professional providing independent and objective assurance of an organisation’s operations”.
- Internal audit – means “an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations”.

These inclusions would eliminate any confusion of the current and future amendments to the Corporations Act over the definition of and the role of the internal auditor and external auditor not only in the in the governance process, but also the changes to the Whistle-blower processes and acknowledgement of ‘eligible recipients’ that companies will be required to enact.

Please contact Tony Rasman, Public Affairs manager, Institute of Internal Auditors- Australia
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Yours sincerely



Peter Jones
Chief Executive Officer

